

# ***U. S. MAGISTRATE JUDGE FELIX RECIO***

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The following are procedures which, in addition to the Local Rules of the Southern District of Texas, will govern all cases tried before United States Magistrate Judge Felix Recio.

## **Contact Information**

U.S. Federal Building and Courthouse  
600 E. Harrison, #203  
Brownsville, TX 78520-7152  
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## **Chambers Staff**

Felix Recio, U.S. Magistrate Judge  
Lydia Villarreal, Secretary  
Sally Garcia, Case Manager  
Jason Scott, Law Clerk

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## ***General Procedures***

### **1. Communicating With the Court and Court Personnel**

- A.** Communications with the Court and inquiries regarding motions, hearings, etc. should be made through the Case Manager, Sally Garcia. Ex-parte contact by counsel with the law clerks is strictly forbidden.

The law clerks are not allowed to discuss any cases, motions pending before the Court, or Court procedures with parties or attorneys. At times, the Court, in its discretion, may direct that the law clerks contact the attorneys in a case regarding a specific matter. Attorneys shall, however, refrain from discussing any issue not directly raised by the law clerks. The law clerks have been directed to report any and all attorney communications to Judge Recio.

- B.** Courtesy copies of all pleadings requiring immediate attention should be forwarded to Chambers to ensure that they reach the Court's attention.
- C.** Questions regarding any criminal matters should be directed to the Case Manager, Sally Garcia who may be reached at (956) 548-2548.

## **2. Motion Practice**

- A. All motions must follow the written motion practice outlined in the Local Rules for the Southern District of Texas. See [Local Rule 6](#).
- B. All registered Filing Users must follow the electronic motion filing practice outlined in the Administrative Procedures for Electronic Filing for the Southern District of Texas. See [HERE](#). (INSERT LINK).
- C. All motions filed are governed by the submission period outlined in [Local Rule 6D](#), which provides for a 20 day response time for all motions. Upon expiration of the 20 day response period, the motion is ripe for submission and may be ruled on at any time thereafter. The submission (or response) date may be extended by a properly filed motion to extend the submission date. Unopposed motions for extension of time will be granted at the discretion of the Court. Opposed motions for extension of the submission date will only be considered if they are timely filed. Parties are also advised to forward to Chambers a courtesy copy of all motions and responses filed in cases before Judge Recio, or that have been specifically referred to Judge Recio for resolution. **Parties may file any courtesy copies of motions, or responses by facsimile unless otherwise directed by the Court.**
- D. Unless the scheduling order provides to the contrary, or unless leave of court is granted, no motion filed within one week of the trial setting will be considered.
- E. All requests for expedited consideration of motions, as well as all requests for oral argument on motions submitted for Judge Recio's consideration shall be made in writing, either at the time of the filing of the motion, or by subsequently filed written request. Such requests are to be filed with the Clerk of Court in the usual manner, with a courtesy copy forwarded to Judge Recio either by mail, or by facsimile.
- F. The Court will not, as a matter of course, conduct a hearing on every discovery motion that is filed. The Court will schedule a hearing if one is deemed necessary to determine the propriety of the relief sought.

## **3. Courtroom Procedures**

- A. **Seating:** There are no designated seating arrangements for the parties and their attorneys. The counsel tables in the courtroom are available on a first-come, first-serve basis.
- B. **Decorum:**
  - 1. As with any appearance before the bench, counsel, parties, and witnesses are expected to address the Court with the customary respect, and conduct themselves with the usual decorum and dignity for the proceedings. See [Local Rule](#)

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2. Counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, smoking, wearing hats, or reading newspapers, books, etc. in the courtroom. All cellular telephones, and beepers must be turned off before entering the courtroom.
3. Counsel and parties are expected to be seated at the counsel tables and ready to proceed when Court is called into session. Counsel may drink water in the courtroom (provided at the counsel table), but no other eating or drinking is permissible.
4. Counsel should question witnesses while standing at the lectern.
5. Counsel is expected to stand at all times when addressing the Court.

**C. Access to the Courtroom:** Enter and leave the courtroom only by the front doors. Do not use the Court's entrance or the side entrances. Counsel needing access to the courtroom for any equipment or exhibits prior to trial, before or after normal hours of court operation, must advance with the Case Manager to have the courtroom open.

**D. Telephones:** Telephone messages will not be taken by the Judge's staff during the course but counsel may request use of a telephone in Chambers.

**E. Equipment:**

The following equipment can be brought into the courtroom on request: Television with video-recorder, a chalk or dry erase board, an easel (parties must provide their own paper), and various overhead projectors. All equipment should be requested by the parties at least 3 days before trial.

To the extent that counsel requires any other equipment, such as overhead projectors, and other sound and/or video equipment, the parties shall so inform the Court in writing prior to trial. Specifically, counsel must provide the Case Manager with a list of all the equipment to be used during trial so that the appropriate security clearance from the United States Marshal Service can be timely obtained.

### ***Criminal Procedures***

1. **Criminal Docket:** The criminal docket is conducted on a rotating schedule between Judge John Wm. Black and Judge Recio.. Questions and Motions in criminal matters should be directed to the Magistrate Judge on duty.

2. **Motions for Review of Detention:**

Under 18 U.S.C. 3142(f) the Magistrate Judge may only review detention if "information exists that was not known to the movant at the time of the hearing and that has a material

bearing” on the amelioration of the risks of non appearance and safety. Therefore, motions for review of detention must specify the factual basis for the motion, the materiality of the facts to the issues, and that the information was not known previously.

**3. Appointed Counsel may not substitute their associates or other attorneys to appear on their behalf without prior approval of the Court.**

**4. Continuances are not generally granted.**

## **Civil Procedures**

### **1. Scheduling Conferences**

- A.** Scheduling conferences are usually conducted via telephone conference with the Law Clerk unless otherwise requested by the lawyers.
- B.** Prior to the commencement of a trial before the Magistrate Judge all parties including litigants and attorneys must sign and file with the Court a 636 Consent to Proceed Before the U.S. Magistrate form. Said form may be obtained from the Court Room Deputy.
- C.** The Scheduling Order will control the subsequent course of the case, and shall not be modified except by leave of Court upon a showing of good cause.
- D.** When the parties consent to trial before Judge Recio, any previously entered scheduling order and trial date set by the prior judge may be changed. A second Rule 16 conference may be held before Judge Recio by telephone to re-set the deadlines that will govern the case. The Scheduling Order that will be entered for consent cases will contain a date certain for trial.

### **2. Final Pretrial Conferences**

Final Pretrial Conferences will be held in accordance with the schedules adopted by the District Court. A copy of that schedule can be obtained from the Court Room Deputy.

### **3. Required Pretrial Materials**

#### **A. Joint Pretrial Order**

Counsel for the plaintiff is responsible for ensuring that the Joint Pretrial Order is timely filed. If, for some reason, the plaintiff fails to file the Joint Pretrial Order, the defendant(s) is responsible for filing its part of the Pretrial Order. All parties are responsible for complying with the requirements of the final joint pretrial order. The Joint Pretrial Order is due one week prior to the trial setting. Failure to timely file the Joint Pretrial Order may subject the offending party to sanctions, including, when appropriate, dismissal for want of prosecution. A courtesy copy of the pretrial order should be forwarded to Chambers.

If the case is to be tried to a jury, the Joint Pretrial Order shall contain, at a minimum, the following:

1. Contested and Uncontested Issues of Fact
2. Contested and Uncontested Issues of Law
3. Witness Lists for all parties in the form provided by the Clerk's Office
4. Exhibit Lists for all parties in the form provided by the Clerk's Office
5. Trial Brief(s) or Memorandum of Law on relevant issues in the case
6. Proposed Voir Dire Questions
7. Proposed Jury Instructions and Jury Questions

The parties shall make every effort to confer regarding their respective jury instructions and jury questions prior to their inclusion in the Joint Pretrial Order.

If the case is to be tried to the bench, the Joint Pretrial Order shall contain, at a minimum, the following:

1. Contested and Uncontested Issues of Fact
2. Contested and Uncontested Issues of Law
3. Witness Lists for all parties in the form provided by the Clerk's Office
4. Exhibit Lists for all parties in the form provided by the Clerk's Office
5. Trial Brief(s) or Memorandum of Law on relevant issues in the case
6. Proposed Findings of Fact and Conclusions of Law.

The Court may, from time to time, allow the parties to file supplemental briefing following the conclusion of a trial.

## **B. Motions in Limine**

Unless otherwise ordered, Motions in Limine shall be filed with the Joint Pretrial Order. An Order must be included with the motion in limine.

## **C. Objections to Exhibits and Deposition designations**

Any objections to the exhibits and deposition testimony to be offered at trial must be filed with the Joint Pretrial Order. The Court expects parties to confer prior to the filing of the Joint Pretrial Order and make a good faith attempt to resolve their differences as to any such objections.

#### **4. Exhibits**

- A.** Counsel for each party shall assemble all documents, photographs, or other materials expected to be used at trial, and make the same available to opposing counsel 10 days prior to the date the Joint Pretrial Order is due. The Court encourages counsel to agree upon joint exhibits to avoid voluminous duplication. If joint exhibits are agreed upon, they must be so designated with the case name, case number, and appropriate exhibit number.
  
- B.** Counsel for each party shall copy each exhibit to be offered at trial and place the exhibits, in numerical order, in a notebook to be provided to the Court. A similar notebook of exhibits shall be made available by each party for use by any witnesses to offer testimony at trial.
  
- C.** The Court will rule on all objections to the exhibits at the Final Pretrial Conference, if one is timely requested, or on the first day of trial.
  
- D.** All exhibits will be offered and received in evidence as the first order of business at trial. Once admitted, the exhibits are to be kept on the Court's exhibit table at all times, until the completion of trial.
  
- E.** Exhibits of unmanageable size (such as charts, diagrams, posters, etc.) shall be withdrawn immediately upon completion of trial and reduced reproduction or photographs substituted pursuant to Local Rule 11(C)(1).
  
- F.** At the conclusion of trial, counsel must withdraw all exhibits offered and received in evidence, and sign a *Receipt for Withdrawal of Exhibits*. In the event of a bench trial, the Court will retain the copies of the exhibits provided to it by the parties, and may request the retention of additional exhibits pending the final resolution of the matter. Following the completion of trial, counsel may, in the alternative, immediately notify the Clerk of Court in writing of their consent to the disposal of the exhibits.

#### **5. Witnesses**

- A.** Counsel is responsible for summoning a witness into the courtroom and instructing them as to proper courtroom decorum.

- B. Witnesses shall be made available to testify in accordance with the trial scheduling policy of this Court as noted below. The Court will not recess to permit counsel to call a missing witness unless the witness has failed to appear in violation of a properly served subpoena.
- C. Witness rooms are available for the parties' use and are located at the entrance, of each courtroom. Please contact the Case Manager on or before the first day of trial to ensure that the witness rooms are unlocked the day of trial, and have been appropriately reserved for each party.

## **6. Trial**

- A. Each trial setting before this Court is for a **date certain**. Unless an attorney has actually begun trial in another court, prior settings will not cause a case to be continued.
- B. It is this Court's policy to conduct the trial proceedings in such a way so as to complete the trial as quickly and efficiently as possible. This may include beginning the proceedings early (sometimes at 8:00 a.m.) and ending late (as late as 7:30 p.m.). Additionally, hearings out of the presence of the jury may be conducted before the jury is empaneled in the morning, during the morning or afternoon break, during the lunch break, and after the jury has been excused for the day. In this regard, counsel are instructed to have **all** their respective witnesses readily available to offer testimony in accord with the foregoing scheduling policy of the Court.
- C. In order to make a clear record of the trial, counsel are advised to speak clearly and directly into the microphones provided. There are microphones at each counsel table, the podium, the witness box, and in front of the bench. Direct and Cross Examination of witnesses will be conducted at the podium.
- D. While the case is being tried, it remains the parties' responsibility to file their own documents with the Clerk's office. Neither the Case Manager nor any of the other Court personnel is under any obligation to file the parties' pleadings for them. However, counsel are advised to deliver a courtesy copy of any motions filed during the course of trial to the Chambers of Judge Recio.
- E. The Court may, in its discretion, impose a timing order on the parties in any trial where the Court deems it necessary to more efficiently expedite the presentation of the evidence.

## **7. Voir Dire**

- A.** The Court will commence jury selection with some general opening remarks, but allows counsel to conduct the voir dire, provided that the voir dire questions are included in the Joint Pretrial Order.
- B.** Time limitations for voir dire may be imposed by the Court in some limited circumstances.
- C.** In some circumstances, the voir dire may be conducted solely by the Judge.

## **8. Continuances**

- A.** The Scheduling Order gives a date certain for trial. Motions for continuance will be considered only if they are filed at least two weeks prior to the trial date provided in the Scheduling Order. Any response to a motion for continuance shall be filed at least one week prior to the scheduled trial date.
- B.** Joint motions for continuance are not binding, and they will be granted only at the discretion of the Court.
- C.** Vacation letters will only be honored if they are filed well in advance of the trial setting.

## **9. Settlements/Dismissals**

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

The Court will be available for settlement discussions upon the request and agreement of all concerned parties.

The Court strictly follows Fed. R. Civ. P. 41(a) with regard to voluntary dismissals. Once an adverse party has answered in a case, a plaintiff may only be allowed to dismiss the case upon a stipulation of dismissal signed by all parties who have entered an appearance in the case.

If a settlement has been reached by the parties but the final settlement papers have not yet been completed, the case will not be closed until the parties file a joint motion for dismissal based upon the settlement agreement.



