

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 91-0064

APPROVAL OF LOCAL RULES OF THE 38TH DISTRICT COURT

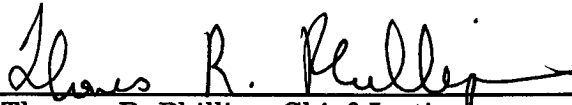
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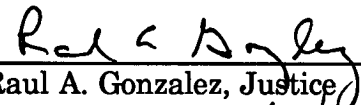
Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court approves the following local rules, which have been previously approved by the presiding judge of the appropriate administrative judicial region and submitted to this Court:

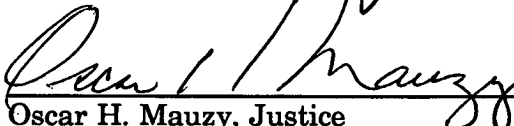
Rules of Court of the 38th District Court (Medina, Real, and Uvalde Counties).

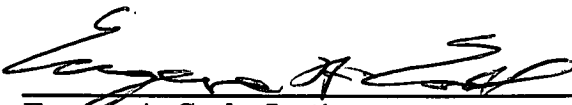
The approval of these rules is temporary, pending further orders of the Court.

SIGNED AND ENTERED this 29th day of August, 1991.

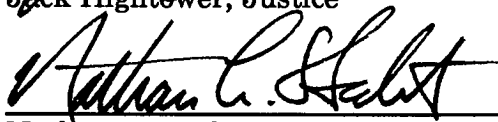

Thomas R. Phillips, Chief Justice

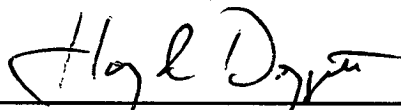

Raul A. Gonzalez, Justice

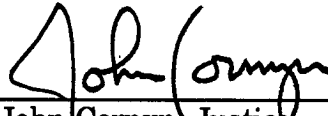

Oscar H. Mauzy, Justice


Eugene A. Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice

CCA: prepare an order

Mickey R. Pennington

DISTRICT JUDGE
512 - 278-3913
38TH JUDICIAL DISTRICT
COURTHOUSE
UVALDE, TEXAS 78801

GENE L. STEELE
OFFICIAL COURT REPORTER
UVALDE COUNTY COURTHOUSE
UVALDE, TEXAS 78801
512-278-2184 OR 512-278-7788



COUNTIES
MEDINA
REAL
UVALDE

July 22, 1991

The Honorable William Moody
Presiding Judge, Sixth Administrative Region
410 City-County Building
El Paso, Texas 79901

Dear Judge Moody:

Enclosed you will find the proposed Local Rules for the 38th Judicial District in final form. According to Mr. William L. Willis, Executive Assistant, Supreme Court of Texas, the Local Rules are to be submitted by the Presiding Judge of the Administrative Region accompanied by a letter of approval.

For your convenience, I have taken the liberty of enclosing an addressed envelope at Mr. Willis' advice addressed to the following:

Supreme Court of Texas
Justice, Nathan L. Hecht
P. O. Box 12248
Austin, Texas 78711

Please call me if I can be of further assistance.

Sincerely,

MICKEY R. PENNINGTON

MRP:aiz

RULES OF COURT

38TH DISTRICT COURT

Composed of

MEDINA COUNTY, REAL COUNTY AND UVALDE COUNTY

JUDGE PRESIDING: MICKEY R. PENNINGTON

RULES OF COURT
38TH DISTRICT COURT

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RULES OF COURT

38TH DISTRICT COURT

Composed of

MEDINA COUNTY, REAL COUNTY AND UVALDE COUNTY

JUDGE PRESIDING: MICKEY R. PENNINGTON

Pursuant to the authorization of Rule 3(a) of the Texas Rules of Civil Procedure, the following rules governing the practice in the District courts of the 38th Judicial District of Texas have been adopted. Nothing contained in these rules shall be construed or interpreted as interfering with the rights of the Trial Judge to make such orders, setting or procedural directions as in his discretion may be necessary and proper for the expedient and orderly dispatch of the business of the Court.

The Clerk of the District Court of each of the counties composing the 38th Judicial District shall make available to each attorney practicing in such Court copies of these Rules.

1. FILING AND SETTING FOR TRIAL OF CASES

Rule 1.10 Time Standards for Case Disposition.

The 38th Judicial District Court adopts the time standards for disposition of cases as established by the Constitution, Statutes, or by Rules of the Supreme Court, Rules of Judicial Administration, or by rules promulgated by the Court of Criminal Appeals.

The Court may elect to vary from these time standards in complex cases or special circumstances upon the motion of either

party or upon the Court's own motion.

Rule 1.11 Court Sessions.

The Court sitting in the above mentioned counties shall be set according to a schedule or published calendar. The Court shall publish an annual calendar showing jury trials, non-jury trials, holidays and other schedules and events and any other matters that will facilitate the work of the Court. The Clerk shall make available a copy of the calendar to each attorney or litigant appearing in the the Court and other persons requesting it.

Rule 1.12 Request for Settings - Non-Jury Cases.

Non-jury cases may be set for trial upon request to the District Clerk of the Court in which the case is filed, or upon the Court's own motion. Such request may be made by letter, by Motion to Set or in any other manner that may be appropriate. Notice of such Motion or request shall be mailed to all other counsel in the case.

Rule 1.13 Request for Settings - Jury Cases.

Jury cases may be set by request from any party or upon the Court's own Motion or at a scheduling or Docket Control Conference hereafter described. Preferably such jury settings shall be made after consultation with all attorneys of record in order that conflicts of schedule and last minute delays may be avoided.

Rule 1.14 Emergency and Special Meetings.

Whenever immediate action of a Judge is required in an emergency and the Clerk's office is not open for business, the case shall, nevertheless, at the earliest practical time be docketed and

all writs and process shall be returnable to the Court.

All applications for ex parte relief shall state whether or not within the knowledge of the applicant and his attorney the opposing party is represented by counsel and if so the names of such counsel.

Rule 1.15 Docket Calls & Announcements.

The Judge shall call the number and style of the cases assigned for that day at the commencement of proceedings, at which time the attorneys for each party shall indicate whether they are ready for trial and how long the trial of the matter before the Court will take. Each attorney should be candid and liberal in time estimates.

The purpose of Docket Call shall be to designate actual trial cases and to assign a numerical order of trial. Readiness should be confirmed at Docket Call.

Rule 1.16 Resetting Cases.

Jury cases not reached for trial when all parties are ready may be carried over to the next available docket not in conflict with other trial settings of the attorney.

Cases that have been continued shall be reset by the Judge for the next trial date available, and no case shall be continued without a subsequent trial setting being made.

The reset of a case continued shall be by a Pre-Trial Order which also shall set forth deadlines for joinder of parties, amendment of pleadings, completing depositions, and the making of a response or supplemental response to discovery, and other pre-

trial matters.

Rule 1.17 Dismissals and Dismissal Docket.

(a) Any case not disposed of within the time standards of Rule 6 of the Rules of Judicial Administration shall be placed on the Dismissal Docket at Regular Intervals as directed by the Judge of the District, and notice of the Court's intention to dismiss and the date and place of the dismissal hearing shall be sent to each attorney of record and to each party not represented by an attorney of record and whose address is shown on the docket or in the papers on file, as provided in Rule 165a of the Texas Rules of Civil Procedure, and the case shall thereafter be dismissed unless the case be retained in accordance with said Rule 165a.

Rule 1.18 Suspense Docket.

If a case has been stayed because it has been abated for any reason, or because a suggestion of bankruptcy proceedings involving a party thereto has been received or for any other reason, the Cause shall not be dismissed but shall be suspended until it can be determined whether the Court may proceed on it. The attorneys shall be responsible for notifying the Court of any change in the status of such case in order that it may be expeditiously heard or dismissed. If no report is received from the attorneys in charge or pro se parties within six (6) months after being placed in suspense or when requested by the Court, the Judge may in his or her discretion set the case for dismissal, either at a regular dismissal docket, or at any other convenient time.

Rule 2.10 Information to Local Administrative Judge

The District and County Clerks shall be responsible individually to each and all Judges and Local Administrative Judge of the county for the accurate collection and reporting of such information as may be prescribed in writing by the Regional Presiding Judge.

3. DISPOSITION OF CASES

Rule 3.10 Presentment of Pre-Trial Pleas and Motions.

At any time after answers are filed or a request for trial setting has been made, upon written request of any party or upon motion of any party or the Judge, a pre-trial hearing or conference shall be set.

At such pre-trial hearing or conference all parties shall present their exceptions, motions and dilatory pleas, including Motions in Limine for rulings by the Court. Failure to present such exceptions, motions and pleas in a timely manner shall cause them to be waived.

Counsel and any pro se parties will be expected at pre-trial to advise the Court which issues will be disputed and will be expected to be familiar with authorities applicable to questions of law thereby raised. Counsel and pro se parties attending the pre-trial conference shall be the person which is expected to try the case or shall be familiar with the case and fully authorized to state the parties' position on the law and facts, make stipulations and enter into settlement negotiations. Should the Court find that counsel is not so qualified, it may consider that no counsel has

appeared and may take action against the party involved.

Rule 3.11 Disposition of Motions and Other Preliminary Matters.

Preliminary matters which require a hearing by the Court may be disposed of either by hearing before the Court or upon written authorities as counsel may forward to the Court, following which the Court may rule without hearing. Any party is entitled to a hearing so long as the same is requested prior to the time that the court makes its ruling.

A pre-trial conference may be held at the request of the Court or of the parties to the case. (Pre-trial conferences for criminal cases are controlled by Chapter 28 of the Code of Criminal Procedure.)

Rule 3.12 Motions for Severance.

All motions to sever are controlled by the provisions of Rules 41 and 174, Texas Rules of Civil Procedure, and such rules will be strictly construed. No severance will be granted without notice and an opportunity for hearing afforded to all parties.

When a Motion to Sever is sustained, the severed claim shall be filed as a new case in the same court and shall be given a new or suffix number or letter by the Clerk in whose Court the case is pending. 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 3.13 Motions for Continuance.

No requests to pass, postpone or reset any trial shall be

granted unless counsel for all parties have been notified and the Movant certifies that the client has been notified of the filing of the motion. The motion shall also contain the correct name and address of each client represented by the Movant. If the motion is granted, the client will be notified by the Clerk.

Rule 3.14 Motions for Default Judgment.

After the appearance date of the defendant in a case has been passed, a written request for entry of a Default Judgment may be made, and a form of judgment presented, together with any affidavits as to unliquidated parts of such claim. If the parties desire a hearing for default judgment, the Court should be contacted for appropriate time for setting, and where pertinent, these motions should be set on non-jury dockets. If a claim is liquidated and represented by documents filed, no hearing is necessary. For unliquidated claims, affidavits or testimony may be made the basis for a judgment by the Court. The use of affidavits in Default Judgment for unliquidated claims are encouraged.

Rule 3.15 Motions for Referral of Disputes or Alternative Dispute Resolution Procedures.

The Court may, on its own motion or the motion of any party, refer a pending dispute for resolution by an alternative dispute resolution procedure provided for in Chapters 151, 152 or 154 of the Texas Civil Practice and Remedies Code. Any party may, within ten (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 and the same shall be forthwith set

by the Judge for hearing and resolution.

Rule 3.16 Docket Control or Scheduling Conference.

At any time after a case is filed, whether or not it has been classified as a complex case, a scheduling conference or docket control conference may be scheduled, upon the Court's motion or upon request by any party. At any time such 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. Upon Court approval the scheduling conference for scheduling or docket control conference may be held by telephone conference call. Any 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 Judge.

The docket control or scheduling conference shall be conducted informally, and shall be for the purpose of obtaining a date for trial to avoid conflicts in attorneys' schedules, determining the probable length of time required for a trial, determining whether or not a jury will be required, fixing deadlines for joinder of additional parties, completion of discovery, amendment of pleadings and filing all proposed jury questions.

The Judge will direct one of the attorneys to prepare an order reciting any action taken or agreements reached at the scheduling conference, and such order when signed and entered, shall control the subsequent course of the action, unless later modified by the Court.

Rule 3.17 Pre-Trial Conferences.

A pre-trial conference to determine the readiness of the parties for trial, the status of the fact issues to be presented in Court, stipulations of the parties, and any settlement negotiations shall be scheduled in the docket control or scheduling conference. The hearing of the pre-trial conference may be by telephone conference call if requested by any attorney and approved by the Court. The Court may order such a pre-trial conference at any time pursuant to Rule 166, Texas Rules of Civil Procedure, even if there has been no docket control or scheduling conference.

Rule 3.18 Compliance with Conference Procedures.

(a) All scheduling conferences and pre-trial conferences shall be attended by the attorney in charge, or by a co-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 non-lawyer personnel.

(c) When counsel for either party fails to appear at a pre-

trial or docket control conference after notice to appear, the Court may:

1. Rule on all motions and exceptions in the absence of such counsel;
2. Declare any motions or exceptions of such absent party waived;
3. Advance or delay the trial setting according to convenience of the counsel present;
4. Pass and reset the hearing;
5. Take any other appropriate action as may be necessary.

Rule 3.19 Non-Compliance with Conference Rules.

When any attorney in charge for either party, after notice and without good cause, fails to appear for docket control scheduling or pre-trial conference or fails to be available for any such conference by telephone, when permitted, the Court may:

1. Make all scheduling decisions and rule on all motions, exceptions or other matters in the absence of such counsel;
2. Declare any motions or exceptions of absent party waived;
3. Advance or delay the trial setting or other such scheduling matters, or decline to set the case for trial, or cancel a setting previously made, according to the convenience of counsel present;
4. Pass and reset the docket control scheduling or pre-

trial conference, in which case the party represented shall be entitled to recover his reasonable attorney's fees and expenses;

5. Consider the absence of the attorney in charge as contempt of Court, and sanction counsel accordingly;

6. Take any other appropriate action as may be necessary.

In situations where the Court determines that there is a suggestion of death, or information concerning bankruptcy proceedings or reasons not to dismiss a case for want of prosecution, or if it is necessary to abate the proceedings, the cause may be held in suspense subject to later setting of the case for trial when it becomes appropriate in accordance with Rule 1.18.

Rule 3.20 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 or requests for sanctions may be heard at any time, in any county in which the Judge having jurisdiction of the case can hear the same.

The Court expects attorneys served with written interrogatories or requests for admission to answer the same within the time specified unless the time within which to answer has been extended or reduced by the Court or by agreement of the parties.

Rule 3.21 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 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 where pending as soon as possible and promptly submit a written dismissal or judgment.

The Court will reserve the right to require the presence of counsel and the parties at the time for which trial was set if no documentary evidence of the settlement has been received before the call of the docket.

Rule 3.22 Conflicting Engagements of Counsel.

When a Motion for Continuance is made on the basis that counsel already has a trial setting in another court, such motion should state the number and style of the case and the Court in which the attorney is scheduled and should state the length of time required for hearing or trial. The Court will reserve the right to check whether or not the appearance of counsel is necessary at such other Courts.

At docket control or scheduling conference, each attorney shall be responsible for disclosing to the Judge any conflicting engagements of counsel that may interfere with a trial setting. Tentative schedules in some other Court will not be grounds for

granting a continuance. In the event the case in the other Court is passed, continued or disposed of prior to trial in this Court, the attorney shall immediately notify the Court and opposing counsel of such fact.

Rule 3.23 Witnesses/Exhibits.

Cases announcing ready on the date of trial shall in all respects be ready, with witnesses and other evidence available so that the trial may proceed without delay and/or interference. When out of county witnesses are to be called, the burden shall be on the party using such witnesses to have them available. Insofar as is possible, counsel for the party 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 are in agreement may be admitted into evidence without objection.

In any case where a witness does not speak English, the attorney presenting such witness shall make provision for a properly qualified interpreter to be present at the time of such witness' testimony. In criminal cases, if an attorney desires to request a court-appointed interpreter for his client or witness, request therefor shall be made at a pre-trial hearing or earlier.

If a witness is not available as required by this rule, and if the absence of such witness does not require a continuance, the Court, in its discretion, may require counsel to present the missing witness out of order, may require use of a deposition in lieu of the witness, may submit the case to the jury without benefit of the witness' testimony or may make any other order to

avoid a delay of the trial.

Rule 3.24 Jury Voir Dire/Venire.

It shall be the duty and obligation of an attorney or pro se party calling a witness for any trial or hearing to furnish to such witness a copy of the witness' instructions, to have explained to the witness the conduct expected while testifying, with particular emphasis on the fact that the Court may impose sanctions for violations of "The Rule".

In the counties of this District, jury questionnaire forms are in use. They are taken up immediately following qualification of the panel and are used to prepare a list of qualified jurors. A copy is made available to each counsel or pro se party. Counsel or pro se party is expected not to repeat during voir dire examination those matters set out in the jury questionnaire. Reasonable time limits for conducting jury voir dire shall be set by the Court on a case by case basis.

All juries will be selected on the first day of the jury trial setting beginning at the time posted. After jury selection, any case may be recessed to a time certain as necessary. Where more than one jury is to be selected, counsel in all cases should be present at voir dire in order to refrain from repeating questions already asked of members of the jury panel on voir dire of a previous case.

Rule 3.25 Jury Charges and Motion in Limine.

A jury charge, with special questions and instructions that may be reasonably anticipated and all Motions in Limine should be

prepared and submitted to the Court at the pre-trial hearing, or at least twenty one (21) days in advance of trial.

4. DISPOSITION OF FAMILY LAW CASES

Rule 4.10 Family Law Cases.

(a) In all contested Family Law cases, it shall be the duty of each attorney to confer prior to the day of trial with each other attorney regarding settlement, stipulations, estimated time of trial, waiver of jury, the extent, description, character and value of property in question, amount of support, conservatorship, periods of possession and/or access rights, duties and powers of conservators, and contested issues.

At any time after a divorce or other Family Law matter shall have been filed, it may be set upon motion of the parties or upon the Court's own motion after the minimum period required by law for such settings. If counsel for either party is requesting a setting for trial, the request shall be in writing and directed to the Court, with a copy to opposing counsel and any pro se parties. Counsel shall consult with his/her client and opposing counsel prior to trial as the time for consultation before the trial is limited.

(b) In all cases requiring a division of property and/or liabilities, the husband and wife shall each file with the Court or upon written mutual agreement exchange between themselves, sworn inventories. Each inventory shall list the value of each item of property and shall list each liability, the number of periodic payments in arrears, if any, the property securing its payments,

and the name of the creditor. Any property or liability claimed to be separate shall be so characterized.

(c) A Financial Sheet showing the income and expenses of each party shall be furnished to the Court and opposing counsel not later than the commencement of hearing or trial in which the payment of support or property rights will be an issue.

(d) Each attorney shall submit a proposed property division, including property claimed or recognized as separate property, to the Court and opposing counsel.

(e) The Court may refuse to hear any matter requiring a division of property or adjudication of spousal or child support if the appropriate information required in sub-paragraphs (b), (c) and (d) and have not be filed or furnished at least seven (7) days prior to a trial on the merits and at least twenty four (24) hours prior to a hearing on interim or temporary orders.

If conservatorship of children is in dispute between the parties in a Family Law case, the attorneys shall make every effort to avoid a hostile and rancorous parade of witnesses that will increase any bitterness existing between the parties. If such matters can be settled by joint managing conservatorships or conciliatory measures which will be for the best interest of the child, these are preferred, unless there are real grounds for the introduction of evidence of serious bodily injury or mental harm to the children.

With respect to child support, except for extremely unusual circumstances, the same shall be governed by the provisions

Sections 14.05, 14.051, 14.052, 14.054, 14.055, and 14.057, Texas Family Code, as presently enacted or as hereafter amended, unless the parties agree to other arrangements, approved by the Court.

Possession of the child by the possessory conservator or the non-possessory joint managing conservator shall be governed by Sections 14.032, 14.033 and 14.034 of the Texas Family Code as presently enacted or as hereafter amended. Counsel and parties are urged to consider all alternatives which may be needed during the minority of the child and the same be addressed in the original divorce decree so as to avoid the necessity for future court amendments and modifications.

Child support payments are to be ordered withheld from the obligor's earnings. The name and address of the obligor's employer must accompany any order for withholding from income for child support.

At the conclusion of any trial on family law cases, the appropriate BVS forms and information on child (suit affecting parent-child relationship forms) shall be filled out and a decree prepared and presented to the Court forthwith. Where practical a decree should be presented at hearing; if not, the same should be presented within ten (10) days of final hearing.

With respect to family law cases other than divorce, the Rules of Civil Procedure shall be followed as in other civil cases. Nothing shall interfere with the right of a Judge to recess a hearing, including juvenile hearings, at any stage of the proceeding where the parties are agreeable or when in the opinion

of the Judge presiding in the case, the best interest of the child and society shall be served.

Most difficulty in the disposition of family law cases is due to inadequate preparation. These rules contemplate extensive communication and preparation by counsel and the client. A case inadequately prepared will not be in compliance with these rules. If it becomes apparent at any hearing that either party or his or her attorney have been willful or grossly negligent in properly failing to prepare for such hearing then the Court may suspend the hearing, and impose sanctions against the offending party or his or her attorney by awarding reasonable attorney fees to the non-offending party. In assessing such attorney fees, the Court may hear additional evidence as to whether the fault for the lack of preparation lies with the client or the attorney, and if with the latter, the Court may assess such attorney fees against the attorney personally.

Rule 5.10 Liquidated Monetary Claims.

A monetary claim represented by an instrument in writing or on open account supported by documentary evidence shall be presented without necessity of hearing, provided that affidavits with respect to attorney fees or other supporting documents are presented to the Court at the time of request for judgment. Such requests may be made accompanied by appropriate judgment for the amount in controversy, pre-judgment interest, attorney fees, post-judgment interest and costs.

Rule 6.10 Jury Management.

The Judge shall adopt a jury plan governing the selection, management, assignment and time of jury service.

When jury panels are selected and notice of the time to report for hearing is mailed to them at the same time as juror information form shall be forwarded to them, such jury information form shall be uniform design and shall be adopted and used to obtain basic information about the background of jurors on the general venire. Each juror shall be instructed to return the form to Court and have the same used by the attorneys in selection.

Juries will be summoned at such dates and time as ordered by the presiding Judge, and will be subject to assignment as needed.

Rule 7.10 Judicial Vacation.

Judicial Annual Leave and Judicial Continuing Legal educational events will be scheduled in advance and published in the annual court calendar.

Rule 8.10 Non-Judicial Personnel.

The Local Administrative Judge of the county shall be responsible for all administrative matters peculiar to the Courts (as distinguished from judicial matters). He may assign or delegate any administrative task to the other judges who shall be responsible for the prompt completion of the task. The Local Administrative Judge shall periodically review case flow procedures and other administrative matters and recommend necessary changes to the County Judges and the Judges of County Court at Law.

The Judge of the court shall control the employees of that court, and those assigned to attend to the functions of that court.

The qualifications for court employees shall be those required by statute, by approved job description, or in official joint court order. The Judge shall be responsible for requiring quality performance by those non-judicial personnel employed.

Rule 9.10 Attorneys - Attorney Vacations.

In civil cases not specially set, an attorney may not be put to trial for a period not to exceed four (4) consecutive weeks of a given year if he has in writing filed with the appropriate Clerk of the County of his residence, with a copy to the appropriate Clerk in the other counties where he has pending cases, at least sixty (60) days in advance, notice of his vacation period. At his discretion a Judge may recognize another time for the designated vacation period.

Rule 9.11 Appearance of Counsel, etc.

Each party shall designate upon filing of each case and each party at the time of answering or appearing therein shall designate one attorney as Lead Counsel for each such party. Lead Counsel shall be responsible for all Docket Calls, all other proceedings and the trial of the case. When a litigant is represented by a firm of lawyers or more than one lawyer, one counsel must be designated on the pleadings and on the requests for settings and all other documents filed as Lead Counsel or, Counsel in Charge. Should Counsel fail or refuse to indicate who such counsel is on the pleadings, then it shall not be grounds for continuance or the passing of the case that such Counsel is sick or out of the city or otherwise engaged. By "Lead Counsel" or "Counsel in Charge" is

meant the counsel who is expected to take the lead for that litigant in the trial of the case.

If the same attorney is called to trial simultaneously in different Courts, then the case on which the earlier setting was made shall take preference over the case having the later setting, except at the discretion of the Court. All applications for a continuance or a postponement of trial or a pre-trial hearing because counsel has another setting in a different court must show the date the setting was made in the other court.

In criminal cases all defendants and their attorneys must be personally present in court during arraignment or pre-trial hearings. Attorneys are required to notify the office of the Judge and of the Clerk that they are employed in the case in writing. If such retainer notice is not given to the Clerk prior to the dates of hearing, pre-trial hearing, arraignment of trial, the Court may make an appointment from among the attorneys available to the Court for appointment and the client may be required to pay for such services and substitution of retained counsel who failed to notify the Court of retention may only be permitted by leave of the Court.

Rule 9.12 Attorney Withdrawal.

In civil cases, withdrawal for an attorney may be affected only as provided in Rule 10 of the Texas Rules of Civil Procedure. If known, the withdrawing attorney shall furnish to the Clerk the current mailing address of the client where there is no immediate substitution of counsel.

In criminal cases, an attorney who has entered an appearance

and became counsel of record by being retained by the defendant or his family, by signing a bail bond, or by appointment of the Court, may not withdraw as counsel of record except upon leave of Court after a motion in writing and, if required by the Court, a hearing thereon.

If leave is granted, the Clerk shall notify the party of such action and advise the party of any trial settings and that he may secure other counsel.

Rule 9.13 Conduct/Decorum of Counsel.

Each day the Court is engaged in hearing a matter, the Court shall be opened by the Bailiff or Clerk directing all Court officials and spectators to their seats.

All officers of the Court, except the Judge and jurors, and all other participants, except witnesses who have been placed under the Rule, shall promptly enter the courtroom before the scheduled time for each Court session. When the Bailiff or Clerk calls the Court to order the following order shall be observed.

In the courtroom there shall be:

- (a) No tobacco used;
- (b) No chewing gum used by a witness or by any attorney while interrogating a witness or addressing the Judge or jury;
- (c) No reading of newspapers;
- (d) No bottles, cups, or beverage containers except water pitchers and cups or as otherwise permitted by the Judge;
- (e) No edibles;
- (f) No propping of feet on tables or chairs;

(g) No noise or talking which interferes with the court procedure;

(h) No riffling through papers or exhibits in such a manner as may distract the jury, the Judge, or the witness.

The Judge, the attorneys, and other officers of the Court will refer to and address other court officers, witnesses, the jury and other participants in the proceedings respectfully and impersonally, by using appropriate titles and surnames rather than first names.

The oath will be administered in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.

All officers of the Court shall dress appropriately for court sessions.

Attorneys should observe the letter and spirit of the Texas Lawyers' Creed and the Texas Disciplinary Rules of Professional Conduct, as adopted by the Supreme Court of Texas, specifically including those dealing with discussion of cases with representatives of the media and those concerning improper ex parte communications with the Judge.

Attorneys should advise their clients and witnesses of this rule and advise them that they are expected to abide by the rule the same as the Judge, the attorney, and court personnel.

All objections, arguments, and other comments by counsel shall be directed to the Judge and not to opposing counsel. The jury shall be directly addressed by counsel only in opening statements

and formal summations.

While another attorney is addressing the Judge or jury, an attorney should not stand for any purpose except to claim the right to interrupt the attorney who is speaking.

Attorneys should not approach the bench without leave of the Court and must never lean on the bench.

Attorneys shall remain seated at the counsel tables at all times except:

- (a) When the Judge enters and leaves;
- (b) When addressing the Judge or jury; and,
- (c) Whenever it may be proper to handle documents, exhibits, or other evidence. (Leave of Court is not required,)

Attorneys should anticipate any need to move furniture, T. V. monitors, appliances or easels and should make advance arrangements with the Bailiff. Tables should not be moved during court sessions.

In addressing the jury, attorneys should use the lectern or remain at or near the jury box, and not move about the courtroom or sit in the witness chair.

Rule 10.10 Powers and Duties of Local Administrative District Judge.

The Local Administrative District Judge shall see that each Court has the assistance of any other Judges who may be available for assignment and that the conduct of business is efficiently and fairly distributed to each person having jurisdiction.

The Local Administrative District Judge shall call meetings as

needed, at a time when all Judges can be available. The Local Administrative District Judge of a county shall preside over such meetings.

The Judge of the District Court may meet with the County Courts or any other persons responsible for the efficient administration of justice and make rules and orders relative to:

- (a) Docket management of the local courts;
- (b) Regular meetings to address the matters set forth in the above rules;
- (c) Judicial budget matters;
- (d) Adult and juvenile probation matters;
- (e) County Auditor matters;
- (f) County purchasing matters;
- (g) Meeting and relationships with other governmental bodies, the public, and the news media;
- (h) Such other matters necessary to provide for the orderly, prompt, efficient, and effective administration of justice in the county;
- (i) Court reporters and timely preparation of records; and
- (j) Dismissals for want of prosecution pursuant to the law applicable thereto.

Pursuant to the Supreme Court Rules of Judicial Administration and Rule 3a of the Texas Rules of Civil Procedure, the Judge will, as necessary, from time to time make rules pursuant to Rule 9b, Supreme Court Rules of Judicial Administration.

11. MISCELLANEOUS LOCAL RULES

Rule 11.10 Judgments and Orders.

Except for good cause shown, all orders and judgments must be submitted to the Court for entry within seven (7) days from the date of the hearing or decision by the Court. All judgments and/or orders in uncontested matters (excluding cases which are settled on the day of trial) must be presented at the time of hearing on such uncontested matters.

All final judgments which are not approved by all counsel or opposing parties who appeared before the Court shall be forwarded to the Court, a copy shall be mailed to all opposing counsel or unrepresented parties by the party preparing the judgment; said judgment shall be held in Judge's chambers for five (5) to ten (10) days, and if no objection to the Judgment is filed, it will then be signed by the Court without a hearing on entry of judgment. Any objections to the judgment must include a form of order setting a hearing on the objection.

Rule 11.11 Formal Opening of the Court.

Immediately before the scheduled time for the beginning of court sessions, the Bailiff shall direct all court officers and spectators to their seats and shall bring order. As the Judge enters the courtroom, the Bailiff shall state, "Everyone please rise." While everyone is still standing he shall make an appropriate announcement such as, "The 38th District court is now in session, the Honorable Mickey R. Pennington, Judge Presiding." If the Judge does not seat the person assembled, the bailiff will

then say, "Be seated, please".

Rule 11.12 Photography or Reproduction in the Courtroom.

The use in the courtroom of cameras, tape recorders or recording devices of any kind, except by the Court Reporter, will not be permitted.

CONCLUSION

Nothing herein provided shall be construed to modify or supersede any provision of the Texas Rules of Civil Procedure, the Texas Code of Criminal Procedure, the Rules of the State Bar of Texas, or any statute of Texas, nor do the foregoing rules apply to the manner of obtaining extraordinary relief that may not be practicably handled in accordance with these rules.

SIGNED AND ORDERED PROMULGATED ON THIS THE _____ DAY OF

_____ A.D., 1991.

JUDGE, 38TH DISTRICT COURT