



## ***Judge Clark issues new procedures re: discovery-related motions, summary judgment motions, motions to strike expert testimony, and motions in limine***



I usually don't post on individual judges' procedures, but today's order from Judge Clark in at least several pending Lufkin patent cases is a pretty innovative blend of existing procedures in use by other judges and new ideas about how to handle motions "to allow the Court to manage its docket in a timely fashion, and to focus its attention on dispositive or otherwise truly significant issues in this case."

**Discovery-related motions** - a party filing a discovery motion has to file a certificate of conference signed by lead and local counsel stating that a proper meet & confer has taken place - which Judge Clark defines as a personal conference (phone or in person) between lead and local counsel for both sides. (Did I mention my new firm has an office in Lufkin?) The order also details that you have to actually listen to each other and consider what's being said (oh the horror!). Letters are not evidence of good faith but may be evidence of bad faith. Yikes! Put those poisoned pens down, guys.

**Summary judgment motions** - SJ motions are now limited to one per side. To file another ones, the party must submit a letter brief seeking permission. Brief is limited to five pages, double-spaced, and must be filed a month before SJ motions are due. Other side can respond likewise, and the Court may hold a conference call to discuss the issue. (Before anyone complains, the one time I was in a case with a one-SJ motion limit like this, the judge allowed us to file a second one when we asked, and granted summary judgment on both grounds, disposing of the plaintiff's entire case prior to trial. Any guesses whether that would have happened if we'd filed, oh, five?)

**Motions to Strike Expert Testimony** - same procedure as above, except the limit is three pages, due 2 weeks before the deadline.

**Motions in Limine** - parties must meet & confer *in person* on motions in limine and objections to exhibits. Only those not agreed-upon may be submitted, and objections to relevance or materiality are reserved until use at trial.

Any comments on these new procedures? As with most judge-specific procedures, I assume the local rules committee will look over these this summer to see if they should be proposed for application district-wide. So speak up if you like or dislike them. (If you have a comment you'd prefer remain anonymous, just e-mail me directly at [michaelsmith@siebman.com](mailto:michaelsmith@siebman.com)).

Posted by Michael Smith on March 06, 2008 at 05:04 PM in Eastern District of Texas news & events, Judge Clark cases |