

ORDER OF THE SUPREME COURT OF TEXAS

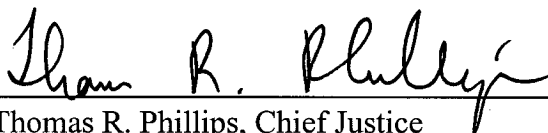
Misc. Docket No. 00- 9042

Approval of Local Rules of the 115th District Court

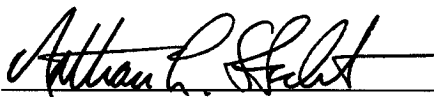
IT IS ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court of Texas approves the attached local rules of the 115th District Court, Upshur and Marion Counties, Texas. The approval of these rules is temporary pending further orders of the Court.

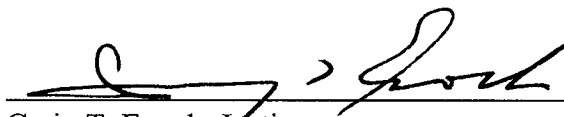
By the Court, en banc, in chambers, this 8th day of March, 2000.



Thomas R. Phillips, Chief Justice



Nathan L. Hecht, Justice



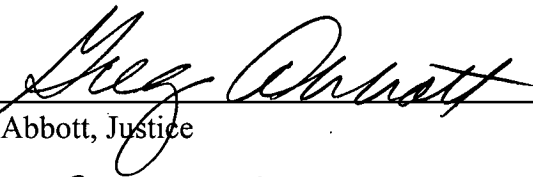
Craig T. Enoch, Justice



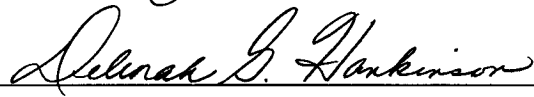
Priscilla R. Owen, Justice



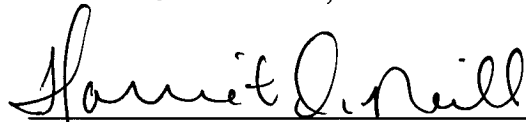
James A. Baker, Justice



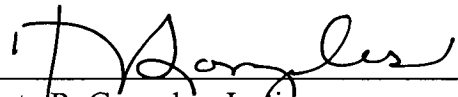
Greg Abbott, Justice



Deborah G. Hankinson, Justice



Harriet O'Neill, Justice



Alberto R. Gonzales, Justice

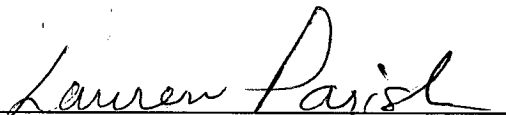
**RULES OF PRACTICE
OF THE
115TH JUDICIAL DISTRICT COURT**

EFFECTIVE JANUARY 1, 2000

Pursuant to the constitutional powers and duties of the Judicial authority in the State of Texas, and under the authority of Rule 3a of the Rules of Civil Procedure, the following local Rules of Practice and Procedure are hereby adopted to govern the trial of all cases in the 115th Judicial District Court. Nothing contained in these Rules shall be construed or interpreted as interfering with the right of the trial Judge to make such orders, settings, or procedural directions as in his/her discretion may be necessary and proper for the expedient and orderly dispatch of the business of the Court. These rules are intended to be consistent with and subject to the Rules of Civil Procedure and the statutes and Constitution of the State of Texas.

The District Clerks of Upshur and Marion Counties shall mail a copy of these Rules to the members of the Bar Associations in Upshur and Marion Counties and to such non-resident attorneys who make appearances before this Court.

The Clerks are ordered to spread a copy of these Rules upon the minutes and to furnish a copy to the Supreme Court of Texas.


LAUREN PARISH, JUDGE
115TH JUDICIAL DISTRICT
UPSHUR AND MARION COUNTY

PREFACE

All of the following Rules apply in both Upshur and Marion Counties unless otherwise specified.

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115TH DISTRICT LOCAL RULES

Rule 1.10 Time Standards for Case Prosecution

The Court will strive to ensure that as far as reasonably possible, all cases shall be brought to trial or final disposition in conformity with the following time standards:

- a) Original criminal cases within six months if on bond, or 30 days if incarcerated;
- b) Probation revocations within 30 days of arrest;
- c) Civil jury cases within 18 months;
- d) Family law cases, contested, within 6 months of filing;
- e) Family law, uncontested, within 3 months of end of waiting period.

Rule 1.11 Court Sessions

By law, the 115th Judicial District Court shall have two (2) terms of court each year in Marion County consisting of one (1) month each. The 115th Judicial District Court shall have two (2) terms of court each year in Upshur County with the January term consisting of four (4) months (January, February, April and May) and the June term consisting of six (6) months (June, July, August, October, November, December).

The Court shall designate Grand Jury Commissioners at the beginning of each term of court in Upshur County. The Grand Jury Commissioners shall report to the Court on the first Wednesday of the term at 8:30 o'clock a.m. The Court shall empanel the Grand Jury on Tuesday the fourth week of the term at 8:30 o'clock a.m.

Rule 1.12 Request for Settings - Non-Jury Cases

- a) At any time after the filing of an answer upon the request of any party of the Judge's own motion the Court Coordinator, acting upon the direction of the Judge, shall set the case for trial on the non-jury docket.
- b) When requesting a setting for a non-jury trial, the approximate length of time required for the trial shall be given in order to facilitate scheduling.
- c) The request for a non-jury trial setting may be made by telephone or by mail. The party obtaining the setting shall notify all parties of the setting.

Rule 1.13 Request for Settings - Jury Cases

Request for Setting Form required for setting jury cases (See Exhibit "A")

- a) Jury trial will be granted only when a Jury Fee has been paid at least thirty (30) days before the Monday of the week in which the case is set for trial.
- b) Demand for a trial by jury shall not be occasion for advancement or substantial delay of the trial or of any other proceeding in the case. If the case is already set for non-jury trial when a timely and proper demand for a jury is made, the Court may try the case with a jury on the same setting, add the case to the list of jury cases for the next jury week, or set the case at some other concurrent time in the Court's discretion.
- c) Nothing in this rule shall be construed to prevent the more rapid trial of jury or non-jury cases when the time requirements of either category of trials shall make more expeditious handling of one category possible.

- d) In Upshur County, a jury docket will be called at 9:00 a.m. on the second Monday of each term for case setting for that or subsequent terms. If the second Monday is a designated County or State holiday, the jury docket will be called at 9:00 a.m. on the second Tuesday of each month. In Marion County, a jury docket will be called on the first day of each term for case setting for that or subsequent terms. Parties may agree on a setting or a party may obtain a setting without the necessity of the case being placed upon jury docket or appearance at a docket, by notifying the Court Coordinator in Upshur County or the District Clerk in Marion County and with the consent of the Court to the setting. The party obtaining the setting shall notify all parties of the setting.

Rule 1.14 **Request for Preferential Settings**

- a) See Government Code 23.101, et seq., for matters that by law will be given primary or secondary priority.
- b) In addition, a case may be preferentially set when, because of unusual circumstances, more than ordinary difficulty would be encountered in having all counsel and witnesses available for a regular setting.
- c) Motions for preferential setting must be written and filed with notice to all parties by docket call or, if the case has not been placed on the docket, then filed 30 days before the requested setting.

Rule 1.15 **Emergency and Special Meetings**

- a) All applications for ex parte relief shall state whether or not within the knowledge

of applicant and his attorney, the opposing party is represented by counsel, and if so, the name of such counsel.

- b) Whenever immediate action is required in an emergency when the Clerk's office is not open for emergencies, the case shall at the earliest practicable time be docketed on motions filed with the Clerk. Except in emergencies, no application for immediate or temporary relief shall be presented to the Judge until it has been filed with the Clerk.

Rule 1.16 Docket Calls and Announcements

SETTINGS OF CIVIL JURY TRIALS AND CIVIL JURY PRE-TRIAL DOCKET

- a) In Upshur County, the civil jury pre-trial docket shall be held on the Wednesday twelve (12) days prior to the Monday jury docket. The civil jury pre-trial docket shall be called at 9:00 a.m. Instructions to Counsel and a copy of the Jury Trial Docket will be furnished to counsel upon the setting of a case for jury trial. (See Exhibit "B"). In Upshur County, pre-trial matters for any cases set to go to trial that month shall be heard at this time unless the trial court, in its discretion, determines otherwise. In Marion County, the civil jury docket shall be held on the first day of each term of Court. In Marion County, pre-trial matters for any cases set to go to trial that month shall be heard at this time unless the trial court, in its discretion, determines otherwise.
- b) One purpose of the civil jury pre-trial docket shall be to designate actual trial cases and to assign a numerical order of trial. It shall be accomplished by the court

calling those cases which have been listed on a docket in chronological order determined by age or listed by preferential setting. The docket shall contain only those cases set by the Court or those which have indicated trial readiness in an original trial request or in a scheduling order. Readiness shall be confirmed at the civil jury pre-trial docket. A case is not considered ready for trial if there are summary judgment motions or other dispositive motions which need to be heard or ruled upon by the Court. Attorneys should not state in a request for setting that they are ready for trial if those motions are pending.

- c) In Upshur County, the Court Coordinator of the District Judge shall keep a list of the order of the settings of jury trials, striking causes on the docket which have been contested and settled and counsel may contact that office to determine the numerical standing for a jury selection. The current status of the jury docket will be posted in the office of the District Judge and updated upon notification of the cancellation of any case. In Marion County, this information may be obtained at the District Clerk's office.
- d) Docket call announcements of "Ready" if ready for any week may be made by letter. But, if there are any pre-trial matters to be determined by the Court - counsel must make an appearance at this time to present those matters. Absolutely no pre-trial matters will be heard on the date of jury selection.
- e) If no announcement is made at the civil jury pre-trial docket or prior to as in d) above, the case will be automatically removed from the jury docket and placed on the non-jury docket. It shall be deemed by the Court that the failure of counsel for

any or all of the parties to attend the civil jury pre-trial docket shall be a waiver by the parties of any objection to placement of the case on the non-jury docket.

SETTINGS OF CRIMINAL TRIALS

- a) After indictment, criminal cases will be given an arraignment date. The arraignment docket shall be the 4th Tuesday of each month in each term in Upshur County. The attorney may waive arraignment and make official appearance in the case in writing prior to the arraignment date and need not be present. If arraignment is not waived, the Defendant and counsel shall appear. If arraignment is not waived and no attorney is officially of record in the case, the Defendant shall appear, and if represented by counsel, both counsel and Defendant shall appear. Appointments of attorneys for indigents will be made at the time set for arraignment. Notice will be given the attorney appointed and a pre-trial and trial date assigned. In that event, and if necessary, arraignment will be conducted at pre-trial.
- b) At arraignment, the case will also be set for pre-trial and trial or a plea date set. If case is set for trial, counsel will be furnished with a copy of the jury trial docket and Instructions to Counsel Upon Setting Case for Trial (See Exhibit "C"). All pre-trial motions shall be filed within seven days of the pre-trial.
- c) The State, Defendant and defense counsel must be present at the pre-trial.
- d) No attorney will be allowed to withdraw from a case without there first being a hearing. Counsel shall serve by certified mail a copy of the motion to withdraw

notifying Defendant to appear at the hearing.

- e) No cases will be continued without a written motion for continuance, and then only upon consent of the Court and upon a resetting date from the Court Coordinator.

Rule 1.17 Resetting Cases

Cases that have been continued or that have not been reached may be carried over to the next available jury week or reset for trial in the discretion of the trial judge.

Rule 1.18 Dismissal Docket; Involuntary Dismissal

The Court shall periodically, but at least once each year, review the court's docket, and commensurate with the condition of the docket, the length of time a case has been filed, and other circumstances, have cases placed on the dismissal docket. When a case is placed on the dismissal docket, notice shall be mailed to all attorneys of record, or any party who has made an appearance, and who is not represented by counsel. (See Exhibits "D" and "E").

Unless a written motion for removal from the dismissal docket is filed prior to the expiration of twenty (20) days after the mailing of the notice, the case is subject to dismissal for lack of prosecution at any time after the expiration of the twenty (20) day period.

Motions for removal from the dismissal docket shall set out the reason for past inactivity, and the date on which the case will be ready for trial. Action on any motion to remove the case from the dismissal docket shall be taken by the Court at the time and date set by the Court for the dismissal docket. If the motion to remove from the dismissal docket is granted the Court shall either:

- a) make a specific trial setting for a time certain, or
- b) provide that the case will be dismissed without further notice if not disposed of by a certain deadline, in which case the burden for disposing of the case or obtaining an extension of the dismissal deadline for good cause shall be upon the party or attorney asserting the cause of action subject to dismissal.

This dismissal docket procedure is cumulative, and not exclusive, and nothing herein shall prevent a cause from being dismissed for failure of any party seeking affirmative relief to appear for a trial, pre-trial, or other hearing, or for any other reason authorized by law or the Rules of Civil Procedure.

Rule 1.19 Suspense Docket

If a case has been stayed because it relates to a bankruptcy proceeding, or if a case cannot proceed due to a legal or factual impediment, then such case is to be transferred to a “Suspense Docket” for suspension of further action and the file delivered to the Clerk for storage.

Rule 1.20 Presentment of Pre-trial Pleas and Motions

- a) No dilatory pleas or motions or exceptions shall be heard less than twelve (12) days before the date on which the case is set for trial, provided that the pleadings to which same are directed have been on file more than thirty (30) days at the time of the hearing.
- b) If a pre-trial is set and the pleading to which exceptions are directed has been on file seven (7) days or more before pre-trial, such exceptions shall be presented at pre-trial.

- c) If a pre-trial is set and the pleading to which exceptions are directed is filed less than seven (7) days before pre-trial, or is filed after pre-trial but not more than seven (7) days before trial, it shall be the duty of counsel urging such exceptions to obtain a hearing, give the required notice, and present such exceptions before the day of the trial.
- d) If no pre-trial is set, it shall be the duty of counsel urging such exceptions to obtain a hearing, give the required notice, and present such exceptions as herein provided.
- e) At hearings on specific motions and preliminary matters other than scheduling conferences and pretrial conferences, it shall be sufficient if counsel present is prepared to proceed on the matter at issue. In the absence of a specific order to the contrary, a party is not required to be represented by counsel who will try the case, or who is familiar with all aspects of the case, except at scheduling conferences and pre-trial conferences.
- f) No motion or special exception will be set for hearing until the moving party shall first communicate with opposing counsel to determine whether a contemplated motion will be opposed. If the motion will not be opposed, the moving party shall accompany a motion with a proposed order signed by counsel for all parties indicating approval of same. If the motion will be opposed, the moving party shall state at the beginning of their motion as follows: "A conference will be held on (date) with (name), attorney for opposing party, on the merits of this motion. Agreement could not be reached; therefore, it is presented to the Court for a determination."

Rule 1.21 Disposition Motions and Other Preliminary Matters

- a) Preliminary matters which require a hearing by the Court may be disposed of either (a) by hearing before the Court or (b) upon such written authorities as counsel may forward to the Court, following which the Court may rule in chambers without any hearing as provided in this rule. Any party is entitled to a hearing so long as the same is requested prior to the time that the Court makes its ruling.
- b) Any party who desires a ruling on any matter pending shall request a ruling either by (a) requesting a hearing or (b) filing a statement of the authorities, if any, relied upon, along with a request for ruling by the Court without a hearing. The opposing party may, within ten (10) days after service of such statement, either (a) request a hearing or (b) file a written response.
- c) If no hearing is requested within seven (7) days after the time for requesting a hearing or for filing a response has expired, the Judge, in the absence of counsel, shall examine the pleadings, authorities cited, and other papers and make such rulings as the Judge deems proper, note a memorandum of such ruling among the papers of the cause, and send copies of such memorandum to counsel for all parties.
- d) Copies of all orders made pursuant to this rule shall be signed and forwarded to all counsel at the time they are entered.

Rule 1.22 Motions for Severance

When a motion to sever is sustained, the severed claim shall be filed as a new case. The

original case from which the claim is severed shall retain the original number given it by the Clerk of the Court. Before the severed claim is filed as a new case, the Clerk's requirement concerning deposit for costs shall be met.

Rule 1.23 **Motions for Continuance**

- a) No requests to pass, postpone, or reset any scheduling conference, pre-trial conference, or other preliminary hearing shall be granted unless all counsel for all parties have been notified and have had an opportunity to object.
- b) Any ground for continuance of the trial setting shall be presented to the Court at least 7 days prior to the trial setting, at the call of the docket, or at the pre-trial conference, if any, whichever shall occur first, or shall be waived.
- c) All motions for continuance of trial setting, including joint motions of all parties, shall be presented to the Court either in open court or in chambers and shall comply in civil cases with the Texas Rules of Civil Procedure, and in criminal cases with Chapter 29 of the Texas Code of Criminal Procedure. All motions for continuance must be signed by the party requesting same. Upon granting a motion for continuance, a scheduling conference shall immediately be held, and the order granting such motion for continuance shall contain an order resetting the case for trial.

Rule 1.24 **Motions for Summary Judgment**

Motions for summary judgment shall be set for hearing by the Court unless no hearing is requested. Summary judgment motions shall be heard on a date prior to the pre-trial date. No

summary judgment motion will be heard after the case has been set on the Court's jury docket.

Rule 1.25 Motions for Treatment of Case as a Complex Case

A motion of a party pursuant to Rule 6e of the Supreme Court Rules of Administration and Rule 1e of the Regional Rules of Judicial Administration must be filed and a ruling obtained to declare that the case is classified as a complex case, or special circumstances exist that make it impossible to adhere to the prescribed time standards. The Court may at any time, in the interest of Justice, determine that the case is complex or recognize the circumstances which, upon its declaration or order, will classify the case as complex and thereafter the Court will invoke such standards as necessary to safeguard the rights of the litigants and expeditious processing of the case.

Rule 1.26 Scheduling Conferences in Complex Cases

- a) If no scheduling conference has been held by the expiration of 30 days from the date of the Court's order declaring the case to be a complex case, then such a conference shall be automatically scheduled by the Court. At any time such a conference is scheduled, the Court in which the case is pending shall notify all attorneys of record of the date and hour at which the attorneys are to appear for the purpose of conducting such conference.
- b) Upon Court approval, the scheduling conference may be held by telephone. The attorney requesting that the scheduling conference be held by telephone shall be responsible for arranging the conference call on the date and time scheduled by the Court Coordinator.

- c) The scheduling conference shall be conducted informally, and shall be for the purpose of: 1) of becoming acquainted with the nature of the case and the issues presented; 2) determining the probable length of time required for trial; 3) fixing deadlines for joinder of additional parties, completion of discovery, or amendment of pleadings, if such deadlines are necessary; 4) to consider such other matters and make other orders as are necessary and proper under the circumstances in regard to handling of the case; 5) and to arrive at a trial date which all attorneys and the Court may consider firm.
- d) The Court shall make an order which recites any action taken or agreements made at the scheduling conference, and such order when entered shall control the subsequent course of action, unless later modified by the Court. Appendix for form of scheduling order. (See Scheduling Order attached hereto as Exhibit "F").

Rule 1.27 Motions for Referral of Disputes and Alternatives

A Court may, on its own motion or the motion of a party, refer a pending dispute for resolution for an alternative dispute resolution procedure provided for in Chapters 151, 152, or 154 of the Texas Civil Practices & Remedies Code. Any party may, within 10 days after receiving notification of a referral, file a written objection which sets forth a reasonable basis for the party's objection to referral. (See Order of Referral to Mediation attached hereto as Exhibit "G").

Rule 1.28 Pre-Trial Conferences

A pre-trial conference may be held at the request of the Court or of the attorneys. If the pre-trial conference is set at the request of the attorneys, it shall be held no later than twelve (12)

days prior to the date set for trial, unless the Court, on timely request of one or more attorneys, orders otherwise.

Rule 1.29 Compliance with Conference Procedures

- a) All scheduling conferences and pre-trial conferences shall be attended by a counsel who is familiar with the case and fully authorized to state his party's position on the law and the facts, to make agreements as to scheduling, to enter into stipulations, and to enter into settlement negotiations. Attorneys for all parties shall be physically present at the scheduling conference unless arrangements have been made for such conference to be held by telephone.
- b) Each attorney shall bring a calendar in order to arrange settings which do not conflict with any previous engagements of counsel. Under no circumstances may an attorney be represented at any scheduling conference or pre-trial conference, whether held by telephone or otherwise, by any secretary or other non-lawyer personnel.

Rule 1.30 Non-Compliance with Conference Rules

When counsel for either party, after notice and without good cause, fails to appear or is unprepared for a scheduling conference or pre-trial conference, the Court may:

- a) Make all scheduling decisions and rule on all motions, exceptions or other matters;
- b) Declare any motions or exceptions prepared waived;
- c) Alter the trial setting or other scheduling matters, decline to set the case for trial or cancel a setting previously made;

- d) Pass and reset the conference, in which case the party represented shall be entitled to recover his reasonable attorney's fees and expenses.
- e) Take such other action that is just and proper.

Rule 1.31 Discovery Motions

All counsel are expected to engage in good faith negotiations pursuant to the discovery and deposition rules of the Texas Rules of Civil Procedure. Requests for hearings on motions for discovery, or for protection, or to quash interrogatories or request for admissions, or on objections to any discovery, interrogatories or requests for admissions, or on objections to any discovery, will not be granted unless counsel filing the same certifies that he has attempted to obtain such discovery or relief from opposing counsel by agreement and has been unsuccessful, or shows good cause for not making such effort.

Rule 1.32 Settlements

All trial counsel are urged to make a bona fide effort to settle cases before announcing ready for trial. The Court will expect counsel, before announcing ready, to confer with his client and with opposing counsel concerning settlement and to recommend an offer which is in his professional opinion reasonable, unless in his professional opinion the case is not such as to justify any offer whatsoever. When an attorney settles or dismisses a case which is set for trial, he shall give notice to the Court as soon as possible.

Rule 1.33 Witnesses/Exhibits

Cases announced to be READY shall be in all respects ready, with witnesses and other

evidence available so that the trial may proceed without delay. When out-of-county witnesses are to be called, the burden shall be on the party using such witnesses to have them available.

In so far as is possible, counsel for the parties shall pre-mark for identification all items to be introduced into evidence and further shall notify the Court as to those items upon which counsel can agree may be admitted into evidence without objection.

Objections to video tape which will be offered at the trial of the cause shall be made and heard on the date of pre-trial and if not made at that time shall be deemed waived. Parties are expected to edit video tapes to exclude inadmissible or repetitive or irrelevant material insofar as possible.

Rule 1.34 Jury Selection

All parties will be prepared to select juries and proceed to trial on the dates of setting, as reflected by the docket of the Court. All juries required for the 2-week jury term will be selected before any case will be tried, and all counsel with cases to be tried will be expected to take notice of the preceding voir dire examinations.

Rule 1.35 Jury Charges

In all civil jury trial cases, anticipated special questions, definitions and instructions shall be submitted to the Court in writing at the pre-trial hearing. If a party fails to submit a proposed charge, the Court may re-set the case to another date.

Rule 1.36 Family Law Cases

An inventory and appraisal shall be filed in divorce cases by both parties if no settlement has been reached concerning the division of the property. Each party should designate what

property is requested by that party.

The parties in any divorce case involving children shall each complete an approved parent counseling course prior to the final hearing of the case. The parties shall furnish to the District Clerk (for filing) certificates of their completion of said course.

All divorce decrees must be entered no later than thirty (30) days after the granting of such divorce unless a time extension is granted by the Court.

(See Guidelines for Time for Possession of and Access to a Child or Children under age 3 in Divorce Proceedings attached hereto as Exhibit "H").

Rule 1.37 Appointment of Counsel

Upon it being made known to the Court that a Defendant has been incarcerated for 48 hours or more, 72 hours on a weekend, and wishes appointment of counsel, the Court shall consider proof of indigence. If indigent, the Defendant will be appointed counsel. (See Upshur County Court Appointed Fee Schedule attached hereto as Exhibit "I").

Rule 1.38 Appearance of Defendant/Counsel

Appointed counsel shall be given written notice of the appointment, and any trial or pre-trial settings. If the Defendant is incarcerated, the attorney is expected to interview or contact the Defendant within 24 hours of notice of the appointment.

A lawyer enters an appearance by executing a bail bond or appeal bond or appearing at any hearing with respect to the Defendant and the criminal episode.

Rule 1.39 Withdrawal of Counsel

No attorney who has made appearance as set forth in Rule 6.14 may withdraw without notifying the Defendant by serving a copy of his motion to withdraw and notifying the Defendant to appear at a hearing thereon. The State shall be notified by counsel of the motion and hearing.

No motion shall be granted if filed within 30 days of the trial setting unless the motion is to substitute new counsel.

Rule 1.40 Attorney Withdrawal

No attorney of record shall be permitted to withdraw from any case without presenting a motion and obtaining from the Court an order granting leave to withdraw in compliance with Rule 10, Texas Rules of Civil Procedure, or Article 26.04, Code of Criminal Procedure. Such leave may be denied where the motion is presented so near the trial date as to require delay of the trial.

Rule 1.41 Adoption of Rules, Local Administration

Pursuant to the constitutional powers and duties of the Judicial authority in the State of Texas, and under the authority of Rule 3a of the Rules of Civil Procedure, the preceding local Rules of Practice and Procedure are hereby adopted to govern the trial of all cases in the 115th Judicial District Court. Nothing contained in these Rules shall be construed or interpreted as interfering with the right of the trial Judge to make such orders, settings, or procedural directions as in his/her discretion may be necessary and proper for the expedient and orderly dispatch of the business of the Court and which may be inconsistent with the Rules stated herein. These rules are intended to be consistent with and subject to the Rules of Civil Procedure and the statutes and

Constitution of the State of Texas.

The District Clerks of Upshur and Marion Counties shall mail a copy of these Rules to the members of the Bar Associations in Upshur and Marion Counties and to such non-resident attorneys who make appearances before this Court.

The Clerks are ordered to spread a copy of these Rules upon the minutes and to furnish a copy to the Supreme Court of Texas.

This Court will be governed by these Rules, and all attorneys are required to become familiar with these Rules and governed thereby. The Clerk of this Court has a copy of such Rules available upon request by the attorney of record, in any case pending.

Rule 1.42 Miscellaneous

An attorney appointed as an Ad Litem is expected to fully perform his functions as provided by law. Parties shall request, when necessary, appointment in advance of the hearing or trial to make full investigations of the matter. (See Appointment of Attorney ad Litem form attached hereto as Exhibit "J").

No nihil dicit judgment will be entered unless the counsel requesting the hearing has notified the opposing counsel or party by certified mail or registered mail (as required by the Rules of Civil Procedure) of the time of the hearing. The Rule does not apply to cases on the civil docket.

All process servers requesting authorization as a process server in the 115th District Court under Tx.R.Civ.Pro. 103 must complete the form attached hereto as Exhibit "K".

EXHIBIT "A"

CAUSE NO. _____

_____	X	IN THE DISTRICT COURT
_____	X	
VS.	X	OF UPSHUR COUNTY, TEXAS
_____	X	
_____	X	115 TH JUDICIAL DISTRICT

REQUEST FOR SETTING

Plaintiff's Attorney: _____
Address: _____

Defendant's Attorney: _____
Address: _____

MONTH TO BE SET: _____

JURY OR NON-JURY: _____

ESTIMATED TIME FOR TRIAL: _____

PRE-TRIAL HEARING REQUIRED: YES _____ NO _____

HAS CASE MEDIATED?: YES _____ NO _____

The undersigned hereby certifies that his pleadings are in order; all depositions and discovery have been completed and the cause is ready for trial; that good faith negotiations have been made to attempt settlement, and that all counsel in the case are listed above and that a copy of this request has been furnished to all counsel.

DATE: _____

Attorney for Requesting Party

TO BE COMPLETED BY OPPOSING COUNSEL AND FILED WITH THE CLERK OF COURT WITHIN THREE DAYS AFTER RECEIPT.

I have received the above request for setting and hereby certify it to be correct with the following exception: (If no exceptions, write "none").

DATE: _____

Attorney for _____

(If exceptions are listed, furnish copy to attorney for requesting party).

EXHIBIT "B"

CAUSE NO. 402-96

RENETTA PAGE AS NEXT FRIEND	X	IN THE DISTRICT COURT
FOR CHANDRA PAGE	X	
	X	
VS.	X	OF UPSHUR COUNTY, TEXAS
	X	
TERRY ANN HILDERBRAND	X	115 TH JUDICIAL DISTRICT

INSTRUCTIONS TO COUNSEL UPON SETTING CASE FOR TRIAL

TO: MARY LOU TEVEBAUGH (Attorney for Plaintiff)
ATTORNEY AT LAW
P. O. BOX 3302
LONGVIEW, TEXAS 75606

CHRIS BUNT (Attorney for Defendant)
HOWARD & DAVIS
P. O. DRAWER 1050
TYLER, TEXAS 75710

DATE: October 27, 1998

This case has been set for jury trial during the two week session beginning **December 7, 1998** and for a pre-trial conference on **November 23, 1998, at 9:00 a.m.** (If this case does not require a pre-trial hearing, please contact my coordinator immediately upon receipt of this notice.) Jury selection will begin at 9:00 a.m. on **December 7, 1998**. Before the pre-trial hearing date, you are instructed to meet with opposing counsel in order to reach agreement on as many matters as possible. All pre-trial motions shall be heard at the pre-trial conference. Any matters you wish to raise at the pre-trial hearing must be filed 7 days before the hearing.

You are expected to submit your proposed charges at the pre-trial conference. If there are unusual legal issues involved in the case, please let me know at the pre-trial hearing. Also, please be prepared to give me the law supporting your desired instructions or questions. If you desire to submit briefs, please do so at the pre-trial hearing.

If you have any questions, please don't hesitate to ask.

LAUREN PARISH
Judge, 115th District Court
Upshur County, Texas

EXHIBIT "C"

CAUSE NO. 10,472

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
	X	
VS.	X	OF UPSHUR COUNTY, TEXAS
	X	
BARNEY LEON GILES	X	115 TH JUDICIAL DISTRICT

INSTRUCTIONS TO COUNSEL UPON SETTING CASE FOR TRIAL
115TH DISTRICT COURT

TO: TIM CONE
CRIMINAL DISTRICT ATTORNEY
405 NORTH TITUS
GILMER, TEXAS 75644

DATE: January 11, 1999

TODD TEFTELLER
TEFTELLER & PELAIA
407 WEST TYLER STREET
GILMER, TEXAS 75644

This case has been set for jury trial during the 2-week session beginning **FEBRUARY 8, 1999** and for a pre-trial (trial management) hearing under Article 28.01, Texas Code of Criminal Procedure on **JANUARY 25, 1999 at 9:00 a.m.** (If this case does not require a pre-trial hearing, please contact my coordinator immediately upon receipt of this notice.) **Jury selection will begin at 9:00 a.m. on FEBRUARY 8, 1999.** Before the pre-trial hearing date, you are instructed to meet with opposing counsel in order to reach agreement on as many discovery matters as possible. If there are any such issues upon which you cannot agree, I will rule on them at the pre-trial hearing. Note: Any matters you wish to raise at the pre-trial hearing must be filed 7 days before the hearing.

If you expect me to honor a plea bargain agreement, the plea should be entered before the date of the pre-trial hearing. Otherwise, I will accept only an open plea.

You are expected to have all your exhibits marked and logged in with the court reporter on or before the date of the pre-trial hearing. Also, please give the reporter a list of the witnesses you intend to call at trial. If as defense counsel you are reluctant to disclose such strategic matters, I will assure you that only the reporter will have access to this information.

If you desire a hearing on such issues as in-court identification, motions to suppress evidence, motions in limine, voluntariness of confessions, reputation testimony, or any other matters normally conducted outside the presence of the jury, these issues must be resolved at the pre-trial hearing. They will not be heard later except with permission of the court for good cause shown.

The defendant's election as to punishment must be filed on or before the date of the pre-trial hearing. Otherwise, the court will assess punishment if the defendant is found guilty.

Your proposed charges shall be submitted to me at the pre-trial hearing. If there are unusual legal issues involved in the case, please let me know at the pre-trial hearing and furnish me with supporting law. You are welcome to submit briefs in advance.

If you have any questions, please don't hesitate to ask.

Lauren Parish, Judge
115th Judicial District Court
Upshur County, Texas

cc: BARNEY LEON GILES
214 FERRY
GLADEWATER, TEXAS 75647

EXHIBIT "D"

CAUSE NO. _____

_____	X	IN THE DISTRICT COURT
_____	X	
_____	X	
VS.	X	OF UPSHUR COUNTY, TEXAS
_____	X	
_____	X	
_____	X	115 TH JUDICIAL DISTRICT

NOTICE OF INTENT TO DISMISS - NO TRIAL SETTING

To All Counsel and Pro Se Parties:

Court records indicate that this case is eligible for dismissal for want of prosecution because it has been on file for more than eighteen (18) months and is not set for trial. Under the inherent powers of the Court, the case will be **DISMISSED FOR WANT OF PROSECUTION**, unless one of the following actions is taken by **AUGUST 30, 1999**;

- 1) A Judgment is signed;
- 2) A trial scheduling order is signed; and the case has a firm trial setting; and a verified motion to retain is filed. All motions to retain shall be set for hearing on **AUGUST 30, 1999, at 9:00 A.M.**

Thank you for your prompt attention to this matter.

LAUREN PARISH, Judge
115th Judicial District Court
Upshur County, Texas

NOTE: A scheduling order form has been provided to you along with this Notice. This will allow counsel to work together on an "Agreed Scheduling Order" prior to any hearing on any Motion to Retain. Your cooperation is greatly appreciated.

CAUSE NO. _____

IN THE MATTER OF THE
MARRIAGE OF

AND

X
X
X
X
X
X
X
X

IN THE DISTRICT COURT

OF UPSHUR COUNTY, TEXAS

115TH DISTRICT COURT

NOTICE OF INTENT TO DISMISS - NO TRIAL SETTING

To All Counsel and Pro Se Parties:

Court records indicate that this case is eligible for dismissal for want of prosecution because it has been on file for more than eighteen (18) months and is not set for trial. Under the inherent powers of the Court, the case will be **DISMISSED FOR WANT OF PROSECUTION**, unless one of the following actions is taken by **AUGUST 30, 1999**:

- 1) A Judgment is signed;
- 2) A trial scheduling order is signed; and the case has a firm trial setting; and a verified motion to retain is filed. All motions to retain shall be set for hearing on **AUGUST 30, 1998, at 9:00 A.M.**

Thank you for your prompt attention to this matter.

LAUREN PARISH, Judge
115th Judicial District Court
Upshur County, Texas

NOTE: A scheduling order form has been provided to you along with this Notice. This will allow counsel to work together on an "Agreed Scheduling Order" prior to any hearing on any Motion to Retain. Your cooperation is greatly appreciated.

EXHIBIT "F"

CAUSE NO. _____

_____	X	IN THE DISTRICT COURT
_____	X	
_____	X	
VS.	X	OF UPSHUR COUNTY, TEXAS
_____	X	
_____	X	
_____	X	115 TH JUDICIAL DISTRICT

SCHEDULING ORDER

Based on the information available to the Court, the following Scheduling Order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. _____ JOINDER. All parties must be added and served, whether by amendment or third practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THIS SCHEDULING ORDER AT THE TIME OF SERVICE.

2. EXPERT WITNESS DESIGNATION. A list including each expert's name, address, and the topic of the witness' testimony must be filed by:

A. _____ Plaintiff(s)

B. _____ All other parties.

Experts not listed in compliance with this paragraph will not be permitted to testify absent a showing of good cause. This designation is not a substitute for any required interrogatory supplementation.

3. _____ ALTERNATIVE DISPUTE RESOLUTION. By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the Court may sign an ADR order.

4. _____ DISCOVERY DEADLINE. All discovery requests and deposition notices must be filed by this date. Counsel may initiate discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial date.

5. _____ FACT WITNESS LISTS. A list including the name, address, phone number, and topic of testimony of each fact witness who may be called at trial must be filed by this date. Fact witnesses not listed in compliance with this paragraph will not be permitted to testify absent a showing of good cause. This list is not a substitute for any required interrogatory supplementation.
6. _____ PLEADINGS. All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
7. _____ PRE-TRIAL CONFERENCE OR DOCKET CALL. Parties shall be prepared to discuss all aspects of trial with the Court on this date. TIME: _____ .m.
8. _____ TRIAL.

SIGNED this the _____ day of _____, 20__.

LAUREN PARISH
Judge, 115th Judicial District Court
Upshur County, Texas

APPROVED:

Plaintiff Attorney

Defendant Attorney

EXHIBIT "G"

CAUSE NO. _____

_____	X	IN THE DISTRICT COURT
VS.	X	OF UPSHUR COUNTY, TEXAS
_____	X	115 TH JUDICIAL DISTRICT

ORDER OF REFERRAL TO MEDIATION

Having considered the matters in dispute in this lawsuit pursuant to the provisions of Texas Civil Practice & Remedies Code Ann. Sec. 154.001, et seq., the Court finds that this matter should be referred to mediation.

IT IS HEREBY ORDERED that this matter is referred to mediation;

IT IS FURTHER ORDERED that the parties hereto shall confer immediately and, within ten (10) days of the date of this Order, may submit an Agreed Order nominating a mediator in this matter who is qualified pursuant to Texas Civil Practices & Remedies Code Ann. Sec. 152.003 or Sec. 154.052. In the event the parties submit an Agreed Order within ten (10) days of the date of this Order, the Clerk of the Court is directed to present said Agreed Order immediately to the Court for consideration and, in the event the Court signed said Agreed Order, the Clerk of the Court is directed to substitute the name of the mediator appearing therein for the name of the mediator appearing in the following paragraph in the Order, and to transmit this revised Order to the parties and to said mediator forthwith.

In the event the parties fail to submit an Agreed Order nominating said mediator, or the Court refuses or fails to sign said Agreed Order, it is ORDERED that _____ is appointed mediator in this matter;

IT IS FURTHER ORDERED that all parties are directed to confer with the mediator to

establish a date for the mediation. The parties and the mediator shall attempt to agree on a date for the mediation to be held before _____;

IT IS FURTHER ORDERED that not less than three (3) days prior to the scheduled mediation the parties shall serve upon the mediator a memorandum as specified by the mediator. The memorandum shall not be made part of the Court's file in this case;

IT IS FURTHER ORDERED that all parties to this matter, accompanied by their counsel if so represented, shall appear and attend the mediation, and that each organization or agency party shall be represented by an officer or representative with complete authority and discretion to negotiate a settlement. No subpoenas, citations, writs or other process shall be served at or near the location of the mediation upon any person entering, leaving or attending the mediation;

IT IS FURTHER ORDERED that, completion in the mediation, the mediator is directed to advise the Court when the process was completed, whether the parties and their counsel appeared as ordered, and whether a settlement resulted. As provided by Texas Civil Practice & Remedies Code Ann. Sec. 154.053 and Section 154.073, all matters, including the conduct and demeanor of the parties and their counsel during the mediation process, are to remain confidential and will not be disclosed to anyone, including this Court. Except as may be permitted by Texas Civil Practice & Remedies Code Ann. Sec. 154.073, neither the mediator nor the mediator's files shall be subject to a subpoena or to a request for production filed by any person;

IT IS FURTHER ORDERED that, unless otherwise ordered by the Court, or the parties agree otherwise in writing, the mediator's fees shall be borne equally by the parties, shall be paid by the parties directly to the mediator and may, upon hearing, be taxed as costs of court.

MEDIATION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR TRIAL.
THIS MATTER WILL BE TRIED IF NOT SETTLED.

SIGNED this the _____ day of _____, _____.

LAUREN PARISH, Judge
115th Judicial District Court
Upshur County, Texas

ATTORNEYS:

VISITATION GUIDELINES FOR CHILDREN UNDER THREE (3) YEARS OF AGE

If parents reside less than 100 miles apart:

0-6 months - visitation shall occur in the home of the custodial parent unless the Court designates another supervised location. Visitation shall be from 6:00 p.m. to 7:00 p.m. on each Tuesday and Thursday evening and from 10:00 a.m. to 12:00 noon on each Saturday.

6-18 months - visitation may occur outside the custodial parent's home. Custodial parent shall provide an infant car seat and any breast milk or formula which the child may need during the visit. Visitation shall be from 6:00 p.m. to 8:00 p.m. one evening per week (to be designated by the visiting parent) and 1st, 3rd, 4th and 5th Saturdays of each month from 10:00 a.m. until 2:00 p.m.

18-36 months - visitation shall be 1st, 3rd and 5th weekends of the month from 9:00 a.m. until 6:00 p.m. on Saturday and Sunday and further on December 25th and 26th, Thanksgiving Day, January 1st, Easter Sunday and July 4th, Mother's/Father's Day, and the child's birthday from 1:00 p.m. to 6:00 p.m. If there is a child over 3 living in custodial parent's home who is on a standard visitation schedule with this same visiting parent, the child under 3 shall begin overnight visitation on standard schedule after age 2.

If the parents reside farther than 100 miles apart: (same as less than 100 miles) or (at visiting parent's option):

0-6 months - visitation shall occur in the custodial parent's or grandparent's home. Visitation may occur between the hours of 9:00 a.m. and 6:00 p.m. on any Saturday and Sunday the visiting parent shall be in town; however, said visitation shall be scheduled so as not to interfere with or interrupt the child's sleeping or feeding schedules.

6-18 months - visitation may occur as set forth above, however, the visiting parent may take the child from the custodial parent's home for 2 periods during each day not to exceed 2 hours each.

18-36 months - visitation shall occur on any designated weekend (no more than 2 weekends per month to be designated by the visiting parent giving custodial parent at least 14 days notice) between the hours of 9:00 a.m. and 6:00 p.m. on Saturday and Sunday. Visiting parent may also have possession of the child from 1:00 p.m. to 6:00 p.m. on December 25th and 26th, and from 9:00 a.m. to 6:00 p.m. on Thanksgiving Day, July 4th, Father's Day and the child's birthday.

EXHIBIT "I"

CAUSE NO. _____

_____	X	IN THE DISTRICT COURT
V.S.	X	OF UPSHUR COUNTY, TEXAS
_____	X	115TH JUDICIAL DISTRICT

ATTORNEY'S CERTIFICATE FOR PAYMENT

I hereby certify that, as attorney claiming compensation for court appointed representation under order of this Court, have actually performed the work verified below.

Check if Applicable	Date	Service	Standing Order	Total Time
_____	_____	Simple Guilty Plea	\$350.00	_____
_____	_____	Dismissal of Case	\$250.00	_____
_____	_____	Indictment Quashed	\$100.00	_____
_____	_____	Misdemeanor Appellate Brief	\$500.00	_____
_____	_____	Felony Appellate Brief	\$350- \$1,250.00	_____
_____	_____	Capital Appellate Brief	\$1,500-\$2,500.00	_____
_____	_____	Oral Argument: Non-Capital	\$100-\$300.00	_____
_____	_____	Oral Argument: Capital	\$500.00	_____
_____	_____	Ad Litem Hearing	\$150.00	_____
_____	_____	Non Jury Trial	\$ _____	_____
_____	_____	Jury Trial	\$ _____	_____
_____	_____	OTHER **Attach itemized Statement and Explanation of Services	\$ _____	_____

EXPENSES: **Attach an itemized
Statement and Explanation
Of Expenses

TOTAL

On this the ____ day of _____, _____, I respectfully request that I be paid a reasonable sum and necessary services and said payment be mailed to the address listed below.

Print Name: _____
State Bar Number: _____
Address: _____

Phone: _____

ORDER TO PAY COURT APPOINTED ATTORNEY

The Court finds that the above reasonable and necessary services were performed by counsel in this case and said above Motion should be granted. It is therefore **ORDERED** that the said Court appointed counsel listed above shall be paid from the General Fund of Uphsur County, Texas the following amount:

\$ _____

Signed this the ____ day of _____, _____

JUDGE PRESIDING

DATE: _____ sent to Auditor by Court

By: _____
Deputy

EXHIBIT "J"

CAUSE NO. _____

IN THE INTEREST OF

A CHILD

X
X
X
X
X

IN THE DISTRICT COURT

OF UPSHUR COUNTY, TEXAS

115TH JUDICIAL DISTRICT

APPOINTMENT OF ATTORNEY AD LITEM

It having been brought to the Court's attention that there is a need to appoint a Guardian and/or Attorney Ad Litem in the above entitled and numbered cause, the Court finds that such need exists and IT IS ORDERED that _____, a licensed attorney whose address and telephone number are _____, is appointed as _____ Ad Litem to represent the interests of the child the subject of this suit, _____.

Attorney's Fees for Ad Litem

IT IS FURTHER ORDERED that each of the parties shall deposit with the Court on or before the _____ day of _____, 20____, the sum of \$ _____, for representation of the minor child herein and the Clerk of the Court is hereby ORDERED to remit the sum of \$ _____ directly to the above-named attorney at the attorney's address provided above.

This appointment shall be effective upon deposit with the Court of the above-described funds by all parties and shall remain in effect during the pendency of this suit or until further order of the Court.

Notice to Ad Litem

The Ad Litem shall not and is not expected to do any work of any kind regarding this appointment until the parties have deposited all funds ordered by the Court. Once those funds deposited have been depleted based on the Ad Litem's work invested in the case, the Court will order additional funds to be deposited by the parties. Again, the Ad Litem shall not and is not expected to do any additional work of any kind regarding this appointment until the parties have deposited those additional funds.

Notice to Parties

Each party is ORDERED to deposit the above-described funds with the Court by the deadline provided in this Order. Additional deposits may be required as the case progresses toward final hearing and subsequent orders may be made requiring the parties to deposit such additional funds with the Court.

Notice: No hearing will be conducted if there are any outstanding Ad Litem fees remaining unpaid on the date of the hearing.

FURTHER, ANY PARTY WHO FAILS TO TIMELY DEPOSIT ANY SUCH AD LITEM FUNDS WITH THE CLERK OF THIS COURT MAY BE SUBJECT TO APPROPRIATE SANCTIONS, INCLUDING BUT NOT LIMITED TO HAVING THAT PARTY'S PLEADINGS STRUCK.

SIGNED on this the _____ day of _____, 20__.

JUDGE PRESIDING

EXHIBIT "K"

APPLICATION FOR AUTHORIZATION AS A
PRIVATE PROCESS SERVER IN THE 115TH DISTRICT COURT

Date: _____

PERSONAL INFORMATION

Full Name: _____

Home Address: _____

Home Telephone: _____

Business Address: _____

Business Telephone: _____

Birthdate: _____ Place of Birth: _____

Social Security No.: _____ Texas D.L. No.: _____

(Attach copy to Application)

Sex: Male _____ Female _____

Height: _____ Eye Color: _____

EMPLOYMENT INFORMATION

(Last Five Years)

Present Employment: _____

Address: _____

Phone No.: _____

Present Position: _____ How Long With Company: _____

Previous Company: _____

Address: _____

Phone No.: _____

Position: _____

From: _____ To: _____

Previous Company: _____

Address: _____

Phone No.: _____

Position: _____

From: _____ To: _____

EXPERIENCE IN EDUCATION IN CIVIL PROCESS

(Please explain in detail)

Have you ever been convicted of a felony or misdemeanor? Yes _____ No _____

If yes, explain: _____

Have you ever been denied a license, permit, or other authorization to do business?

Yes _____ No _____

If so, state the place, date, circumstances, nature of the permit or license and identify the agency having records pertaining to same.

Have you ever been denied approval to serve process pursuant to standing order?

Yes _____ No _____

If yes, explain: _____

Has your authority to serve process pursuant to standing order ever been terminated, revoked, vacated or suspended? Yes _____ No _____

If yes, explain: _____

Name a person with permanent information as to your whereabouts and your future location and address: _____

Telephone No.: _____ Fax No. (If applicable): _____

ATTORNEY REFERENCES

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

STATE OF TEXAS X

COUNTY OF UPSHUR X

I, _____ solemnly swear that I have personal knowledge of the information contained in this Application and all statements are true and correct. I will follow all legal requirements relating to service of citations and other notices by individuals. I will supplement this Application should any of the information change or become outdated. I further understand and agree that the information contained in this Application will be used to complete an N.C.I.C. or similar police check of my background.

Affiant

Before me, the undersigned Notary Public, on this day personally appeared _____, known by me to be the person whose name is signed above and acknowledge to me that he/she has personal knowledge of the statements contained in this Application and said statements are true and correct.

Given under my hand and seal of office this ____ day of _____, _____.

Notary Public in and for the State of Texas
Printed Name: _____
My Commission Expires: _____



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

March 8, 2000

Hon. Lauren L. Parish
115th District Court
Post Office Box 1052
Gilmer, Texas 75644-1052

Dear Judge Parish,

Please find enclosed, a copy of the order of the Supreme Court that temporarily approved local rules for the 115th District Court of Upsher and Marion Counties.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Hon. Pat McDowell
1st Admin Judicial Rgn

Hon. William R. Porter

District Clerk - Upsher County
District Clerk - Marion County

County Clerk - Upsher County
County Clerk - Marion County

Supreme Court Adv Committee

State Law Library