

Austin Bar Bench Bar Conference 2010 ♦ Flip Chart Notes

The following are notes from the brainstorming session at the 2010 Bench Bar Conference. The goal of the session was to exchange information and perspectives and to raise issues for possible follow-up action. The notes as presented below were intended to capture each speaker's opinion, but do not represent any decision or opinion of anyone other than the speaker.



Question 1

What should judges/lawyers do when an opposing party over-designates exhibits, witnesses, depo excerpts, etc...?

e.g. 50 witnesses and 200 exhibits for a 5-day trial

(38 blue dots)

- Tell other side about witness they plan to call next day
- Try to get 2.6 Assignment Pretrial Conference
- Designate number of witnesses
- Try to ask for pretrial conference—close to trial date to narrow list
- Ask judge to limit
- Backup deadline
- Ask duty judge to get on central doc
- Change local rules to allow for pretrial conference
- Come up with own scheduling order with other side
- Ask judge for help if other side will not agree to custom schedule
- Set designation out further
- Judge may not agree to sign custom schedule if disagrees with rule
- Rule should stay 12 days, but ask for conference if needed with duty judge
- Don't wait until last minute to get on doc because you will not get hearing in time to help narrow

Question 1 – Over Designate

Decide in advance who will try case

Get 2.6 Assignment

Could it go to duty judge

Ask for pretrial conference in advance

Go to duty judge to get permission to go outside of local rule timeline

Work out custom schedule order—if other side won't agree ask for hearing

Benefits of being “creature of habit”

Commentary on local rule—duty judge to set on short time

Don't change designation deadline or procedure

Even with duty judge may not be reached

Joe De La Fuente

Terry Harris

Walter Taylor

Cecilia Wood

Question 2

Summary Judgment Practice

- Should there be a dispositive motion docket?
 - If so, how?
- What changes should be made to summary judgment practice?
- Different views

(36 blue dots)

- Do judges review briefing prior to oral argument?
- Suggestion to judges—tell attorneys “I will take it under advisement” and say when you will rule
- Fear judges rely too much on oral argument and skills and not brief
- Some judges read some or all before oral argument
- Is it better to read prior to oral argument?
- Get more pointed questions from judge if they have read

SJ Practice

How Judges Feel:

Hurley-likes to hear arguments first and then read briefs

Give timeframe on decision

Jones-Fear of judges deciding primarily based on oral argument

Covington-likes Hurley’s position, Hypothetical until argument thinks you get more attention to brief after hearing argument

Steven Moss

Ty

David

Question 3

Other Judges views on the Yelenosky–Jenkins approach to discovery requests and objections

(33 blue dots)

Question 4

Would it be possible to have a pretrial hearing the week before the jury setting in District Court and have that as a drop dead deadline to exchange actual exhibits, witness lists, or know there’s an exception and why?

An exhibit list that says—“all docs you’ve produced” doesn’t help me agree/stipulate or prep an informed concise objection

(31 blue dots)

Question 5

Duty Judge: Getting rulings during depositions?

(22 blue dots)

- If you have to call judge should be sanctions
- May need help or judge on standby
- Judges say too little time some days/depends on day and luck/very difficult
- Have judges had to supervise depo?

Duty Judge and Depos:

1. Most issues with out-of-town depositions with lawyers who do not know Texas rules
2. Depositions close to trial

Would like rulings

Judges:

Duty judge doesn't have time

No rule against calling duty judge right now

Have deposition in jury room

Supervised depositions?

Video to keep people in order

Covington as duty judge has ruled in midst of deposition couple of times

Question 6

Would Travis County Judges allow the playing of video depositions and showing documentary evidence excerpted and color enhanced in opening statement?

(19 blue dots)

- preadmit
- Some judges do not like or would not allow video depositions during open or voir dire
- Documents during open are okay
- Optional completeness problem

Question 7

Judges:

Would you describe yourself as more of a

- big picture person,
- a detail-oriented person, or
- a bottom line person

(8 blue dots)

What kind of judge are you?

Hurley: Bottom line

Covington: Bottom line; Big Pic; Detail

Yelenosky: Bottom line; Legal details

Davis: Bottom line—nitpicker; Pieces that do not fit

Livingston: Cut to Chase (bottom-line); Details/Big Picture jumbled

Shepperd: Bottom line

Naranjo: Bottom line; Big; Details

Rose: Bottom line; Big Picture; Detail

Phillips: Bottom line

Stegg: Allows big picture especially with prose

Question 8

Family Law and Assignment of Judges

What system works best for judges, lawyers, and litigants?

(5 blue dots)

Question 9(A)

- Dallas—have to write down contact prior to hearing/what happened
- Judges love to hear you have met
- Tell judge if you tried to talk to other side prior to conference

Beefing up the certificate of conference process
(4 blue dots)

Question 9 (B)

Family Law

Processes for counseling litigants to reduce bench time

What exists?

How could it be augmented

What other programs might there be?

(4 blue dots)

Family Law

Judge Richardson

Cecilia Williams

Judge Hathcock

Judge Naranjo

M. Perlmutter