

# PRETRIAL CONFERENCES (Texas State Court Rules)

# What is a Pretrial Conference?

- Held at Court's discretion.
- Depending on case, it could be weeks or more before trial.
- Usually an order issued with requirements.
- May be local rules setting out requirements.
- Exhibit lists (and possibly exhibits), witness lists, motions in limine and other motions.
- Prior to the pretrial, the Court expects counsel to confer and reach agreements on exhibits, motions, etc. to the extent possible.
- All agreements must comply with T.R.C.P. 11 to be enforceable.

# MOTION IN LIMINE

- In Latin, “in limine” means “on the threshold”.
- Goal is to preclude evidence pretrial that is not admissible.
- While timely objections made during examinations during trial usually result in the Court’s ruling on admissibility (therefore precluding the evidence), it may not be enough.
- If the question itself would permit the jury to hear the inadmissible evidence, it should be precluded in an order granting the motion in limine.
- Example: Plaintiff was released from prison 15 years ago, having been convicted of felony theft. (Evidence of a conviction that old is inadmissible.) Opposing counsel’s leading question “You were convicted of felony theft” allows jury to hear that evidence before Plaintiff’s counsel can timely object.

# REQUIREMENTS

- Motion must be in writing.
- Response not required to be in writing unless judge orders it.
- Motion must be heard before voir dire.
- Court's ruling does not preserve error so further action is required.

# EFFECTS OF RULINGS: IF DENIED

- Evidence is not precluded and may be mentioned by either party.
- Party wishing to exclude the evidence must timely object to its admissibility during trial.
- *Note to party who made the motion in limine:* If there is a possibility that the Court may later reverse its ruling, holding the evidence inadmissible, you should not introduce the evidence yourself. “Opening the door” waives your right to object later.

# EFFECTS OF RULINGS: IF GRANTED

- There can be no mention of the precluded evidence during Voir Dire, Opening Statement and Witness Examination (unless Court first reverses its ruling).
- When during witness examination the evidence should be presented, counsel must first approach the bench, tell the judge that the precluded evidence should be admitted with the witness and explain why it is now admissible.
- If the judge agrees and reverses his ruling, counsel can then present the evidence through his witness.
- Opposing counsel must then object timely to preserve error.
- If the judge refuses to reverse his ruling, counsel must make a bill to preserve error.

# HOW TO MAKE A BILL

- After examinations are completed, but before the witness is excused from the stand, ask to approach the bench and tell judge you would like to make a bill on the evidence that has been excluded.
- Jury will be excused.
- Counsel asks the witness all of the questions necessary to present the excluded evidence.
- Opposing counsel has the right to cross examine the witness.
- Once questioning is concluded, counsel presenting the evidence must ask the Court to reconsider its ruling that the evidence was inadmissible, giving reasons why it is admissible and asking that the evidence be presented to the jury.
- If the Court still precludes the evidence, the bill has preserved it for appeal.
- If the Court reverses itself and holds the evidence is admissible, jury is brought back in and counsel then asks the same questions of the witness to present the evidence for the jury's benefit. Opposing counsel has the right to cross examine.