

When Less is More: Judges From Other Ranches Explain What Pretrial and Trial Limitations Help them Steer the Herd

Questions outline – v. 3

Eastern District of Texas Bench Bar Conference 2023

Introduction of Panelists & Co-Moderators

- Honorable Carlton W. Reeves, Southern District of Mississippi
- Honorable Cathy Bissoon, Western District of Pennsylvania
- Honorable Beth Freeman, Northern District of California
- Honorable Greg Williams, District of Delaware

- Co-Moderator: Betty Chen, Demarais LLP
- Co-Moderator: Michael Smith, Scheef & Stone

Introduction of Panel Topic

Calculated decisions to limit the activity in a case are not new – they are in fact routine in procedural rules, local rules, judge specific orders, and agreements between the parties. When used properly, they act to focus the activity in the case on higher priority matters, and resolve cases in accordance with the overarching purpose of the rules, which according to Federal Rule of Civil Procedure 1 is “to secure the just, speedy, and inexpensive determination of every proceeding.”

However, when used improperly they can fail to save the parties money in the development of the case, and in the worst situations, unfairly limit the development and presentation of the case to the extent that the merits are affected because the court and the jury, as applicable, may not be provided with the necessary information for the appropriate resolution of the case.

This panel will discuss common types of limits on case activity in civil litigation in federal courts, with the goal of identifying limits which meet the twin goals of reducing expense while at the same time avoiding unfairly truncating the presentation of the merits.

TOPICS FOR QUESTIONS TO THE PANEL

We will start with the earliest stages of the case – pleadings and initial motion practice, and work our way through trial.

Pleadings & Motion Practice

- Do you have a practice of imposing limits on initial motions in a case (page limits?)
- What about the timing of motions – is it better to defer some or prioritize others? For example, there’s always a debate among the practitioners as to whether to bring Section 101 motions in a patent case before or after claim construction?

Settlement Conferences / Mediations

Courts are increasingly requiring settlement conferences with magistrate judges or requesting that parties mediate the case, whether privately or with a mediator. What do you think about this requirement?

Hearings

- Do any of you have limits on hearings (availability or length?)
- What do you think about the use of PowerPoint presentations at hearings? Underused/overused?

Discovery

- What limits on discovery have you found to be most effective?
- What do you think about requiring early damages disclosures?

(drill to down to cover specific topics)

- Do you have limits on discovery disputes (call before hearing/page limits/joint submissions?)
- State courts often require parties to engage a “discovery master” and split those fees when things are getting too contentious. What are your thoughts on that practice and whether it’s practical to implement in federal court?

Pretrial

- Are there limits you have found particularly effective at the pretrial stage?
- Do you find limits on the number/length of pretrial filings helpful?
- What about limiting number of exhibits/hours of depositions played?
 - What about having these limits not at trial but at the pretrial disclosures stage?

Trial

- Are there limits you have found particularly effective at the trial stage?
- Do you time trials? Have you found that effective?
- What are your requirements to publish impeachment materials?
- Do you provide notebooks to jurors? Allow lawyers to talk to the jurors afterwards?

Worst Practices

- Are there any limits that have turned out to “not” be effective?