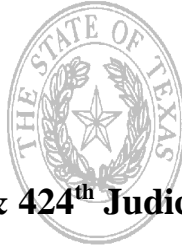


MEMORANDUM



From District Judges, 33rd & 424th Judicial Districts

To: Prosecution and Criminal Defense Bar
Date: September 30, 2008
Subject: Management of criminal cases

Your attention is drawn to the following existing rules and standing orders relative to the criminal dockets:

- Standing Order Governing Motions, Discovery & Trial Appearances, and Supplemental Discovery Orders – on the web site – has not changed.
- Sample Setting Order of 2007 (given at arraignment or other first appearance) – on the web site – had not changed but is attached here as well.
- Graphical depiction of the process flows – attached.

We've now done a number of months of dockets with the "Status Docket" methodology and your judges feel it best to clarify and amplify on a couple of things. Judge Mills and I will both be proceeding as set forth below.

Accompanying this Memo is a prototype of the Setting Order and a graphic flow chart depiction of that order. We hope the flow chart will assist in contemplating how it is envisioned this methodology will work.

This Memo will be distributed as follows:
By email to the email distribution list (main list)
Posting in the offices of the District Clerks
Included with Local Rules
Posting on the Courts' web site with the standing orders

One clarification on the Standing Order Governing Motions: there is no plea bargain deadline.

Further discussion follows.

The **overriding principle** is that this method places a great deal of responsibility on both sides of the criminal bar to get their business done, yet maintain ultimate judicial control over the docket. The **primary goal** is to increase efficiency of the judicial process which is defined for our purposes as giving each level of case the attention it truly deserves, disposing of cases that do not need a trial for resolution in the shortest feasible period of time while reserving trial time only for those cases truly needing a trial. Efficiency is not measured merely by disposing of cases quickly, but as quickly as possible while still ensuring constitutional due process without wasting time in court.

Three main points will be evident in this method:

1. Case management is differentiated at the point of arraignment according to the felony level and complexity of the cases. For example: mandatory probation cases will proceed directly to a plea docket. If it is then determined that a trial is necessary it will be moved to a trial docket.
2. The **Status Docket** is a pivotal step in the process, at which point the Court will insist that both sides have a clear understanding of their cases and at which time its direction can be determined. It is anticipated that 90% of all cases on the status docket will move to a plea track.
3. The only **cases reaching the trial docket** will be cases deserving of trial. It is expected that an additional 5% of the cases on the original status docket will have been resolved, leaving only 5% of the status docket ultimately remaining on the trial docket.

Two steps are critical to accomplishing these goals:

1. The State must communicate early in the process (i.e. at arraignment) with a plea offer or advise that none will be forthcoming and the parties must diligently pursue an agreement thereafter.
2. Both sides must arrive at the status docket having completed negotiations and being ready to announce. Except in extraordinary cases, and your judges expect this to be 10% or fewer of the cases on the docket, no time will be taken for negotiating. Do not plan on getting a reset of the Status Docket except for good cause shown.

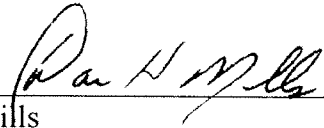
Therefore, commencing in January 2009 the Court will expect that every case on the trial docket is ready for trial. They will be called in an order determined by the Court with preference to jail cases and cases with truly unique scheduling requirements. Trial cases will reach a docket, either for trial or a plea, no later than 120 days from indictment except for cases truly needing more time and only after a bench conference to ascertain necessary scheduling.

Thus you can see the extreme **importance of the Status Docket** in weeding out the non-trial cases. For this reason you will find both judges pushing hard and staying as long as necessary on the status dockets to ensure that only trial-worthy cases are announced for the trial docket. It is expected that both sides will have done everything possible **prior to the status docket** to resolve the case but no announcement will be accepted for the plea/trial track decision until the Court is convinced that such is a legitimate result.

The Court will utilize appropriate *ad hoc* procedures to deal with trial cases not being ready or any perceived “jamming” of the dockets leading to either too many cases remaining on the trial dockets or lengthening of the 120 day goal without justification, or wasting the Court's time on these docket days. By way of example, cases may be dismissed or reset in short order if not ready on the trial date; or defendants may be re-incarcerated if they have failed to meet with CSCD prior to their plea date.



Guilford L. Jones, III
33rd District Court



Dan H. Mills
424th District Court

Attachments: As stated

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THE STATE OF TEXAS
v.
[DEFENDANT]

§ IN THE DISTRICT COURT OF
§ [County - in ALL CAPS] COUNTY, TEXAS
§ [33rd or 424th] JUDICIAL DISTRICT

**ORDER SETTING MOTIONS, DISCOVERY & TRIAL SCHEDULE and
PRETRIAL NOTICE UNDER ARTICLE 28.01 C.C.P.**

The Court enters the following Setting Order upon defendant’s plea of “Not Guilty” at arraignment or upon appearance of counsel or the subsequent filing of pretrial motions.

Counsel for the defendant shall notify the defendant of all Court settings and, if the defendant is on bond, advise the defendant that he/she must be present on the dates and times specified in this Order. All settings are in the 33rd/424th Judicial District Courtroom in the County where the case is pending. Abbreviations used in this order: C.C.P. means the Texas Code of Criminal Procedure; TRE means the Texas Rules of Evidence.

NOTICE OF STANDING ORDER: THERE IS A STANDING “DOCKET CONTROL ORDER” WHICH IS FILED IN THE OFFICE OF THE DISTRICT CLERK, AND IS INCORPORATED BY REFERENCE JUST AS IF FULLY SET OUT HEREIN. THE DOCKET CONTROL ORDER EXPLAINS THE ACTIVITIES EXPECTED AT EACH HEARING AND INCLUDES SUPPLEMENTAL DISCOVERY ORDERS AND A TRIAL ORDER. IT IS THE RESPONSIBILITY OF COUNSEL TO OBTAIN AND BE FAMILIAR WITH ALL PROVISIONS CONTAINED THEREIN. The standing order is also available at http://dcourt.org/forum/standing_orders.

SETTING ORDER

Date/Time and DESCRIPTION OF HEARING TYPE & ACTIVITY

- 1 Date and Time As ordered in the Precept to Serve Indictment or Capias
ARRAIGNMENT. Appearance of defendant and counsel is required. It is expected that at this time the State will either deliver a discovery packet to the defense or make arrangements for open-file inspection and that either an offer will be conveyed in writing or the defense will be advised that none is to be forthcoming.
- 2 **Request for Pretrial:** If prior to the status docket either side perceives a genuine need for a pretrial that may assist the decision required at the status docket (such as a suppression hearing), any necessary motions may be filed and a hearing requested with notice to the other side and with a certificate of conference regarding the request. Defense counsel are reminded not to file motions redundant of matters contained in the Court’s standing Docket Control Order.
- 3 **[STATUS DATE] AT [STATUS TIME INCLUDING A.M. OR P.M.] – STATUS AND ANNOUNCEMENT HEARING DOCKET.** This appearance cannot be waived. Defendant and counsel MUST appear. IT is expected that both sides will be able to make a clear and unequivocal announcement as to the need for a trial, or not.
It is expected that at this time there will be no pending discovery issues, that an offer will have been timely conveyed, and that either an agreement will have been reached or negotiations exhausted.
The Court will then in open court assign the case to either a trial track or plea track.
If assigned to a trial track, defense must at this time request an Art. 28.01 hearing or it will be waived.
If a 28.01 hearing is requested you are hereby advised as follows: All Art. 28.01 Motions must be filed and served upon the other side at least 14 days prior thereto (rather than the seven days provided in the C.C.P.). It will be set as a contested hearing and the State will be expected to have any necessary witnesses present (such as to defend a motion to suppress).
If assigned to a plea track with a final plea-bargain having been reached, you are reminded as follows:
REQUIREMENTS: File with the clerk (a) the promulgated plea bargain agreement and (b) a written waiver of jury trial, each signed by the defendant and both lawyers, and send the defendant immediately to CSCD for preparation of a PSI (or notify CSCD if defendant is in jail). This applies whether the plea is for probation or confinement.

Email (preferred) or Fax a copy of both papers to the Court Coordinator at 512-756-8478.

If assigned to a plea track for an anticipated plea, then the foregoing requirements must be met immediately upon reaching a firm plea-bargain. If no bargain is reached the case is subject to being moved to the top of the next available trial docket

ORDER REGARDING MOTIONS

In addition to any local or other rules concerning motions, no motion may be filed without first conferring with opposing counsel and attempting to resolve the matter and including a certificate of conference on the motion which indicates the fact of the conference and the result thereof. Additionally, a certificate of service must appear thereon which indicates the specific addressee and the full address, manner and means of service, plus certificate of conference.

SIGNED this day [Date of Arraignment].

Judge Presiding

