

STATE BAR OF TEXAS

COURT RULES COMMITTEE

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

RULE 166. PRETRIAL CONFERENCE

In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties or their duly authorized agents to appear before it for a conference to consider:

- (a) All pending dilatory pleas, motions and exceptions;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) A discovery schedule;
- (d) Requiring written statements of the parties' contentions;
- (e) Contested issues of fact and simplification of the issues;
- (f) The possibility of obtaining stipulations of fact;
- (g) The identification of legal matters to be ruled on or decided by the court;
- (h) The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness;
- (i) The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witnesses;
- (j) Agreed applicable propositions of law and contested issues of law;
- (k) Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a non jury case;
- (l) The marking and exchanging of all exhibits that any party may use at trial and

- stipulation to the authenticity and admissibility of exhibits to be used at trial;
- (m) written trial objections to the opposite party's exhibits, stating the basis for each objection;
- (n) The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;
- (o) The settlement of the case, and to aid such consideration, the court may encourage settlement;
- (p) Such other matters as may aid in the disposition of the action.

The court shall make an order that recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.

II. Proposed Rule: The proposed new wording has been underlined.

RULE 166. PRETRIAL CONFERENCE SCHEDULING, STATUS CONFERENCE AND JOINT PRETRIAL STATEMENTS

~~In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties or their duly authorized agents to appear before it for a conference to consider:~~

- (a) Scheduling. As soon as practicable but in no event more than one hundred twenty (120) days after all Defendants have appeared the Court shall enter a scheduling order. The order can be as a result of a hearing or telephone conference with the attorneys for the parties and any unrepresented party or by agreement of the parties or their attorneys. The order shall establish times for:
 - (1) Joinder of additional parties;
 - (2) Amending or supplementing pleadings;
 - (3) Filing and hearing motions and special exceptions;
 - (4) Designating testifying expert;
 - (5) Taking of experts' depositions;
 - (6) Status conference (prior to completion of discovery)
 - (7) Completion of discovery;
 - (8) Filing of joint pretrial statement

- (9) Trial on the merits; and
- (10) Such other matters which the Court determines should be scheduled.

If the attorneys for the parties and any unrepresented party enter into an agreed scheduling order the parties shall submit the agreed scheduling order to the Court for entry by the Court not later than one hundred (100) days after all Defendants have appeared. The scheduling order may be amended by the Court on the Courts own motion, by motion of any party or by agreement of the parties approved by the Court. In the event of an amendment, an amended scheduling order shall be entered.

- (b) Status Conference.** At a time set by the Court, on the Court's order or upon request by any party the attorneys for the parties and any unrepresented party shall appear before the Court for a status conference. The status conference is to assist in the preparation and disposition of the suit without undue expense or burden to the parties and for the purpose of establishing early and continuing control so that the suit will not be protracted for lack of management, expediting the disposition of the suit, discouraging wasteful pretrial activities, improving the quality of the trial through more thorough preparation and facilitating the settlement of the suit.

Matters to be Considered at the Status Conference. At the status conference the Court shall consider and may take action with respect to:

- (a) (1) All pending dilatory pleas, motions and special exceptions;
- (b) (2) The necessity or desirability of amendments to the pleadings;
- (c) (3) Establishing a plan and discovery schedule identifying the issues for discovery purposes, setting limitations on discovery, if any, determining the allocation of expenses as are necessary for the proper management of discovery , any other matters which the court may deem appropriate to facilitate the discovery process and minimize discovery disputes. The frequency or extent of use of the discovery methods set forth in Rule 166b1 of these Rules may be limited by the court if it determines upon motion of any party or the court's own motion, notice and hearing, that: (i) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.
- (d) (4) Requiring written statements of the parties' contentions;
- (e) (5) Identification of contested issues of fact and simplification of the issues;
- (f) (6) The possibility of obtaining stipulations of fact;

- (g) (7) The identification of legal matters to be ruled on or decided by the court;
- (h) (8) ~~The exchange of a list~~ The identification of direct fact testifying witnesses, other than rebuttal or impeaching witnesses ~~the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness together with the disclosures listed in Rule 166d A(1) and (2) of these Rules for those witnesses.~~
- (i) ~~The exchange of a list of expert witnesses who will be called to testify at trial, stating their address, telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness;~~
- (j) ~~Agreed applicable propositions of law and contested issues of law;~~
- (k) ~~Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a nonjury case;~~
- (l) ~~The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used a trial;~~
- (m) ~~Written trial objections to the opposite party's exhibits, stating the basis for each objection;~~
- (n) ~~The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;~~
- (o) (9) The settlement of the case, and to aid such consideration, the court may encourage settlement;
- (p) (10) Such other matters as may aid in the disposition of the action in order to provide the parties with a trial including pretrial discovery at reasonable costs, in a reasonable time consistent with justice being done and fairness to all parties; and
- (11) Consideration of alternative dispute resolution.

~~The Court shall make an order that recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions. establish a pretrial calendar~~

for consideration of the matters referred to in this rule and as required by Rule 166f.¹

- (c) **Joint PreTrial Statement.** At such time as set by the Court, the parties shall file with the Court a pretrial statement. The pretrial statement shall be prepared by the attorneys for the parties in the suit and any unrepresented party and shall be signed by the attorneys and any unrepresented party. The pretrial agreement shall include the following:
- (1) A list of Plaintiff(s) witnesses;
 - (2) A list of Defendant(s) witnesses;
 - (3) Stipulations, if any, by the parties;
 - (4) The estimated time for trial;
 - (5) Plaintiff's proposed jury issues;
 - (6) Defendant's proposed jury issues;
 - (7) A short concise statement of contested issues of law;
 - (8) A list of any pending motions
- (d) **Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the suit unless modified by the court.
- (e) **Non Compliance and Sanctions.** If a party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or status conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or the court's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 215. In lieu of or in addition to any other sanction, the judge shall require such party or the attorney or both, to pay at such time as ordered by the Court, the reasonable expenses and reasonable attorneys fees of the other party(s) incurred for attendance at conferences or pretrial hearings or in attempting to require compliance with prior orders unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expense unjust.
- (f) **Waiver of Compliance.** By written agreement signed by all parties to the suit and filed with the Clerk of the Court, compliance with paragraph b or c or both of those

¹ Rule 166(f) is a rule proposed by the Court Rules Committee, but is not an existing rule.

paragraphs may be waived. Upon the filing of such agreement the Court shall enter an order stating which parts of this Rule, if any, are waived and will not be applicable for the suit. Notwithstanding such agreement of the parties, if the Court is of the opinion that compliance with paragraphs b or c or both of this Rule are necessary for a proper disposition of the case the Court may order compliance with such paragraph(s) as is appropriate.

III. Brief statement of reasons for requested change and advantages to be served by the proposed new rule:

The purpose of this rule is to try to cut down litigation expenses especially in the area of discovery. The design of this change and other proposed rules is to require the parties, by agreement or court order, to first enter into a scheduling order setting realistic dates for completion of pre-trial matters and especially a realistic date for trial. Because almost all litigation is driven by the trial date it is perceived that a realistic trial date is one of the most important factors in cutting down the cost of litigation since it prevents parties and clients from having to prepare more than once for the trial of the case. Following the scheduling orders, the parties will normally engage in some amount of discovery and have some idea of discovery problems that are being encountered or may be encountered. The purpose of the status conference is to take care of any pending motions and special exceptions so that the pleadings can be put in proper shape and to design a discovery plan and head off any discovery problems before they arise and hence, eliminate disputes and satellite litigation over discovery. The trial court may have to spend time, at the status conference with the attorneys, in designing the discovery plan and dealing with anticipated discovery problems before they arise but it is believed that the time spent at this conference will reduce the time the court has to spend later on in resolving discovery disputes. The joint pre-trial statement should be filed just prior to trial.