

2023 Eastern District of Texas Bench Bar Conference
You're Ready and Rarin' To Go – Observations from the Bench

Panel:

Judge Robert 'Trey' Schroeder, USDC, EDTX
Magistrate Judge Roy Payne, USDC, EDTX
Magistrate Judge Boone Baxter, USDC, EDTX
Co-Moderator: Travis Underwood, Gilliam & Smith, LLP
Co-Moderator: Danielle Williams, Winston & Strawn, LLP

Objection is to share the observations from judges on both a macro and micro level

Topics

- I. **Topic #1: Perspectives on the District from a Current Judge/Former Practitioner/Former Clerk [Judge Baxter]**
 - a. As someone with a great deal of experience in this district at several levels, what has been the biggest surprise to you in making the transition from practitioner to the bench? Least surprising?
 - b. Is there anything about your experience as a former practitioner in the district and former law clerk that has been particularly influential on your approach to managing your cases / managing your docket / managing your chambers?
 - c. What's been your favorite thing so far about being on the federal bench?
 - d. [Judge Schroeder] What has it been like having a familiar face serving on the bench as the new magistrate? How

- II. **Topic #2: Nuts and Bolts of Chambers Operation [All Judges]**
 - a. *Attorney Engagement* – How should lawyers interact with chambers outside the courtroom and outside of formal docket filings?
 - i. Email

1. [Judge Schroeder] – Varies from case to case depending on the type of case, the attorneys involved, etc. Want to be customer oriented but particularly for high profile cases want everything to be reflected on the docket as well.
 2. [Judge Baxter] – Generally allowed
 3. [Judge Payne] - ?
- ii. Phone Calls to Chambers
1. [Judge Baxter] – allowed; go through Courtroom Deputy
 2. [Judge Payne] – allowed; go through law clerks or judicial assistant?
 3. [Judge Schroeder] – allowed; go through ?
- iii. General philosophy on contact with chambers [Judge Payne]
1. Should not be ex parte
 2. Important for lawyers and staff to look at the rules and orders before calling with questions. Sometimes the answer is: “get a lawyer.” But sometimes there are gaps in the rules.
- iv. Turning to areas not necessarily addressed by rules or orders...
1. In general the court decides whether a hearing is needed – but if a party wants to request a hearing, is that an option? Is there a preferred mechanism? [All Judges]
 2. Frequently there are motions related to moving deadlines or other motions related time sensitive issues, if there is a time sensitive motion that needs addressing, what should a party do? [All Judges]
 3. What if anything should a party do if there’s a motion that has been pending for many months on the docket with no activity? Is it acceptable to contact the court to point it out? If so, how? [All Judges]

4. What if a party believes the Court made an error in a ruling? (Different than something that would be the subject of an appeal) [All Judges]

b. Synergy/Relationship Between Magistrate Judge and District Judge Chambers

- i. [Judges Payne and Baxter] What percentage of the cases in Marshall and Texarkana are referred?
- ii. [Judge Payne] When a case gets referred to you in Marshall, how closely are your chambers coordinating with and interacting with Judge Gilstrap's chambers? What about Texarkana?
- iii. [Judge Baxter] Same questions
- iv. [Judge Schroeder] When a case is referred to a magistrate judge – either automatically or intentionally – how involved do you like to remain in the case? Regular meetings between chambers? Or just address objections to R&R's whenever they may arise?

c. New Changes to Policies/Practices – Remote Proceedings

- i. [Judge Schroeder] With COVID things changed – for a while had to go remote, then experienced a transition, now more in a post-pandemic world to the extent possible. Do you see a use anymore for remote proceedings? Criminal? Civil?
- ii. [Judge Baxter] Open to remote proceedings? Whether Zoom or telephonic?
- iii. [Judge Payne] Open to remote proceedings? Whether Zoom or telephonic?

III. Topic #3: Practice Tips for Success [All Judges]

- a. [Judge Schroeder] At some level the things lawyers should do in the courtroom to be successful are well understood and intuitive – be prepared, etc. – anything new or different you've observed recently or heard from judges or jurors?

- i. Jurors watch everything you do – be courteous, professional, and polite – don't visibly react to something a witness or opposing counsel says.
 - ii. Be respectful of their time – jurors always ask “why did the lawyer ask the same thing over and over.”
 - iii. Anything else?
- b. [Judge Payne] On the topic of speaking to jurors, is there anything you've heard from jurors that has stood out?
 - i. On the topic of being respectful of jurors' time – jurors appreciate timed trials, pre-admission of exhibits, anything that causes them to spend less time away from home.
- c. [Judge Baxter] Has being on the bench and having a different perspective taught you anything new or surprising about how to effectively lawyer in the courtroom? [to the extent not already covered]
- d. [All Judges] When it comes to courtroom advocacy – whether jury trial, motion hearing, evidentiary hearing, or anything else in a courtroom – are there any consistent mistakes that you see many lawyers making over and over again? And if so, what are they?