

PRETRIAL PROCEDURES; WHAT ARE THE BEST PRACTICES?

SPEAKERS:

JUDGE GUY HOLDRIDGE, JUDGE WILLIAM A. MORVANT,
CARLA COURTNEY, JILL L. CRAFT,
THOMAS R. TEMPLE JR. AND DARREL J. PAPIILLION

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QUESTIONS ABOUT PRE-TRIAL MATTERS WHAT SHOULD BE THE BEST PRACTICE?

I. CASE MANAGEMENT

Plaintiff files a petition alleging she was injured in a three car accident. Plaintiff's petition states she was hit by car one (the car immediately behind her car) and then by car two (which was immediately behind car one). The driver of car one files a general denial answer as a self-represented litigant because she is uninsured. Driver two and his insurance company file an answer alleging that his car never hit car one. Plaintiff does not have UM coverage. There has been no action in the case in the eighteen months since the answers were filed.

- A.** Should the trial judge set a status conference on his own motion to move the case forward?
 - 1.** Yes
 - 2.** No

- B.** If discovery has been on-going for 18 months, should the trial judge set a status conference on his own motion to move the case forward?
 - 1.** Yes
 - 2.** No

- C.** If the plaintiff was a self-represented litigant, should the trial court become more involved to move the case forward?
 - 1.** Yes
 - 2.** No

- D.** Should Louisiana judges adopt more of a federal case management system so as to not allow cases to stay in the system for many years before being set for trial?
 - 1.** Yes
 - 2.** No

II. EXCEPTIONS

Two years after the original petition was filed, the plaintiff files an amended petition adding the State of Louisiana DOTD and the manufacturer of the brakes of car one as new defendants. The DOTD files an exception of prescription and the manufacturer of the brakes files an exception of lack of subject matter jurisdiction. The trial court sets both exceptions for hearings within twenty (20) days. All counsel advise the court that they have decided to waive oral argument and submit the exceptions on their briefs.

- A. Should the trial court inform the parties of their burden of proof and that evidence is needed to be introduced at the exception hearings?
 - 1. Yes
 - 2. No

- B. There has been a proposal to allow the parties to submit their evidence on exceptions by attaching the depositions, answers to interrogatories, affidavits, etc. to their exceptions (like in motions for summary judgment) instead of having to admit their evidence at the hearing. Would you be in favor of this proposal?
 - 1. Yes
 - 2. No

III. PRE-TRIAL CONFERENCES

Plaintiff was seriously injured when there was an explosion and he fell from a tank when he was working at a chemical plant. He was an employee of a sub-contractor. He sues three other sub-contractors, the general contractor and the owner of the chemical plant for damages. The discovery has been on-going for two years and the plaintiff would like to obtain a trial date to further settlement negotiations. There is still about eight or ten witnesses to be deposed, plus the three experts and the two treating physicians.

- A. The plaintiff's attorney files a "Motion to set Scheduling Conference" in accordance with Code of Civil Procedure article 1551 and District Court Rule 9.14. The defendants' attorneys file a "Joint Motion in Opposition" to the scheduling conference arguing that a conference should not be set since a sufficient amount of discovery has not been completed and the experts have not been deposed. The trial judge should:
 - 1. Set the Conference
 - 2. Deny the Conference

- B. Should the trial judge require that all parties certify that all discovery is complete before setting a trial date?
 - 1. Yes
 - 2. No

- C. Should the trial judge notify the attorneys for all parties if he will not be present at the pre-trial conference and the attorneys will only be meeting with a law clerk or administrative assistant?
 - 1. Yes
 - 2. No

- D. If the status/pre-trial conference is only to give court discovery deadlines and a trial date, should the conference be held
 - 1. In person
 - 2. By phone

3. At the judge's discretion
 4. At the attorneys' discretion
- E. In the pre-trial conference or in a pre-trial order, should the parties be forced to list any impeachment witnesses and exhibits which they know about or have in their possession?
1. Yes
 2. No
- F. If the attorneys for all parties request the judge to have a settlement conference to discuss the issues of liability and/or damages, should the judge conduct the settlement conference if it is a bench trial?
1. Yes
 2. No
- G. Should the judge conduct the settlement conference if it is a jury trial?
1. Yes
 2. No
- H. At the settlement conference, all attorneys ask the judge to speak in private with the plaintiff since they are all in agreement with the settlement amount, but the plaintiff does not want to settle before speaking to the judge. All parties waive any objection to ex parte communication with the plaintiff. The judge should
1. Speak with the plaintiff
 2. Do not speak to the plaintiff
- I. The five defense attorneys are present at the pre-trial conference, which is to start at 10:00 a.m. The judge is also present. Approximately 10:30 a.m., the secretary for the plaintiff calls the judge and states that "he is still tied up in court and would like to participate by phone." What should happen?
1. Allow the plaintiff's attorney to participate by phone
 2. Re-set the pre-trial conference
 3. Re-set the pre-trial conference and allow all of the attorneys to participate by phone
 4. Re-set the pre-trial conference with sanctions on the plaintiff's attorney in the amount which the defendants attorney had to spend to attend the first conference

IV. MOTIONS FOR SUMMARY JUDGMENT

All five (5) defendants and the plaintiff have filed "Motions for Summary Judgment." They are filed over sixty-five (65) days prior to the trial dates and set for hearing over thirty (30) days after filing and over thirty (30) days before the trial. The plaintiff and one defendant file their oppositions and supporting documents and affidavits untimely six (6) days before the hearing date.

- A. What should happen?
 - 1. The oppositions and supporting documents should not be considered by the court.
 - 2. The late filing parties should not be allowed oral argument.
 - 3. It is up to the discretion of the trial judge whether to consider or not consider the oppositions or to allow oral arguments.

- B. In state court, oral argument are a matter of right. In Federal court, it is discretionary with the court. Should Louisiana courts adopt the Federal system, in which the court would determine whether to allow oral arguments on a motion for summary judgment?
 - 1. Yes
 - 2. No

- C. If the court allows oral argument, should the trial court inform the parties when she has already decided the motion and has a judgment prepared?
 - 1. Yes
 - 2. No

- D. Should the court in setting the motion for hearing signify to the parties that she does not ask questions at the hearing and takes all matters under advisement?
 - 1. Yes
 - 2. No

V. DAUBERT MOTIONS

The trial court has denied the “Motion for Summary Judgment.” All five defendants and the plaintiff have experts to testify as to their opinion as to the cause of the plaintiff’s accident.

- A. Since no party has filed a “Daubert motion” in accordance with Code of Civil Procedure article 1425, sixty (60) days before the trial, are all parties are now prohibited from objecting to the expert’s qualifications and methodologies at trial?
 - 1. Yes
 - 2. No

- B. Should the trial judge state in her pre-trial order that all experts not objected to in accordance with article 1425 will be allowed to testify at trial?
 - 1. Yes
 - 2. No

- C. Presume one defendant filed a “Daubert Motion” to exclude the plaintiff’s expert. The motion is heard thirty-two (32) days prior to the trial and the court rules that the plaintiff’s expert

cannot testify because he lacks the qualifications to be an expert and his methodologies are not tested. Should the plaintiff be given a continuance of the trial date to get another expert?

1. Yes
2. No

D. Presume the defendant's expert is challenged and is not allowed to testify. Should the defendant be granted a continuance to obtain another expert?

1. Yes
2. No

E. If the trial court refuses to allow a witness to testify after a "Daubert Hearing" should the trial be stayed pending appellate review?

1. Yes
2. No

VI. MOTION IN LIMINES

Two (2) days before trial, the plaintiff files a motion in limine containing twenty-five (25) sub-parts seeking to exclude two of the defendant's witnesses and any references to the plaintiff's numerous convictions, arrests, and other medical conditions.

A. Should new articles be added to the Code of Civil Procedure to recognize and regulate "Motions in Limine."

1. Yes
2. No

B. Should all judges have standardized rules setting forth deadlines for filing "Motions in Limine" in their pre-trial orders?

1. Yes
2. No

C. Since there are no rules on "Motions in Limine," can the trial judge rule on these motions ex parte without allowing opposing party time to respond?

1. Yes
2. No

D. If the trial judge rules on the Motion in Limine the day of trial and excludes a defendant's witness, what should be the proper relief for the defendant?

1. Stay the trial
2. Continue the trial
3. No relief other than to proffer the testimony
4. Whatever supervisory relief the defendant can obtain from the Court of Appeal