











# COVID-19 Safety Information >



District Courts of Harris County



## JUDGE JACLANEL MCFARLAND

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## PROCEDURES FOR THE 133RD CIVIL DISTRICT COURT

### JUDGE MCFARLAND'S COURT PROCEDURES:

#### MOTIONS:

### Discovery Motions

Always consult with each other (preferably lead attorney on the case to opposing lead attorney on the case) before filing any motion related to discovery and include a certificate of conference. Be sure to attach a copy of the discovery response at issue or state verbatim the request and answer in the body of your motion. Proposed orders should list each discovery issue separately. The court requires complete compliance with TRCP 191.2, which states as follows:

**“Parties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions or requests for hearings relating to discovery must contain a certificate by the party filing the motion or request that a reasonable effort has been made to resolve the dispute without the necessity of Court intervention and the effort failed.”** Please summarize your reasonable effort (Note: Sending a copy of a motion, without more, is not a conference. Sending an e-mail or leaving a telephone message, without more, is not a conference. If opposing counsel refuses to return numerous phone calls or other messages, outline those attempts in your motion.)

The court also requires complete compliance with Rule 3.3.6 of the Local Rules of the Civil Trial Division of the Harris County District Courts, which states as follows:

**“The certificates of conference required by the TRCP are extended to all motions, pleas and special exceptions except summary judgments, default judgments, agreed judgments, motions for voluntary dismissal or non-suit, post-verdict motions and motions involving service of citation.”** Note: The Clerk will remove from the docket motions that do not comply with this rule and will notify the requesting party of same.

### Responses

If time is short before a hearing, or **submission** or trial, please file your response directly with the court clerk so that Judge McFarland will be able to read the response before the hearing date. Please include a proposed order denying your opponent’s motion.

### Special Exceptions

Attach a copy of the pleading you are excepting to (unless the special exception is only to the amount of damages sought) or state verbatim the paragraph to which your special exceptions apply.

### Motions for Sanctions

Sanctions should not be requested unless the opponent has violated a previous order. Instead, ask for reimbursement of your costs.

### Motions for Severance

All motions for severance must contain the following:

- \* New case number and style name;
- \* List of original pleadings to be severed out and transferred to the new case;
- \* A list of pleadings to be copied, certified and transferred to the new case;
- \* Whether or not the new case file is pending or final;
- \* Indicate attorney name, address and bar number whom costs to be assessed.

See court clerk for details. A less expensive alternative in some cases is to ask for abatement of one cause of action or separate trials on a cause of action.

#### Trial Continuances

Motions for continuance need to be verified, should be filed early, and should state that the client consents to the requested continuance. The more detail in your motion, the better the chance that it will be granted.

#### Agreed Motions

Agreed motions do not have to be placed on the court's docket. Just file them with the court for consideration. They will immediately be presented to Judge McFarland without the necessity of a hearing (this includes unopposed motions for continuance).

#### Motions to Withdraw as Counsel

All motions to withdraw must be set for oral hearing and contain the following:

- \*An indication that the motion to withdraw was provided to the client;
- \*An indication of whether or not the client consents to the motion;
- \*The last known address and phone number of client; and
- \*Notice to client that client has the right to appear at the hearing to object to the motion or file a response prior to the **submission** of the motion.

#### Rule 106 Motions for Substituted Service

All Motions for Substituted Service under Rule 106 must be accompanied by an affidavit that includes the following information:

- \*Efforts taken to verify that defendant actually lives or works at the subject address

\*Each attempt at service, with date and time

\*Identity of persons who were present at the subject address and what was said

\*Identity of cars in the driveway or other indications that defendant resides at the subject address.

\*At least two attempts before 7:30am AND two attempts after 7:30pm.

\*Proposed order for substitute service must include language stating service must be given to a person 16 years or older at the address

or placed on the door. Additionally:

\* (a) a copy of the citation, Petition, and this Order shall be mailed by BOTH certified mail, return receipt requested, AND by regular mail to the Defendant at the same address at which service is authorized above;

(b) the return of service shall not be made until 30 days after mailing or until the process server receives back the green card from the post office, whichever date is earlier;

(c) the return of service shall include a statement setting out the date of mailing and the result of the mailing by certified mail, and the date of mailing and result of same by regular mail (*i.e.*, whether the envelope was returned by the post office, the green card came back signed, etc.); and

(d) a copy of any envelope or green card returned by the post office shall be attached to the return of service.

## HEARINGS:

### Emergencies

Parties must consult with each other about the matter (preferably lead attorney on the case to opposing lead attorney on the case). If only one side thinks it is an emergency, file a written request via letter for the emergency hearing. E-file the document into the file. The court staff will then give the request to the Judge for consideration. If an emergency hearing is granted, the movant is responsible for providing proper notice of the hearing to all parties.

### Law Day Docket

Any party requesting an oral hearing should call the court clerk for a date and time. Please advise the court clerk of the amount of time necessary for your hearing and if you require a court

reporter. The court staggers hearing times so that parties will not have to wait unnecessarily. Therefore, if the hearing on your motion will take longer than the time allotted on the morning docket, make arrangements with the court clerk for an afternoon hearing. Once you obtain a hearing date, file a notice of oral hearing and serve it on all counsel or pro se parties.

It is the movant's responsibility to provide proper written notice of the hearing to the court and to all parties. It is also the movant's responsibility to timely advise opposing counsel if he/she is passing the hearing.

#### LAW DAY DOCKET - per Court's assigned times

Be sure to plan ahead in filing your summary judgment and setting it for a hearing. This allows you to receive a hearing when you want it and in compliance with your DCO. For motions for Default judgment, please submit proper military affidavit. Visit <https://www.dmdc.osd.mil> or <https://www.defenselink.mil/pubs/foi> for the Defense Manpower Data Center's (DMDC) Military Verification service.

Note: Any matter that has been set by the parties for an oral hearing on a date later than the pre-trial conference will be heard at pre-trial conference as a pre-trial matter and is not a basis for a continuance.

#### Temporary Injunctions

Temporary injunctions and evidentiary hearings typically are set Monday afternoon and Friday afternoon. Please call the court clerk before your scheduled hearing to confirm the hearing. For a Temporary Injunction hearing, it is imperative that we know whether or not you are ready to proceed; if the parties were properly served, and the length of time and the number of witnesses.

We may need to reschedule your hearing and extend the TRO if there are trial conflicts. Do not bring your witnesses to court until you have spoken to the court clerk.

Also, Judge McFarland requires that if your TRO is granted by the Ancillary Judge, the parties are required to attend mediation regarding the TI issues before your TI hearing in 14 days. If the parties are unable to agree on a mediator, the 133rd Court will appoint one. If mediation does not occur within 14 days, your TRO will not be heard.

#### Submission Docket

The **submission** docket is on Mondays at 8:00 a.m. after 10 days' notice. Oral hearings for matters placed on the **submission** docket frequently are allowed if requested; however, the request

may not be granted if a response has not been filed. A request for an oral hearing is not a substitute for a motion to continue the hearing. Please clearly identify your request for an oral hearing or your request to continue the hearing by filing them separately from your response with proposed orders attached. The court may determine that certain motions do not need to be placed on the oral hearing docket (e.g., motions to reconsider with no new evidence). The court clerk will inform you if your motion for oral hearing is denied in such a situation.

The court allows certain motions be considered on **submission**. These motions include Motions to Reconsider (with no new evidence), Motions for Leave to File Pleadings, Motions to Designate a Responsible Third Party.

#### Appearance by Phone

An attorney may appear by phone for any scheduled hearing. See court clerk for details. If more than one person wants to appear by phone at a scheduled hearing, the attorneys must all conference in on one line and then call the court.

## TRIALS:

Pretrial Orders/Exhibits/Motions in Limine. This court does not require pretrial orders. However, we expect the parties to exchange motions in limine, exhibit lists, witness lists, and deposition excerpts a week before trial. Eliminate duplicate exhibits. Mark an 8 x 11 size exhibit for any blowup used. Be prepared to advise Judge McFarland of exhibit numbers for which you have no objection.

Depositions. Provide page/line for any witness anticipated to testify by deposition at least seven days prior to trial date. Opposing counsel must promptly advise of any objections. Any objections not agreed to should be presented to the judge prior to commencement of voir dire examination.

Time for Trial. Be prepared to advise the judge of amount of time necessary to present your case in chief and any lengthy cross-examinations.

Court's Charge. Proposed jury charge should be exchanged prior to trial. Provide the Court with an electronic copy in Microsoft Word format.

Findings of Fact/Conclusions of Law. In a non-jury trial, proposed Findings of Fact and Conclusions of Law and closing argument briefs are to be filed after trial along with a cd or flash drive in Microsoft Word format.

Trial Settings. All cases are automatically set for trial after the answer of a defendant. Most cases are reset within 4 to 6 months if not reached at the first setting. If you anticipate a challenge to an expert's qualifications, please schedule the hearing well in advance of trial. Please discuss scheduling of any anticipated Daubert motion with the court at an earlier status conference.

Parties must call the trial coordinator to get docket positions. The positions on the JIMS/internet screens are not always the most current. Betsy Wall's direct line is 832-927-2483. Beginning January 1, 2014, there will be no docket calls in the 133rd Court. Pretrials will be held when cases are assigned to trial.

Jury Panel. If you need a panel of more than 42 jurors, please let the court coordinator know at docket call. If you need a panel larger than 50, please advise the court coordinator at least 45 days before trial so that we may reserve the ceremonial courtroom.

Voir Dire. Judge McFarland does not limit the time for voir dire. After the general voir dire, individual jurors may be questioned at the bench for cause. If you are going to use a jury questionnaire, let the court coordinator know 30 days before trial. Work together to prepare a joint questionnaire. If there are any questions not agreed on, you need to present them to Judge McFarland for a ruling 10 days before trial.

Throughout the pendency of a case, the parties, all counsel, and their agents or representatives shall obey and comply with the Texas Rules of Civil Procedure, the Texas Disciplinary Rules of Professional Conduct, and the Texas Lawyers' Creed - A Mandate for Professionalism (as applicable). Judge McFarland expects counsel to act professionally at all times. Violations of this order (or of other orders and/or instructions of the court) are punishable by contempt. This punishment can include up to a \$500.00 fine and/or six (6) months in jail. Certain violations may also be subject to sanctions pursuant to Rule 215, Texas Rules of Civil Procedure, as well as other applicable authority and the inherent power of the court.

#### Mediations

The court requests cases mediate prior to trial. If you cannot agree on a mediator, please call Betsy Wall, trial coordinator, at 832-927-2483, and the court will appoint a mediator for you. If you believe that your case is not appropriate for mediation, file an objection to the mediation and set it for telephone hearing or put it on the **submission** docket. Please refer to the back of your docket control order for further instruction.

### **GENERAL:**

#### **1) Where do I go to view the 133rd files?**

The Harris County District Clerk maintains records of cases filed in the Harris County District Courts and the Harris County Criminal Courts At Law. Cases filed for the 133rd Civil District Court are stored in electronic form. Please visit the website at <https://e-docs.hcdistrictclerk.com/eDocs.Web/Login.aspx> or you may go to the Civil Court Building, Civil Customer Service Department, 2<sup>nd</sup> Floor at 201 Caroline, Houston, Texas 77002 to view our files.

#### **2) What are the Court's special rules governing courtroom decorum?**

Dress appropriately. Judge McFarland expects counsel, parties and witnesses to dress in a professional manner.

Stand each time the jury enters or exits the courtroom.

Stand when addressing the Court. Sit when questioning a witness.

Ask to approach the witness the first time and then you may approach freely.

Don't address witnesses, parties or opposing counsel by their first names. Use their titles.

Line up your witnesses in order to avoid delay. Advise the court if there are witness timing issues so that witnesses may be taken out of order, if necessary, or allowed to be on call so they don't have to wait a lengthy period of time to testify.

Please identify yourself to the Judge and the court reporter before a hearing begins. Provide a business card to the Court Reporter with your correct address, phone number, fax number and Bar number.

Provide the court reporter with a glossary of names and terms that will be used during the hearing or trial. Provide the Court Reporter with case citations that will be used.

Plaintiff's exhibits are to be marked with yellow "Plaintiff's Exhibit" stickers. Defendant's exhibits are to be marked with blue "Defendant's Exhibit" stickers. Use only numbers when marking exhibits instead of letters. Exhibit stickers are available by contacting the court reporter. Exhibits must be bound in binders

Accurate exhibit lists should be furnished to the Judge and to the court reporter. Exhibits with multiple pages should be stapled, bound and/or assembled so that they may be accurately preserved.

Redactions should be made prior to the exhibit being offered. Exhibits redacted after the exhibit is admitted (subject to redaction or without initial objection) are to be marked as an "A" exhibit and the original, unredacted exhibit is kept by the court reporter for the record. Once an exhibit is offered (even if not admitted), it must be tendered to the court reporter.

Once an exhibit number has been assigned, the same exhibit number may not be used for another exhibit, even if the original exhibit is withdrawn or not used in the trial or hearing.



Page and line designations of deposition testimony, along with a non-condensed copy of the transcript, are to be furnished to the court reporter prior to the offer. When one person is reading from written deposition testimony, the reader must say “Question” prior to reading each question and “Answer” prior to reading each answer.

Arrangements for acquiring testimony after a hearing or during a trial may be made directly with the court reporter. Please advise the court reporter a week before trial if daily copy is required. You must notify the other side of your request. You may reach the reporter at [darlene\\_stein@justex.net](mailto:darlene_stein@justex.net).

**3) Does the court provide its own blackboard?** Yes. **Chart stand?** Yes. **Elmo?** Yes.

**Video Conference?** Yes. Please see Betsy Wall at 832-927-2483 for details. **Video equipment?** Yes. **What arrangements must be made to use them?** None; however, if you would like to stop by the week before trial to practice using the court equipment, the Bailiff, James Koen, will be happy to assist you.

**4) How is notice of rulings given by the Court?**

The coordinator or court clerk will call you with rulings by the court on most contested matters and matters taken under advisement. In addition, they will fax a copy of the order to you. For other matters, a postcard is mailed from the District Clerk’s Office. Make sure your address is current with the District Clerk’s office. You also may call the court clerk. Check with the District Clerk about accessing imaged documents on-line.

### **DISMISSAL NOTICES (DWOP's)**

File your Motion to Retain. DO NOT APPEAR at the hearing date on the letter. Filing the Motion to Retain is sufficient. You may call the Court to see if your Motion to Retain has been granted. Give adequate reason in the Motion to keep the case active.

## **HELPFUL RESOURCES**

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### Judges

### Attorneys

- Civil Ad Litem
- FDAMS Application
- FDAMS User Guide
- Standards and Procedures
- Vips Application
- Vips Support Documents and Useful Resource Links
- HCSO Inmate Visitation Info



### Reporters

Court Reporter Case Management System

### Media

Civil Electronic Media Rules



### Employees

Microsoft Outlook Web Access  
Accessing County Resources

### Statistics

- Civil
- Criminal
- Family
- Juvenile



### Career Opportunities

- Job Vacancies
- Externships
- Internships
- Volunteers

## Harris County Links

*Harris County | Texas*

*Harris County Community Supervision & Corrections Department*

*Harris County Pretrial Services*

*HC AZ*

*Court Agenda*

*County Directory*

*Employees*

*County Holidays*

*District Clerk*

## The Administrative Office of the District Courts

*1201 Franklin, 7th Floor*

*Houston, Texas 77002*

## Thank you for visiting us

*Visitor Counter: 2091586*