

Supporting Civil Justice Reform

A Texas Case Study

Rule 169, Texas Rules of Civil Procedure

Applies to civil cases with \$100k or less in controversy

Inclusive by default, not by motion

May be removed from expedited process for good cause

Rule 169, Texas Rules of Civil Procedure

Case must be set for a trial date within 90 days after discovery period ends.

Judge may continue the case twice, not to exceed 60 days

Each side allowed no more than 8 hours in trial

Time limits relate to ADR as well

Framework to Implement the Rule

How to Make It Work

Education

Forms

Flags & Reports

Diplomacy

How to Make It Work - Education

- While the rules of civil procedure come from the state level, education has been largely local
- State Bar has offered specialized courses that include the new rules, as opposed to general awareness
- Trial judges speak at local bar association CLE
- Mandatory nature may drive judge-centric education

How to Make It Work - Forms

Docket control orders

Scheduling orders

Ultimately Judge-driven

How to Make It Work - Forms

CAUSE NO. 15-08-07899

§ IN THE DISTRICT COURT OF
vs. § MONTGOMERY COUNTY, TEXAS
§ 284TH JUDICIAL DISTRICT

EXPEDITED DISCOVERY CONTROL PLAN – JURY

The Court requires a written motion and a showing of good cause by any party to remove a case from the expedited actions process unless removed by virtue of a pleading filed under Rule 169(c)(1)(B). Should a pleading be filed under Rule 169(c)(1)(B), the filing party MUST IMMEDIATELY contact the Court Coordinator to advise the Court that such a pleading has been filed.

Based on the information available to the Court, the following Discovery Control Plan shall apply to this case unless modified by the Court. Any date that falls on a Saturday, Sunday or legal holiday (as determined by Montgomery County Commissioners Court) shall be moved to the next day which is not a Saturday, Sunday or legal holiday. Unless otherwise ordered by the Court, the dates set forth herein, as calculated from the suit filing date or the trial date stated below, remain applicable even if the trial date is reset, whether because a continuance is granted or otherwise. If no date or limitation on discovery is given below, the item is governed by the Texas Rules of Civil Procedure.

THE PARTY CAUSING THE JOINDER OF ANY NEW PARTY FOLLOWING THE ISSUANCE OF THIS DISCOVERY CONTROL PLAN, WHETHER BY AMENDMENT OR THIRD-PARTY PRACTICE, SHALL PROVIDE A COPY OF THIS DOCUMENT, THE COURT'S TRIAL PREPARATION ORDER AND THE COURT'S ORDER OF REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION TO THE JOINED PARTY.

- DISCOVERY PERIOD.** All discovery is governed by rule 190.2. All discovery, including depositions, must be COMPLETED by the end of the discovery period. Counsel may conduct discovery beyond this deadline by agreement, but incomplete discovery WILL NOT delay dispositive motions or the trial.
- EXPERT WITNESS DESIGNATION.** See Rule 195.2
- MEDIATION/ALTERNATIVE DISPUTE RESOLUTION.** See Rule 169(d)(4)(A)(iii). Unless the parties have timely filed an agreement not to engage in ADR, ADR IS REQUIRED. Failure to timely conduct ADR WILL NOT be grounds for a continuance.

4. 30 DAYS BEFORE TRIAL

DISPOSITIVE MOTIONS. Upon filing of the motion, the moving party shall contact the Court Coordinator and set a hearing date or a submission date that will occur no later than the Wednesday before this date.

5. MAY 13, 2016

DOCKET CALL - PRE-TRIAL CONFERENCE. TIME 9:00 AM. All parties and counsel shall be present at the Docket Call - Pretrial Conference and be prepared to discuss all aspects of trial with the Court. **PARTIES SHALL COMPLY WITH THE TRIAL PREPARATION ORDER.**

6. MAY 16, 2016

JURY TRIAL. TIME 9:00 AM. All parties remain on call for trial for the entire week AND for the week following unless released by the Court. **THIS CASE MAY ONLY BE CONTINUED TWICE, NOT TO EXCEED A TOTAL OF 60 DAYS.**

FAILURE BY ANY PARTY SEEKING AFFIRMATIVE RELIEF TO APPEAR FOR THE DOCKET CALL - PRETRIAL CONFERENCE MAY RESULT IN DISMISSAL FOR WANT OF PROSECUTION OF THAT PARTY'S CLAIMS FOR AFFIRMATIVE RELIEF AT THAT TIME.

FAILURE BY ANY PARTY SEEKING AFFIRMATIVE RELIEF TO APPEAR FOR THE TRIAL WILL RESULT IN DISMISSAL FOR WANT OF PROSECUTION OF THAT PARTY'S CLAIMS FOR AFFIRMATIVE RELIEF AT THAT TIME.

SIGNED: October 20, 2015.

/s/
Presiding Judge
284th Judicial District Court

How to Make It Work - Forms

CAUSE NO. 15-08-07899

§ IN THE DISTRICT COURT OF
vs. § MONTGOMERY COUNTY, TEXAS
 § 284TH JUDICIAL DISTRICT

ORDER OF REFERRAL TO MEDIATION - EXPEDITED ACTION

Unless the parties have timely filed an agreement not to engage in Alternative Dispute Resolution (ADR), the Court finds that this case is appropriate for ADR pursuant to Tex. Civ. Prac. & Rem. Code Ann., Section 154.001, et seq.

IT IS ORDERED that all parties are referred to use an ADR procedure which does not exceed a half-day in duration, excluding scheduling time, that does not exceed a total cost of twice the amount of the applicable civil filing fees for this case, and that is completed no later than sixty days before the initial trial setting in this case. If the parties do not agree on an ADR procedure or impartial third party (ITP), the parties are ORDERED to mediation with the Montgomery County Dispute Resolution Center (telephone 936-760-6914). The parties are to schedule ADR through their counsel, or personally if they are unrepresented by counsel. If no agreed date can be scheduled, then the ADR ITP shall select a date and all parties shall appear as directed. The date scheduled by the ADR ITP is incorporated in this Order as the date upon which the mediation shall occur. The date scheduled for ADR cannot be changed or cancelled except upon agreement of the parties. ADR can be rescheduled before the ADR deadline.

IT IS FURTHER ORDERED that the administration fees for ADR are to be divided and borne equally by the parties unless agreed otherwise, shall be paid by the parties directly to the ADR ITP and shall be taxed as costs.

IT IS FURTHER ORDERED that, upon completion of ADR, the ADR ITP is directed to advise this Court when the process was completed, whether the parties and their counsel appeared as ordered, and whether a settlement resulted.

As provided by Tex. Civ. Prac. & Rem. Code Ann., Section 154.053 and Section 154.073, all matters, including the conduct and demeanor of the parties and their counsel during the ADR process, are to remain confidential and will not be disclosed to anyone, including this Court. Except as may be permitted by Tex. Civ. Prac. & Rem. Code Ann., Section 154.073, neither the ADR ITP nor the ADR ITP's files shall be subject to a subpoena or to a request for production filed by any person.

SIGNED October 20, 2015.

/s/
Presiding Judge, 284th Judicial District Court

How to Make It Work - Flags & Reports

Case Management System is vital

Monitoring and calendaring for court staff

Civil differentiated case management (DCM)

How to Make It Work - Diplomacy

- Creating a rule reliant on judicial action can yield two results:
 - “I’m supposed to be a neutral”
 - “I already dispose of these cases timely and cost-effectively”
- Balance judicial independence with system efficiencies

How Did It Work?

Evaluation

Evaluation - How Did It Work?

- Settlement rates in the study sample went from 47.6% of dispositions to 61.5% of dispositions. Summary judgment and trial dispositions went down from 18.1% and 30.6% to 11.3% and 23.9% respectively

Evaluation - How Did It Work?

- After implementation of the rule, attorneys more likely to file motions to modify discovery or stipulations to extend discovery
- A substantial majority of attorneys reported the rules provided sufficient time for discovery and assessing merits of their case

Evaluation - How Did It Work?

- Faster time to disposition was driven by type of disposition:
 - Settlements occurred earlier under the new rules
 - Trial cases resolved more quickly after 12 months under the new rules
 - Cases disposed via summary judgment were also resolved more quickly after 12 months under the new rules

Questions?

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