

## TITLE 1. RULES GOVERNING ALL PROCEEDINGS

### RULE 1.1 CONDUCT AND COURTROOM DECORUM

#### a. Policy

Judges and attorneys have a duty to uphold the highest standards of conduct and to earn and promote public respect for the judiciary, the legal profession and the American system of justice.

#### a. The Texas Lawyer's Creed

The Standards of Professional Conduct in Section IV of The Texas Lawyer's Creed, as promulgated by the Texas Supreme Court and the Texas Court of Criminal Appeals are adopted and incorporated herein by reference as guidelines for participating in litigation in the District, Constitutional and Statutory County Courts of Midland County.

#### a. Conduct Required of Counsel

1. Counsel shall timely appear before the court at each setting and following each recess.
2. Counsel shall be appropriately attired for all court proceedings.

Male attorneys shall be dressed neatly in business suits or sportcoats, with appropriately contrasting slacks, dress shirt and tie. The shirt collar shall be buttoned. Blue jeans, resort wear, sportswear and similar clothing are not considered appropriate courtroom attire.

Female attorneys shall be dressed in conservative dress or business attire. Split skirts, blue jeans, jumpsuits, resort wear, sportswear and similar clothing are not considered appropriate courtroom attire.

1. Counsel shall rise and remain standing while addressing the Court.
2. Counsel shall address all statements, requests and objections to the Court and not to opposing counsel.
3. Counsel shall not argue objections in the presence of the jury without prior leave of court.
4. Counsel shall not interrupt or talk over opposing counsel, except to state formal objections.
5. Counsel shall remain behind counsel table while examining witnesses. If requested by counsel, counsel may stand at a podium while examining witnesses.
6. Counsel shall neither make nor insinuate derogatory or insulting remarks about opposing counsel.
7. Counsel shall address the Court as "Your Honor" or "Judge" and except with leave of court, shall refer to all counsel, parties and witnesses (except children) by their surnames, using such titles as Mr., Mrs., Miss, Dr., etc., as appropriate, and not by first names or nicknames, or any discriminatory or inappropriate classification.
8. Counsel shall neither exit nor enter the bar while court is in session without prior permission of the Court or the bailiff.
9. Counsel shall request leave of court before approaching the bench or to approach the witness when necessary to work with documentary or tangible evidence.
10. Counsel shall not lean on the bench except as may be necessary to prevent jurors from overhearing bench conferences. Counsel shall not engage in personal discussions with the Court or each other during trial while in the presence of jurors, parties, or witnesses.
11. Counsel shall advise counsel's clients, witnesses and others subject to counsel's control of these rules of conduct and courtroom decorum.

#### a. Conduct Required of All Persons

All persons in the courtroom during trials and other proceedings shall be attentive to the proceedings and shall refrain from any action which may disrupt the proceedings.

Therefore, all persons shall comply with the following:

1. All persons shall be appropriately attired for court proceedings.

All persons entering the courtroom shall be dressed in clothing reasonably befitting the dignity and solemnity of court proceedings. Tank tops, T-shirts, shorts, thongs, and clothing that is tattered or soiled are among those items of clothing not considered appropriate courtroom attire. No hats, caps or sunglasses shall be worn in the courtroom.

1. No tobacco use in any form is permitted.
2. No bottles, beverage containers, paper cups or edibles are allowed in the courtroom, except as permitted by the Court.
3. No gum chewing is permitted.
4. No reading of newspapers, books, or magazines is permitted.
5. No propping of feet on tables or chairs is permitted.
6. No talking or unnecessary noise is permitted which interferes with the court proceeding.
7. No person may, by facial expression, shaking or nodding of the head, or by any other conduct, express approval or disapproval of any testimony, statement or transaction in the courtroom.
8. All persons shall rise when the judge enters the courtroom, and at such other times as the bailiff shall instruct.
9. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags or containers into the courtroom without the prior approval of the bailiff.
10. No person shall be permitted any verbal or physical contact with a prisoner without the prior approval of the bailiff.
11. No person shall bring radios, tape recorders, computers, cameras, cellular telephones, pagers or other electronic devices into the courtroom unless the device is required for the court proceeding and prior approval has been given by the bailiff or the Court.

#### a. Enforcement

The bailiff of the court shall enforce the rules of conduct and courtroom decorum.

*History: Adopted effective May 29, 1998.*

### RULE 1.2. REQUESTS FOR CONTINUANCE OR POSTPONEMENT

#### a. Consent or Notice Required

No request for a continuance, to pass, postpone or reset any trial, pretrial, or other hearing shall be granted unless counsel for all parties consent, or unless all parties not joining in such request have been notified and have had an opportunity to object.

#### a. Contents of Motion

Unless counsel for all parties consent in writing to the request for a continuance and the same is approved by the Court, a motion must be filed pursuant to Rule 251, et seq. of the Texas Rules of Civil Procedure, as amended or Article 29.01, Texas Code of Criminal Procedure, as applicable, and the motion must be accompanied by an order setting the motion for a hearing. Any motion that does not meet these requirements will be denied without prejudice to the right to refile.

*History: Adopted effective May 29, 1998.*

### RULE 1.3. CONFLICT IN TRIAL SETTINGS

#### a. Duty of Counsel to Notify Court

Whenever an attorney has two or more cases on trial dockets for trial at the same time, it shall be the duty of the attorney to bring the matter to the attention of the courts concerned immediately upon learning of the conflicting settings.

#### a. Priority of Cases In Event of Conflict

Insofar as practicable, the affected courts shall attempt to agree upon which case shall have priority. Absent such agreement, conflicting trial settings shall be resolved in the following priority:

1. Federal cases
2. Temporary injunctions
3. Criminal cases against defendants who are detained in jail pending trial
4. Cases given statutory preference
5. Preferentially set cases, other than those given statutory preference
6. The earliest set case

*History: Adopted effective May 29, 1998.*

## TITLE 2. RULES GOVERNING CIVIL PROCEEDINGS

### RULE 2.1. APPLICATION FOR EX PARTE ORDERS

Counsel presenting any application for an ex parte order shall, at the time the application is presented to the Court, certify in writing that:

- a. to the best of counsel's knowledge, the party against whom the relief is sought is not represented by counsel; or
- b. if the party against whom the relief is sought is represented by counsel, that (i) such counsel has been notified of the application and does not wish to be heard by the Court thereon; or (ii) counsel presenting the application has diligently attempted to notify opposing counsel, has been unable to do so, and the circumstances do not permit additional efforts to give such notice.

*History: Adopted effective May 29, 1998.*

**RULE 2.2. PRETRIAL AND TRIAL SETTINGS**

- a. At any time after the filing of an answer or entry of an appearance by the opposing party, any party may request a setting for a trial on the merits or, where applicable, a pretrial hearing, by (i) filing with the Court a motion requesting a hearing, and an order setting the hearing, accompanied by a certificate of service to opposing counsel; or (ii) orally requesting the Court to schedule the hearing and confirming the setting by letter addressed to the Court, a copy of which shall be served on opposing counsel in accordance with Rule 21a of the Texas Rules of Civil Procedure, as amended. All requests for a setting shall include an estimate of the amount of court time required for the hearing.
- b. Prior to requesting a setting, counsel shall attempt to coordinate a setting with opposing counsel.

*History: Adopted effective May 29, 1998.*

**RULE 2.3. WITHDRAWAL OF COUNSEL**

- a. Withdrawal

Withdrawal of counsel shall be governed by Rule 10 of the Texas Rules of Civil Procedure, as amended, and the following rules.

- a. Notice to Client

If another attorney is not to be substituted as attorney for the party or if the party does not consent to the motion to withdraw, the withdrawing attorney shall notify the client in writing that the Court will be requested to sign an order granting the withdrawal on or after ten (10) days following the date of such notice. Notice shall be sent by certified mail, return receipt requested.

- a. No Delay of Trial

Unless allowed in the discretion of the Court, no motion to withdraw shall be granted that is presented within thirty (30) days of the trial date or at such time as to require a delay of trial.

*History: Adopted effective May 29, 1998.*

**RULE 2.4. ALTERNATIVE DISPUTE RESOLUTION**

- a. Policy

It shall be the policy of the courts of Midland County, Texas to encourage the peaceable resolution of disputes and early settlement of pending litigation, including family law litigation, by referral to alternative dispute resolution (ADR) pursuant to the Texas Alternative Dispute Resolution Procedures Act, Texas Civil Practice and Remedies Code, Chapter 154.

- a. ADR Mandatory

No trial on the merits shall be conducted in any case until all contested issues have been referred to an ADR procedure, and ADR has been unsuccessful; or the Court has determined that ADR is inappropriate for the case.

- a. Manner of Referral

It is anticipated that the parties shall cooperate in referring such issues to an ADR procedure under terms and conditions as are mutually agreeable, without the need for court intervention. If the parties are unable to cooperate or agree to a referral of such issues to an ADR procedure, then upon written notification to the Court by one of the parties that efforts to coordinate a referral have been unsuccessful, the Court, without a hearing, shall enter an order of referral to an ADR procedure, and under such terms and conditions selected by the Court.

- a. Objection to Referral

If the Court enters an order of referral to an ADR procedure, any party may object to such referral pursuant to Texas Civil Practice and Remedies Code, Chapter 154. Upon the filing of an objection, the Court shall schedule a hearing. If the Court finds that there is a reasonable basis for the objection, the Court may, in its discretion, order that the case not be referred to an ADR procedure and order the case set for trial on the merits.

- a. Discovery Abated

After the case has been referred to an ADR procedure by the parties or the Court, no further discovery under the Texas Rules of Civil Procedure shall be conducted, except by written agreement of the parties filed with the clerk of the Court, or by court order.

*History: Adopted effective May 29, 1998.*

**RULE 2.5. DISMISSAL FOR WANT OF PROSECUTION**

- a. Procedure

The Court, on its own motion, may dismiss a case for want of prosecution. The procedure provided in Rule 165a of the Texas Rules of Civil Procedure, as amended, shall apply.

- a. Reasons For Dismissal

A case may be dismissed for want of prosecution for any of the following reasons:

1. Failure of a party seeking affirmative relief to take appropriate action when the case has been pending without action for six months.
2. Failure of counsel for a party seeking affirmative relief to appear for a pretrial or preliminary hearing, particularly if there has been a previous failure to appear or no motion has been timely filed to meet the exceptions previously sustained.
3. Failure of a party seeking affirmative relief to make an announcement as scheduled when the case has been set for trial.

*History: Adopted effective May 29, 1998.*

**RULE 2.6. ORDERS AND DECREES**

- a. Reduction to Writing Within Sixty (60) Days

Within sixty (60) days after rendition, announcement of the Court's ruling or announcement of settlement by counsel, counsel shall cause all judgments, decrees or orders of any kind to be reduced to writing, forwarded to opposing counsel for approval as to form, and delivered to the Court for signing.

- a. Dismissal if Written Order Not Furnished

Upon failure to furnish the Court with a judgment, order or decree disposing of the case within the sixty (60) day period, the Court shall place the case on the next regularly scheduled dismissal docket, whereupon the case may be dismissed and costs may be taxed at the Court's discretion.

- a. Procedure for Entry of Order

If counsel is unable to secure all opposing counsel's approval as to form, counsel may:

1. File a motion for entry of the proposed judgment, order or decree and secure a hearing for the same, with notice to all opposing counsel pursuant to Rule 21a, Texas Rules of Civil Procedure. At a hearing, the Court may assess costs and attorney's fees within the Court's discretion; or
2. Present the Court with the proposed judgment, decree or order, together with a letter requesting the Court to sign the same if the Court has not received a written objection from opposing counsel within ten (10) days from the date of the letter. Each party who submits a proposed judgment for signature shall serve the proposed judgment and a copy of the letter on all other parties who have appeared and remain in the case, in accordance with Rule 21a, Texas Rules of Civil Procedure. If the Court receives a written objection from opposing counsel within the stated time, the proponent of the judgment, decree or order shall schedule a hearing for entry of the same pursuant to subdivision 1 of this rule.

*History: Adopted effective May 29, 1998.*

**TITLE 3. RULES GOVERNING CRIMINAL PROCEEDINGS IN DISTRICT COURTS**

**RULE 3.1. ARRAIGNMENT**

After indictment, all defendants, their attorneys and bondpersons shall be notified and are required to personally appear for the defendant's formal arraignment. No waiver of arraignment shall be allowed except for good cause shown.

*History: Adopted effective May 29, 1998.*

**RULE 3.2. SCHEDULING OF PLEAS**

- a. Plea Information

The District Attorney and counsel for the defendant shall complete a plea information form promulgated by the courts. A completed plea information form shall be filed with the District Clerk or the court coordinator, as the Court directs. No plea hearing shall be scheduled until a completed plea information form has been filed with the proper designee.

*History: Adopted effective May 29, 1998.*

**RULE 3.3. DUTIES OF COURT APPOINTED COUNSEL**

All court appointed criminal defense counsel shall be required to do the following:

- a. Appear promptly at all times required by the Court.
- b. It shall be counsel's continuing duty to visit an incarcerated defendant regularly until the defendant's case is concluded. Counsel's continuing duty to visit the defendant in

- jail is not satisfied simply by accepting collect telephone calls from an incarcerated defendant. Counsel should be able to assure the trial court that counsel has devoted sufficient time to visit an incarcerated defendant should a dispute arise concerning counsel's fulfillment of this duty.
- c. Ensure that an incarcerated defendant is provided with appropriate attire for a jury trial. This provision shall not be construed to permit counsel to purchase clothing for a defendant without first seeking the approval of the Court.

*History: Adopted effective May 29, 1998.*

**RULE 3.4. WITHDRAWAL OF RETAINED COUNSEL**

Absent good cause shown, retained defense counsel in criminal proceedings shall not be permitted to withdraw from representation of a defendant unless the defendant has employed other defense counsel, and provided that the substitution of counsel does not interfere with the orderly disposition of the criminal proceeding.

*History: Adopted effective May 29, 1998.*

**TITLE 4. (Reserved For Expansion)**

**TITLE 5. RULES GOVERNING FAMILY LAW PROCEEDINGS**

**RULE 5.1. TEMPORARY HEARINGS**

a. Scheduling

All temporary hearings shall be set on a date and at a time scheduled by the Court. At the time set for the temporary hearing, counsel shall make an announcement of the estimate of time required to present the case.

a. b. Notice Required When Responding Party Seeking Affirmative Relief

An application to the Court for a temporary order and notice of any hearing thereon which is presented by a party responding to an application for temporary orders in which that party is seeking affirmative relief shall be served on the adverse party in accordance with Rule 5 and Rule 21a of the Texas Rules of Civil Procedure, as amended.

a. Time Limits

In all matters in which managing conservatorship is in issue, the parties shall be granted not more than three (3) hours to present the case, which time shall be equally divided. In all other temporary matters, including a modification of a temporary order, the parties shall be granted not more than one (1) hour to present the case, which time shall be equally divided. Counsel should request a special setting at the time the application for temporary relief is presented to the Court for scheduling when, because of unusual circumstances, the time limits are unworkable or inappropriate. The Court shall determine the amount of time that shall be allotted for the hearing.

a. Order of Cases

All cases in which counsel announce a settlement shall be heard first. All other cases shall be docketed according to counsel's announcement, with those matters requiring the least amount of time to be heard first.

a. Documents Required

In all cases in which temporary support of a spouse and /or the child is in issue, each party shall be required to furnish:

1. A statement of monthly income and expenses in a form substantially similar to that attached to these rules as Appendix 1.
2. Copies of that party's federal income tax returns for the two calendar years prior to the temporary hearing.
3. All payroll statements, pay stubs, W2 forms, and 1099 forms which evidence that party's earnings for the calendar year prior to the temporary hearing and from January 1 of the current year through the date of the temporary hearing.
4. All checking account statements, including all canceled checks, deposit slips and check registers, all savings account statements, including all deposit and withdrawal slips, to or from which that party has made any deposits or withdrawals during the two years prior to the temporary hearing.
5. Copies of any financial statements filed by that party with any financial institution in the two years prior to the hearing.

a. Duration of Orders

No temporary order shall exceed one hundred and eighty (180) days in duration from the date the order is signed, except by agreement of the parties or order of the Court.

*History: Adopted effective May 29, 1998.*

**RULE 5.2. PARENT EDUCATION AND FAMILY STABILIZATION COURSE**

a. Course Mandatory

All parties in a suit affecting the parent-child relationship, including an action to modify an order in a suit affecting the parent-child relationship, shall attend and complete a parent education and family stabilization course approved by the court in which the suit is pending. Except as provided herein, the provisions governing a parent education and family stabilization course in Section 105.009, Texas Family Code, as amended, shall apply.

a. Waiver of Course

For good cause shown, after notice and hearing, the court may waive the requirement of a course. If a party claims an inability to afford to take a course, and the court finds the claim is meritorious, the court may order that party to attend and complete a course that is offered on a sliding scale fee or without charge, if a course of that type is available.

a. Deadline for Completion

Each party shall complete the course prior to a final hearing on the merits of the case.

a. Verification of Attendance

Each party completing the course shall file a certificate of completion with the court within thirty (30) days of completion of the course, or at the time of that party's next court appearance, whichever is sooner.

a. Sanctions

If a party fails to attend and complete the course, the court may make such orders with regard to the failure as are just, including holding the party in contempt of court, striking pleadings, or invoking any sanction provided by Rule 215, Texas Rules of Civil Procedure, as amended.

*History: Amended effective November 2, 1999. Adopted effective May 29, 1998.*

**RULE 5.3. INVENTORY AND APPRAISEMENT**

a. Inventory and Appraisal Required

In all cases in which the character, value or division of property or debts is in issue, each party shall file, not less than thirty (30) days prior to trial, a sworn inventory and appraisal of all of the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties. It is recommended that each party file this inventory in a form substantially similar to Form 5-1 of the Texas Family Law Practice Manual published by the State Bar of Texas or in a form substantially similar to that attached as Appendix 2.

a. Composite Inventory and Appraisal

After each party's sworn inventory and appraisal has been filed, the parties shall file a composite inventory and appraisal in a form substantially similar to that attached as Appendix 2. The Petitioner shall initiate the composite inventory and forward it to the Respondent for completion not less than fourteen (14) days prior to trial. The Respondent shall complete and file the composite inventory with the Court and serve a copy of the same on the Petitioner not less than seven (7) days prior to trial.

a. Sanctions for Failure to File

If a party or the parties fail to prepare and/or file the initial inventory or the composite inventory as required, the Court may conduct a pretrial hearing and make such orders with regard to the failure as are just, including but not limited to, sanctions pursuant to Rule 215(2)(b) of the Texas Rules of Civil Procedure, as amended.

*History: Adopted effective May 29, 1998.*

**RULE 5.4. CHILD SUPPORT SERVICES**

a. Automatic Referral to Attorney General

Each order or decree which provides for child support to be paid through the registry of the District Clerk of Midland County, Texas shall include and shall be deemed to include, an application for child support services provided by the District Clerk and the Texas Attorney General pursuant to Chapter 76, Texas Human Resources Code, as amended. This rule shall apply to all orders for child support, whether entered before or after the effective date of these rules.

a. Fees for Services

A reasonable fee, to be set by the district and statutory county court judges, may be collected by the District Clerk at the time a suit affecting the parent-child relationship is filed.

a. May Decline Services

A person entitled to receive child support services may decline such services on forms provided by the Texas Attorney General at the time collection efforts are initiated. Only the services of the Texas Attorney General may be declined.

a. Record of Order of Child Support

Whenever the Court orders the payment of child support, modifies or enforces a child support order, the obligee or the obligee's attorney shall complete a record of order of child

support. Forms shall be available from the District Clerk and shall be completed and delivered to the District Clerk immediately after the hearing, although the Court's ruling may not have been reduced to writing at that time.

*History: Adopted effective May 29, 1998.*

## **TITLE 6. (Reserved For Expansion)**

### **TITLE 7. MISCELLANEOUS**

#### **RULE 7.1. AUTHORITY FOR RULES**

These rules are adopted pursuant to the Texas Government Code, Section 75.011 and Rule 3a of the Texas Rules of Civil Procedure, as amended, and the constitutional, statutory and inherent powers of the courts to regulate proceedings before them and to provide for the orderly and efficient dispatch of litigation.

*History: Adopted effective May 29, 1998.*

#### **RULE 7.2. TITLE AND CITATION**

These rules shall be known as the Midland County Local Rules of Practice of the District, Constitutional and Statutory County Courts or the Midland County Local Rules.

*History: Adopted effective May 29, 1998.*

#### **RULE 7.3. PARTIAL CIVIL INVALIDITY**

In the event any of the foregoing rules or any part thereof is held to be invalid for any reason, such invalidity shall not affect the validity of the remaining rules and parts of rules, all of which have been separately numbered and adopted.

*History: Adopted effective May 29, 1998.*

#### **RULE 7.4. TERMS**

The terms counsel, lawyer, and attorney of record as used in these rules shall apply to an individual litigant in the event a party appears pro se.

*History: Adopted effective May 29, 1998.*

#### **RULE 7.5. CONSTRUCTION OF RULES**

Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine or neuter gender shall each include the other; and the singular and plural shall each include the other.

*History: Adopted effective May 29, 1998.*

#### **RULE 7.6. APPLICATION OF RULES**

These rules supersede any prior local rules of practice. These rules shall become effective upon approval by the Texas Supreme Court.

*History: Adopted effective May 29, 1998.*