



FACT SHEET FOR JUDGE SAM SPARKS

CIVIL CASES

Contacting the Court

1. Who should be contacted regarding scheduling matters?

Contact Linda Mizell, Judicial Assistant, at (512) 916-5230, and/or the law clerk handling the specific case. It should be noted that Judge Sparks handles all of his own scheduling.

2. May the court's law clerks be contacted directly? If so, under what circumstances?

Yes. The law clerks may have direct communication with counsel. One law clerk handles even-numbered cases, and one law clerk handles odd-numbered cases.

3. May the court be contacted by e-mail or fax? If so, what is the address or number?

Only by permission.

4. How does the court prefer attorneys to contact the court in an emergency?

The attorneys may contact any member of the Court's staff.

5. May parties contact the court during depositions?

Yes.

6. What procedures should be followed if a party expects to be filing a motion for a temporary restraining order or other expedited relief?

A courtesy call should be made to the courtroom deputy clerk and notice should be given to the opposing party of the fact of filing or notice of any hearing set.

7. What procedures should be followed to request an expedited hearing in a civil case?

Any such request should be made by motion.

8. Is it permissible to contact the court regarding the status of motions in a civil case? If so, should the law clerk or the courtroom deputy be contacted?

No. The inquiry should be directed to the Clerk's Office.

9. Should the parties notify the courtroom deputy, the law clerk, or another person if a contested motion in a civil case has been resolved?

The law clerk or judicial assistant should be notified by telephone with a confirming fax, upon request.

General Pretrial Procedures

10. What is the court's procedure for issuance of scheduling orders in civil cases?

Pursuant to Rule 26, the parties are to present their requested scheduling order within sixty days after the answer or appearance by defendant, using the form of order provided on the Western District's web site (<http://www.txwd.uscourts.gov/rules/stdord/Austin/sched-ss.pdf>). The Court will then review and, if appropriate, enter the same. If not appropriate, the Court will enter its own scheduling order. Civil cases are set for docket call within twelve months from the entry of the scheduling order, if possible, depending on the civil docket settings.

11. What is the court's procedure for requests for modification of scheduling orders?

The parties may file requests for modification of scheduling order, but rarely will the Court change the dates for filing dispositive motions, docket call, and trial.

12. Are there matters that the court routinely refers to a magistrate judge in civil cases?

None.

Procedures Specific to Civil Cases

13. Does the court require that the parties in civil cases file their initial disclosures?

No.

14. What are the court's procedures for referring civil cases to alternative dispute resolution? Under what circumstances does the court order mediation, when during the case is it ordered, and how is the mediator chosen?

The Court rarely refers civil matters to any alternative dispute resolution; however, when the parties jointly request mediation and identify the mediator selected, the Court will order that particular case to mediation. The Court does not choose any mediators

with the exception of assigning a case to a United States Magistrate Judge for mediation under special circumstances.

15. Does the court have any specific requirements for removed cases?

A copy of the record from the state court should be filed with the Clerk, and there must be jurisdiction.

16. Does the court typically have pretrial conferences in civil cases? If so, when during the case?

The Court always sets a status conference approximately two months prior to trial in every civil case.

17. Does the court typically have docket calls in civil cases? If so, when during the case?

There is one docket call each month for cases to be tried the following month. Docket call is usually three or more days prior to jury selection.

18. Does the court have any requirements for pretrial submissions in civil cases in lieu of or in addition to those in the local rules?

No.

Facilities and Technology

19. Does the court reporter use Real Time? If so, who should be contacted to obtain rough transcripts?

Yes. The court reporter is Ms. Lily Reznik, telephone number (512) 391-8792.

20. Does the courtroom have Internet access? If so, must arrangements to use the Internet access be made ahead of time?

Yes. Check with the U.S. District Clerk's Office for details.

21. Please describe courtroom technology available to counsel for use in presenting evidence:

The courtroom offers an integrated system whereby personal computers or tablets (not provided) can be connected for video and audio presentations. Those presentations are viewed on a large screen and/or monitors at counsel tables, the bench, witness box, and the jury box. The courtroom deputy controls which monitors will display the presentation/evidence. Also available for use by counsel is an Elmo, DVD player, and a digital dry erase board (a touch screen monitor which is viewed on display monitors and/or the screen in the courtroom). There is also a WiFi network in the courtroom.

22. Is any additional technology available? If so, please describe.

No.

23. What arrangements must be made to use the available equipment?

It is not necessary to make arrangements to use the available equipment.

24. May parties bring their own equipment? If so, are there any restrictions on what equipment may be brought and who should be contacted to arrange for the delivery of such equipment?

Parties may wish to bring computers and/or tablets, but with the presentation equipment available, it is unlikely additional equipment is necessary.

25. Is it possible to have time in the courtroom to familiarize oneself with the layout and available technology? If so, who should be contacted to schedule the time?

Yes. If counsel would like to familiarize themselves with the equipment and/or get instructions in its use, they should contact the Courtroom Deputy Clerk, at (512) 916-5896, ext. 8708.

Motions Practice

26. When (if ever) does the court want a courtesy copy of a filing?

Only when the pleading is filed within 48 hours of a hearing scheduled in the case.

27. Does the court prefer copies of cases attached to briefs or motions? If so, are copies from electronic databases acceptable? Does the court prefer pertinent provisions of the cases to be highlighted?

No.

28. Does the court typically have hearings on contested motions in civil cases? If not, what circumstances would warrant a hearing?

The Court only will determine whether a hearing is to be held in a civil case.

29. What time of day are hearings in civil cases generally held?

Discovery hearings are held at 6:00 a.m. All others during the day.

30. Does the court allow telephone conferences for the resolution of motions or other matters? If so, who arranges them and when are they typically scheduled?

The Court does allow counsel to participate in hearings by telephone. They must be prearranged through the Judicial Assistant, Linda Mizell at (512) 916-5230.

31. Does the court depart from the page limits contained in the local rules? If so, by standing order or is a motion for leave of court and order required?

The Court has never failed to allow counsel to file pleadings with a number of pages in excess of that stated in the local rules; however, a motion to exceed the page limit is required.

32. Does the court accept briefing on motions beyond the motion, response, and reply? If so, is a motion for leave of court and order required?

A motion is not required.

33. Does the court accept letter briefs in civil cases? If so, are there circumstances in which the court prefers letter briefs?

There are circumstances where the Court requests letter briefs; otherwise briefs should be in standard format. Letter briefs, like any other pleading, must be filed with the Clerk.

34. Does the court permit the parties in civil cases to agree to extensions of time by stipulation filed with the court, rather than by motion and order, where the extension will not affect other pretrial dates? E.g., an extension to answer the complaint or to respond to written discovery.

After the scheduling order is entered, the Court permits the parties to agree to all dates with the exception of the deadline for filing dispositive motions, the docket call, and trial dates. The parties are not required to file any stipulation or motions. In the event of an argument as to any agreement, the Court will enforce the scheduling order as expressly written.

35. How far before trial does the court rule on dispositive motions?

This depends on when the dispositive motions are filed.

36. Does the court have any particular rules regarding filing, hearing, or granting motions that have not been addressed above?

No.

Courtroom Decorum

37. Does the court have special rules governing courtroom decorum (e.g., addressing opposing counsel; approaching the witness; talking or passing notes at the counsel table; beverages allowed at the counsel table; attire)?

The Court requires counsel and their clients to be appropriately dressed. Counsel do not have to have the Court's permission either to approach the witness or to move around the courtroom. Beverages are not allowed other than the water set out by the deputy clerk.

38. Does the court prefer that counsel address the court from counsel table or from the lectern?

All presentations in the courtroom are from the lectern.

39. Does the court prefer that counsel address witnesses from counsel table or from the lectern?

All presentations in the courtroom are from the lectern.

Hearing and Trial Procedures

40. What is the court's general procedure for continuing civil trials? How early does the court want the request made and how early will the court rule on such a request?

There are no continuances of civil trials other than for medical reasons or death. Trial settings are attempted to be set within twelve months of the entry of the scheduling order, if the civil docket permits. All cases set for trial in particular month will be tried in that month.

41. Will the court grant a motion to continue the trial date if it is unable to rule on a pending dispositive motion before the parties must begin final trial preparation?

No, but that has never happened.

42. When does the court typically begin and end trial days?

Trial days are 8:30 a.m. to 6:00 p.m. unless members of the jury reside more than seventy miles from Austin and then the time is adjusted accordingly.

43. Does the court permit the use of jury questionnaires? If so, when should the proposed questionnaire be provided to the court?

The Court has standard questionnaires completed by all jurors for counsel. Special questionnaires are permitted in special cases and should be presented to the Court at least one week prior to jury selection. The parties should agree to this. The parties

should submit their proposed questionnaire (one set) and set out any questions objected to by the opposing party.

44. Does the court allow attorneys to conduct their own voir dire in civil cases? If so, typically for how long?

No.

45. How much time are parties typically given for opening statements in civil cases?

In all civil trials, each party is given a specific amount of time from opening statement to the closing of evidence. Counsel may use any and all of the time allotted in any way desired.

46. Does the court require the parties to exchange demonstratives prior to using them in trial? If so, when should they be exchanged?

All exhibits, including demonstrative exhibits, should be displayed and disclosed to opposing party prior to jury selection.

47. Does the court permit the parties to use deposition testimony by agreement even if the witness is not unavailable?

Of course.

48. Must a party intending to present testimony by deposition provide excerpts to the court? If so, when?

The parties must provide the excerpts of testimony by deposition to opposing party prior to trial, but it is not necessary to present the same to the Court.

49. May the parties provide the court with electronic versions of proposed jury instructions, verdict forms, or proposed findings of fact and conclusions of law? If so, what format should be used?

Yes. The manner of proposed pleadings is preferred and should be in WordPerfect.

50. May the parties leave exhibits and equipment in the courtroom overnight?

Generally the parties may leave exhibits and equipment overnight in the courtroom, but there are occasions when other proceedings are scheduled and then discretion is necessary.

51. What is the court's practice on returning exhibits to the parties and requiring the parties to preserve them for appeal?

Once an exhibit is tendered to the Clerk, the Clerk maintains control over the exhibit thereafter.

Court Appointments

52. What are the court's procedures and requirements for court appointments for indigents?

The Court does not appoint counsel for state or federal habeas cases or civil cases, with the exception of that rare case where special circumstances justify the appointment of counsel.

53. What are the court's procedures and requirements for appointment of guardians ad litem?

The Court appoints its own guardians ad litem.

Miscellaneous

54. What are the court's procedures for dismissal of cases for want of prosecution?

Entry of an order.

55. What are the court's requirements and procedures for voluntary dismissal of cases?

The Court's law clerks will inquire of opposing party if a voluntary dismissal is permissible and, if so, the case is dismissed. If there is opposition, a hearing is scheduled.

56. When does the court find that sanctions are appropriate?

The Internet has insufficient space to answer this question.

57. Are there any other special practices or procedures for lawyers and parties appearing before the court in civil cases?

The Court expects lawyers in federal court to be prepared, provide competent services and be knowledgeable of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Western District of Texas and standing orders in the Austin Division.

58. Any pet peeves?

Of course not.

CRIMINAL CASES

Contacting the Court

1. Who should be contacted regarding scheduling matters?

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Only by permission.

4. How does the court prefer attorneys to contact the court in an emergency?

The attorneys may contact any member of the Court's staff.

5. May parties contact the court during depositions?

Yes.

6. What procedures should be followed if a party expects to be filing a motion for expedited relief?

A courtesy call should be made to the courtroom deputy clerk and notice should be given to the opposing party of the fact of filing or notice of any hearing set.

7. What procedures should be followed to request an expedited hearing in a criminal case?

Any such request should be made by motion, with a telephone call to the courtroom deputy clerk.

8. Is it permissible to contact the court regarding the status of motions in a criminal case? If so, should the law clerk or the courtroom deputy be contacted?

No. The inquiry should be directed to the Clerk's Office.

9. Should the parties notify the courtroom deputy, the law clerk, or another person if a contested motion in a criminal case has been resolved?

The law clerk or judicial assistant should be notified by telephone with a confirming fax, upon request.

10. How should attorneys advise the court when a criminal case requires an evidentiary sentencing hearing?

The Court may not be brilliant, but is not a dumbbell and can figure out when an evidentiary hearing is necessary.

General Pretrial Matters

11. What is the court's procedure for issuance of scheduling orders in criminal cases?

A standing order is entered in every criminal case setting a deadline for plea agreements, hearing on all motions, and trial date.

12. What is the court's procedure for requests for modification of scheduling orders?

The parties may file requests for modification of scheduling order, but rarely will the Court change the dates for filing dispositive motions, docket call, and trial.

13. Are there matters that the court routinely refers to a magistrate judge in criminal cases?

None.

Procedures Specific to Criminal Cases

14. Must counsel in criminal cases confer on all motions before filing them? If so, must counsel reflect the result of their conference in the body or title of the motion?

The local rules so require and failing a certification of the conference and the reason for no agreement, the Court will dismiss the motion for failure to comply with the local rules.

15. Does the court prefer use of the pretrial checklist or pretrial motion practice?

The parties should follow the Court's standing discovery order, which will be entered after arraignment or waiver or arraignment. The standing discovery order will also set deadlines for filing motions concerning matters not covered by the standing order, as well as dates for motions hearing and trial.

16. If the parties use the pretrial checklist, how should they make a record of what was agreed to?

N/A

17. If the parties use the pretrial checklist, how should they get a hearing on contested matters?

N/A

18. Does the court have any specific requirements for motions to suppress? If so, please describe them.

Motions to suppress must be in writing.

19. Does the court have any specific requirements for discovery motions? If so, please describe them.

Any discovery motions must contain a certificate that a conference was held and the specific reasons no agreement could be made. The most significant requirement for the filing of discovery motions is that the filer better be right.

20. What does the court hope to accomplish at docket call settings in criminal cases?

There are no docket call settings in criminal cases.

21. When should exhibits and objections to them be exchanged and filed?

As set out in the standing discovery order.

22. Does the court prefer that objections to the Presentence Investigation Report be filed or merely communicated to the Probation Officer?

Objections to presentence investigation report should be given in writing to the probation officer who will attach it to the presentence investigation report which will be filed at the time of sentencing.

Facilities and Technology

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No.

32. Does the court typically have hearings on contested motions in criminal cases? If not, what circumstances would warrant a hearing?

All motions in criminal cases are heard on the date set out in the scheduling order.

33. What time of day are hearings in criminal cases generally held?

Usually at 9:00 a.m. on Fridays.

34. Does the court allow telephone conferences for the resolution of motions or other matters? If so, who arranges them and when are they typically scheduled?

The Court does allow counsel to participate in hearings by telephone. They must be prearranged through the Judicial Assistant, Linda Mizell at (512) 916-5230.

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This depends on when the dispositive motions are filed.

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Hearing and Trial Procedures

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A motion for continuance must be filed in compliance with the scheduling order, but few continuances are permitted.

45. Will the court grant a motion to continue the trial date if it is unable to rule on a pending dispositive motion before the parties must begin final trial preparation?

No, but that has never happened.

46. When does the court typically begin and end trial days?

Trial days are 8:30 a.m. to 6:00 p.m. unless members of the jury reside more than seventy miles from Austin and then the time is adjusted accordingly.

47. Does the court permit the use of jury questionnaires? If so, when should the proposed questionnaire be provided to the court?

The Court has standard questionnaires completed by all jurors for counsel. Special questionnaires are permitted in special cases and should be presented to the Court at least one week prior to jury selection. The parties should agree to this. The parties should submit their proposed questionnaire (one set) and set out any questions objected to by the opposing party.

48. Does the court allow attorneys to conduct their own voir dire in criminal cases? If so, typically for how long?

No.

49. How much time are parties typically given for opening statements in criminal cases?

There are no time limits.

50. Does the court permit the parties to use deposition testimony by agreement even if the witness is not unavailable?

Of course.

51. Must a party intending to present testimony by deposition provide excerpts to the court? If so, when?

The parties must provide the excerpts of testimony by deposition to opposing party prior to trial, but it is not necessary to present the same to the Court.

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Court Appointments

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In criminal cases, all indigents have appointment of counsel. The Court does not appoint counsel for state or federal habeas cases or prisoner cases, with the exception of that rare case where special circumstances justify the appointment of counsel.

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