FROM: Presiding Judge

TO: Trial lawyers in civil cases

SUBJECT: Trial Management

The purpose of this memorandum is to alert you to certain practices that will be encountered in this court, so you can plan accordingly and have a more efficient trial.

1. Working schedule

a. Day one.

The lawyers and judge will meet at 8:00 a.m. and begin work in final pre-trial matters. The jury panel will report at 8:30 a.m. After a jury is selected there will be a 1-1/2 hour noon recess. The trial day will normally end at 4:45 p.m.

B. Day two, et seq.

Trial will resume at 9:00 a.m. on the second and subsequent days, with 1-1/2 hours for lunch, to conclude at 4:45 p.m. (Except when a jury is in deliberations).

2. Recesses

The judge will try hard to resume trials promptly at the end of recesses. Lawyers will be expected to be present and ready also. Those who are not may expect to enter the courtroom with the jury in the box awaiting their arrival.

3. Electronic recording

a. Supreme Court order.

In 1989 the Supreme Court of Texas authorized the trial record in this court to be made by electronic means. The court uses a 4-channel digital recording system operated by a “court recorder,” who performs all the duties normally done by a court reporter during trials, including marking exhibits and playing back testimony. You will not need to speak or act any differently than you do in any other court.

b. Duplicate tapes (or daily copy) available.

You may obtain copies of tapes at any time on request to the court recorder, for a fee of $10.00 per tape payable to Brazos County.

Several local free lance typists routinely transcribe tapes from this court for appeals. For a slightly higher charge they will produce daily copy. The court recorder will provide you with their telephone numbers, but you will need to make your own financial arrangements directly with the typists. No member of the court staff is permitted to transcribe tapes.

c. Special appellate rules.

Be aware that the Supreme Court of Texas has established some special appellate rules for courts using electronic recording. In the event of an appeal, see "Rules Governing Procedure for Making a Record of Court Proceedings by Electronic Recording, "Texas Rules of Court (West 1995), p. 341.

4. Motions in limine

a. Limited time.

Only a small amount of court time will be devoted to motions in limine presented on the morning of trial. The jury panel will not be kept waiting for that purpose. If extended court time is needed, make arrangements in advance. The court makes liberal use of telephone conference hearings.

b. Confer with opposing counsel.

You must confer with opposing counsel, explain what you mean by the generalized terms in your motions, and try to reach agreements on the proper rulings before approaching the judge. Remember, nothing requires the judge to rule on your motions in limine, so please cooperate to save trial time.

5. Voir dire examination

a. Purpose.

The law recognizes only two purposes of voir dire: learning enough about the panel members to intelligently exercise peremptory strikes, and discovering grounds to support a challenge for cause. It is not intended for shaping opinions or "conditioning" the jury.

b. Content.

Lawyers should direct their time and attention to the legitimate purposes of voir dire, and avoid attempts to bias or prejudice the panel for or against any party.

Experience shows that it frequently takes the judge's uninvited intervention to keep the proper focus during voir dire, and the judge will not hesitate to do so. The judge will permit each side to make a brief "preliminary statement" to acquaint the panel with the general nature of the case, and the parties' contentions, provided the statements are fair, objective, and do not appear calculated to inject bias or prejudice. The sole purpose of such statements is to let the panelists give informed answers to questions about friendships, relationships, prior knowledge of the facts, their attitudes toward the type of litigation, and similar matters.

c. Time limits.

The judge will confer with you and set reasonable time limits on your voir dire, during which he may periodically announce how much time is left.

d. Individual questions.

Challenges for cause will normally be considered only after all counsel have had a chance to question the panelist individually and apart from the rest of the panel. The judge will not allow endless latitude in such questioning, and will often intervene with questions of his own to resolve a developing issue.

e. Questionnaires.

Consider preparing questionnaires to be answered in writing by the panel while we are working in chambers on something else. You might be surprised at how much revealing information you can quickly and intelligibly extract through a well-conceived questionnaire that includes open ended questions or weighted expressions of opinions.

6. Opening statements

a. Purpose.

Please use them for their intended purpose, to state "to the jury briefly the nature of [the party's] claim or defense and what said party expects to prove and the relief sought." R.265(a).

b. Content.

Opening statements should not go into detail about anticipated testimony, or describe in detail any document, or other exhibits. Ranger Insurance Co. v. Rogers, 530 S.W.2d 162, 170 (Tex. App.--Austin 1975, writ ref'd n.r.e.)

c. Time limits.

Reasonable time limits will be imposed.

7. Exhibits

a. Pre-marking.

The court recorder will gladly provide you with a supply of labels so you can mark your exhibits in advance.

b. Charts.

Charts and diagrams that are constructed in court as the testimony is presented, whether by the hand of counsel or witnesses, are often useful in highlighting essential facts, and will normally be admitted into evidence.

c. Equipment available.

The courtroom has a screen to use for projecting slides or transparencies, and an overhead projector, in addition to the usual marker board and flip chart with paper. A speaker phone is on the bench. By agreement of counsel the judge will allow witnesses to testify by telephone.

8. Objections and approaching the bench

Please do not make a habit of asking to approach the bench, but try to fairly and succinctly state your objections and responses from counsel tables.

It will be obvious to judge and jury when you try to make "jury argument" objections or responses, and neither appreciates unfair practices. The judge is likely to penalize you by rebuke, shortened argument, etc.

9. Depositions

Please edit them in advance of trial! Then before using them in evidence, edit them again. The judge will not necessarily delay the trial to make rulings on your deposition objections; they may be dealt with like any other witness testifying live. However, if you cooperate in moving the trial along the judge will gladly work with you to do anything that smooths out the presentation of evidence.

10. Jurors taking notes and asking questions

Jurors will be allowed to take notes freely, and to consult them during deliberations. The court will give cautionary instructions on the practice. Manges v. Willoughby, 505 S.W.2d 379, 383 (Tex. App.--San Antonio 1974; writ ref'd n.r.e.); but see English v. American & Foreign, Inc., Co., 529 S.W.2d 810, 813 (Tex. App.--Texarkana 1975, no writ).

Jurors will be allowed to ask written questions of witnesses. The attached handout describes that procedure. See, Fazzino v. Guido, 836 S.W.2d 271, 276 (Tex. App.--Hou. [1st] 1992), holding that with procedural safeguards used, practice not harmful, and not fundamental error.

11. Requested instructions and questions

Please prepare yours using WordPerfect 5.1 if possible, and have disk (either 5-1/2" or 3-1/2") and hard copy available on Day One to present to the judge. The Court uses IBM computers. This information may become dated in time, so please contact the court staff before your trial.

12. Bifurcated and separate trials

Consider Rule 174(b) and the desirability of bifurcating the trial (separate verdicts on separate issues--same jury), or conducting separate trials (different juries). This has proven useful to shorten trials where a single fact issue could be outcome determinative (e.g., lack of notice in Tort Claims Act case), or where liability on the merits is determined before hearing evidence on damages.

13. ADR

a. Summary jury trials.

If the main thing needed to resolve your case is the opinion of a jury, consider a summary jury trial (usually a day or less in length) to get one that is advisory only. The results may help move your opponent closer to settlement.

b. Mediation and arbitration.

If your case is not reached, please show wisdom and courage by suggesting mediation or arbitration. Mediation results in settlement 75% of the time.

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JURORS ASKING QUESTIONS OF WITNESSES

1. Judge explains the process to trial attorneys before voir dire (by copy of this handout or orally or both), answers any questions about the process, and assures the attorneys that they will be given opportunities to make objections to the process as well as any juror questions, both outside the presence of the jury.

2. During voir dire examination the Judge explains the process in general terms, reserving detailed instructions for after the jury is seated and sworn.

3. During preliminary instructions to the impaneled jury, the Judge explains the process in detail, including the content of the following items. This can be done orally because it will be in the Statement of Facts in the event of an appeal.

4. Judge emphasizes to jurors that they are not required, expected, or necessarily encouraged to ask questions, but that the opportunity will be available to them.

5. Judge explains that juror questions may have to be excluded for legal reasons, the same as if they'd been asked by an attorney. That is, some questions are not permitted in a trial because of the Rules of Evidence that must be followed no matter who asks the question. The Judge may wish to expand on this point, to put jurors at ease, by saying they should not be intimidated by the possibility their question will violate some rule of evidence that no one expects them to know; that they should feel free to ask their question and leave its admissibility up to the Judge; but that they should not speculate on why their question was not allowed if it is not. The jury should be instructed not to discuss among themselves any question submitted by a juror, except that any question that actually is asked of a witness becomes part of the evidence in the trial and is appropriate for discussion after deliberations begin.

6. Judge informs the jurors that he cannot rephrase their questions to put them in a format for reading to the witness, so jurors should submit them in the exact form they expect them to be read to the witness. E.g., jurors should writ out "What did you do..." instead of "ask him about what he did..."

7. After each witness is examined by all attorneys, jurors are given a chance to submit questions before that witness is excused.

8. The Judge asks jurors for a show of hands to indicate if there are any jury questions, e.g., "are there any questions from the jury?"

9. Jurors write out any questions on a sheet from their note pad and hand them up through the bailiff. As many questions as any juror has may be written on one or more pages.

10. Before there is any discussion or reading of the questions, the jury is sent to the jury room. The witness (if not a party) is also sent out of the room.

11. With the jury out, the Judge and attorneys review submitted questions, which are read into the record by the Judge.* The attorneys may examine the written questions if they wish, but in practice it has been rare that they see the need. The attorneys make any objections while the jury is out. The Judge rules on the propriety of the questions, based on the normal rules of evidence, and may choose to exclude some if they appear to be adversarial in nature. Experience has shown that they almost never are.

12. With the jury back in the jury box, the witness on the stand, the Judge reads each question to the witness, followed by the witness' answer. If the juror appears confused by any question, the Judge may offer to read it again. The Judge should decline to answer any question from the witness that asks the Judge to interpret the meaning of the question, but should instruct the witness to answer as best he can. The attorneys may make any objection to the form or content of the answer (e.g., narrative, includes hearsay, etc.).

13. After all jury questions have been answered by the witness, the attorneys may ask follow up questions relating to the jurors questions, beginning with the sponsoring attorney.

14. The witness is then excused without further questions from the jurors.

*One commentator on this procedure has suggested that the juror questions should be preserved and marked as Court or appellate exhibits to be included in the trial record. This seems unnecessary, given that each question that is asked of a witness has been taken down in the Statement of Facts at lease twice.