

PREPARING AND PRESENTING YOUR CASE BEFORE THE COURT

Judge Scott Beauchamp, 255th District Court (AJ)

Judge Scott Becker, 219th District Court

Judge Emily Miskel, 470th District Court

Judge Beauchamp
Avoiding Discovery
Problems

Avoiding Discovery Problems

- Plan discovery and responses early.
- Address problems as early as possible.
- Be prepared for emergencies.
- Evidence, evidence, evidence.

Discovery Control Order

- Sets a date for trial or a conference to determine the trial date.
- Sets a discovery period during which all discovery must be conducted or all discovery requests sent.
- Places limits on the amount of discovery.
- Sets deadlines for joining additional parties, amending/supplementing pleadings, designating expert witnesses.

Discovery Control Orders

- Custom discovery periods and limits.
- Set expectations of both sides for discovery and the case.
- Get the Court involved early.
- Spoliation prevention.
- Court ordered discovery (nonobjection discovery).

Discovery Problems

- Unproduced evidence.
- Late or no responses.
- Undesignated experts.
- Waived objections.
- Deemed admissions.
- Exhaustion of discovery.
- Expiration of discovery period.

Pretrial Discovery Remedies

- ⦿ Motion to expand discovery period/extend discovery deadline.
- ⦿ Motion to allow late objections.
- ⦿ Motion to withdraw deemed admissions.
- ⦿ Motion to allow late designation of experts or to change designation deadline.
- ⦿ Motion to allow late production or supplementation.
- ⦿ Motion for additional discovery.

Acting Proactively

- Respond to discovery problems on first awareness.
- Late/no responses: respond anyway ASAP.
- File and set motions immediately.
- Offer reasonable concessions.

Why Act Proactively?

- Good faith showing: lessen chance of sanctions.
- Quick response equals less prejudice.
- Potential to make opposing side appear unreasonable.

TRCP 193.6

- Objection at trial to unproduced evidence/undisclosed witness.
- Automatic exclusion of evidence/witness, unless:

TRCP 193.6

- Good cause for failure to timely respond, produce evidence or disclose witness.
- No unfair prejudice to opposing side in failing to produce evidence or disclose witness.
- Unproduced evidence/undisclosed witness does not unfairly surprise the opposing side.
- Request for continuance/postponement of trial.

EVIDENCE

- Proving/defending Motions to Compel.
- Proving/defending objections/privileges.
- Sanctions.
- Good cause/no unfair surprise/no unfair prejudice under TRCP 193.6.

Conclusion

- ⦿ Discovery rules are not invoked unless timely objection is made.
- ⦿ No set types of motions to alleviate discovery problems...Be Creative!
- ⦿ Court has the discretion to vary from the rules on discovery issues.
- ⦿ Court can do very little if the request is not supported by evidence.

Judge Becker Technology



HDMI





VGA



Audio cable

Judge Miskel Court Staff

Court Staff

⦿ Coordinator

⦿ Clerks

⦿ Bailiff

⦿ Constables

⦿ Court Reporter

Judge Beauchamp Nonparent Practice

Nonparent Practice

- ⦿ There will always be a subject matter jurisdiction issue except with grandparent access requests.
- ⦿ Pleading is critical.
- ⦿ Standing cannot be waived.
- ⦿ Double hurdle in original suits: Standing and parental presumption on the merits.
- ⦿ No parental presumption in modification cases.

Pleading Standing

- State the statutory section on which standing is claimed.
- Listing statutory section alone is not enough to support standing; unsubstantiated legal conclusions are insufficient.
- Sufficient facts must be in pleadings for the court to conclude that the petitioner has standing.
- Standing determined as of filing date only.

Standing: Procedure

- Court reviews pleading (even without a contest) to determine standing in all cases.
- Court assumes all facts in favor of Petitioner's pleadings.
- Pleadings are reviewed in light most favorable to Petitioner.
- If facts in pleadings support standing the court may proceed with the case.

Standing: Procedure

- If facts in pleadings do not support standing, subject matter jurisdiction does not attach.
- Court cannot make any orders on case except to dismiss case.
- Court may allow petitioner to replead if pleadings regarding standing are insufficient.

Respondent's Pleading

- Respondent parent may contest facts stated in pleadings in support of standing by filing a Plea to the Jurisdiction.
- Court must hold an evidentiary hearing and resolve Plea to the Jurisdiction before making any substantive orders.
- See article for discussion on standard for hearing on a Plea to the Jurisdiction.

Common Standing Grounds

- TFC 102.003(a)(9): Beware the split in authority.
- TFC 102.004(a): No standing for persons related by affinity.
- TFC 102.004(b): Includes persons with substantial past contact with child; interventions only.
- TFC 102.005: Termination/adoption.
- TFC 153.432: No standing for step-grandparents.
- TFC 156.002: Modification suits.

Parental Presumption

- Applies to all determinations on the merits regarding a child between a parent and nonparent in an *original suit*.
- Parenting one's child is a fundamental liberty interest.
- Parent has a fundamental constitutional right to make decisions regarding his/her child's care, possession, and control.
- Generally, a fit parent is presumed to act in the best interest of the child, and there is no reason for the state to interject itself into family matters if a parent adequately cares for his/her child.

Parental Presumption

TFC 153.131

The court must appoint a parent as sole managing conservator or both parents as joint managing conservators unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development.

* This does not apply in a modification suit.

Parental Presumption

TFC 153.433(a)(2)

In a case where a grandparent seeks possession/access of a child over a parent's objection, the grandparent must prove that denial of possession or access to the child for the grandparent by the parent would significantly impair the child's physical health or emotional well-being.

Parental Presumption

- ⦿ TFC 153.131 rebuttal: Showing of significant impairment, family violence, voluntary relinquishment of child for one year plus best interest showing.
- ⦿ If court finds parental presumption rebutted, court cannot make orders that conflict with such a finding.
- ⦿ Additional evidentiary requirements under TFC 153.433(a)(1) and (3) for grandparent possession/access.
- ⦿ Ambiguity: other nonparent access.

Judge Becker

Exhibits and Documents

Cause No. 219-____-2016

IN THE INTEREST OF BLAH BLAH
BLAH,
a minor child

IN THE DISTRICT COURT

219TH JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

Exhibit List

Exhibit Description	Offered	Admitted
1. Photograph Dad w/child @ 6-Flags (Dad)		
2. E-mail 1/15/14 re: late for visitation (Dad/Mom)		
3. Summary of Requested Relief (Dad)		
4. Photo of kids room (Dad)		
5. Text message (Dad/Mom)		
6. Facebook post (Dad/Mom)		
7. Proposed Possession Schedule (Dad)		
8. FIS (Dad)		
9. Child Support Calculations (Dad)		
10. DWI Arrest Report (Dad/Ofcr. Leo)		
11. Text message #2 (Dad/Mom)		
12. Text message #3 (Dad/Mom)		
13. Facebook post #2 (Mom)		
14. Photo of empty wine bottles in mom's trash (Dad/Mom)		
15. DWI Video (Ofcr)		

IN THE DISTRICT COURT

IN THE INTEREST OF BLAH BLAH

BLAH,
a minor child

219TH JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

Witness List

Witness	
1. John Jones	<ul style="list-style-type: none">• Summary of Requested Relief (Ex. 3)• Photos with kids (Ex 1)• E-mails from Mom (Ex. 2)• Texts from Mom (Ex. 11 & 12)• Photos of kids room (Ex. 4)• Facebook posts (Ex. 6 & 13)• Proposed possession schedule (Ex. 7)• FIS (Ex. 8)• Child Support Calcs (Ex. 9)• DWI Arrest Report (Ex. 10)• Photos of empties in Mom's trash (Ex. 14)
2. Ofcr. Leo	<ul style="list-style-type: none">• DWI Arrest Report (Ex. 10)• DWI Video (Ex. 15)
3. Jane Jones	<ul style="list-style-type: none">• E-mail from her to Dad (Ex. 2)• Texts from her to Dad (Ex. 11 & 12)• Facebook posts (Ex. 6 & 13)• Photos of Empties in trash (Ex. 14)• DWI Video (Ex. 15)

Authentication

vs.

Hearsay

Judge Miskel

**Things You Didn't Know
You Could Ask For**

Witnesses

- ⦿ Scheduling
- ⦿ Testify by Phone
- ⦿ Out-of-Order
- ⦿ Physical Limitations
- ⦿ Interpreter

Opposing Counsel Stipulations

- Exhibits

- Deposition
Excerpts

- Expert
Qualifications

- Audio/Video Clips

Don't Take No For An Answer (Politely)

- Pre-Trial Rulings
- Reopen Evidence
- Trial Amendment
- Post-Trial Motions
- Bench Filing