

AS REQUIRED BY TEXAS HOUSE BILL 79



LOCAL RULES OF PROCEDURE

AND

RULES OF DECORUM

FOR

THE JUSTICE OF THE PEACE COURTS

WASHINGTON COUNTY, TEXAS

EFFECTIVE 01/01/2012

**JUDGE ZWIENER, JUDGE CONE, JUDGE MAY, JUDGE
MCCUNE**



Chapter 1
GENERAL

1.1 Objective

These rules are promulgated to provide a uniform system for the fair, impartial, and prompt disposition of matters properly before the Justice Courts of Washington County, Texas. They are to be interpreted consistent with this objective.

1.2 Scope

These rules govern cases in the Justice Courts of Washington County, Texas. They are promulgated pursuant to Section 27.061 of the Texas Government Code.

1.3 Jurisdiction

The Justice Courts of Washington County hear:

- (a) Civil cases in which the amount in controversy is \$10,000.00 or less.
- (b) Eviction cases, both residential and commercial, including writs of reentry.
- (c) Administrative hearings involving revocation of concealed handgun permits, etc.
- (d) Criminal offenses which are both traffic and Class C.
- (e) Cases involving animal cruelty and neglect.
- (f) Peace Bonds, depends on Court policy

1.4 Organization

Each Justice Court in Washington County has a specific geographical area of jurisdiction; each precinct area is approved by the Washington County Commissioner's Court. Each court has its own court clerks responsible for setting cases on the individual docket of the court, under the direction of the Judge.

1.5 Calendar

Each Justice Court will keep a docket of scheduled hearings and trials. A docket shall be available to the public for said hearings and trials.

The judges will generally be available as indicated by these rules and the calendar. However, when a judge is absent from his office or is not able to hear a case, it is the policy of the Justice Courts to exchange benches with an available Judge, when deemed appropriate; so there will be no interruption in the work of each court. Visiting Judges may also be scheduled to hear certain cases under extraordinary circumstances.

1.6 Jury Selection.

Justice Courts utilize the method of selecting names to be assigned for jury service. This method shall be the same method as used by the Washington County Court at Law and the District Courts.

Chapter 2 CIVIL CASES

2.1 Filing Cases

All civil cases should be filed in the Justice Court where one or more defendants may reside, except as otherwise provided by law. Eviction cases shall be filed in the Justice Court where the premises are located.

2.2 Mediation

It is the policy of the Washington County Justice Courts to encourage the peaceful resolution of disputes and the early settlement of pending litigation. Each court shall determine which, if any, of its cases to refer to mediation and shall determine to which mediation service to refer a case.

Any party receiving notice of a referral to mediation has 10 days from date of notice to file a motion objecting to the referral. If any party to a case files a motion objecting to the referral to mediation, and the Court finds that there is a reasonable basis for the objection, the case may be excused from the referral. If either party fails to appear for mediation or if no resolution is reached, the case is to be promptly set for trial.

2.3 Setting Cases

All civil cases are to be brought to trial or final disposition as promptly as practicable.

At any time the Court may order a pre-trial conference. The Court may enter a written order or orders following each pre-trial conference, which would address any applicable matters.

Each Justice Court shall be responsible for the setting of hearings and trials in each court and for the notices thereof.

2.4 Demand for Jury

A party requesting a civil jury trial shall file a written request with the court in which the case is filed not later than the 10th day before trial. The jury fee shall be paid upon filing the request.

2.5 Continuances

Continuances will be heard not later than 5 court business days preceding trial. Motions will be heard at such time as scheduled by the court. The notice and pleading requirements of law must be followed. Continuances may not be heard thereafter unless they allege grounds which arose only after that time.

2.6 Matters Preliminary To Trial on the Merits

Except for motions for continuance based on new circumstances, all motions in limine, exceptions, and all pre-trial motions and pleas in each jury case shall be presented and heard at pre-trial hearing. All such exceptions, motions, and pleas not presented and heard at scheduled pre-trial hearings will be deemed waived, except upon a showing of good cause.

For non-jury cases all exceptions, motions and pleas must be filed three court business days before the scheduled trial before the court.

A movant shall deliver a copy of each pleading to any opposing party and to the court in the manner and within the time provided by the Texas Rules of Civil Procedure.

2.09 Hearing Conducted by Telephone

At the sole discretion of the presiding judge, a party or attorney may appear by telephone conference call. A request by a party for such an arrangement must be made in writing at least seven court business days in advance of the hearing. In rare cases, in the interest of justice, the court may permit a witness to appear by telephone conference call.

A judge will not initiate or provide equipment for a conference call. All arrangements with telephone operators must be made by the requesting party, and the court shall never incur the burden of any expense associated with the conference call.

2.10 Dismissal for Want of Prosecution by the Court

2.10.1 Case Selection

All cases are eligible for dismissal for want of prosecution *sua sponte* by the Court.

2.10.2 Notice

The court clerk may give notice, in writing, that certain cases will be dismissed for want of prosecution. Such matters will be dismissed on the date indicated in the notice of dismissal unless the Court orders it retained.

2.10.3 Docket Setting

Only the Court may make a setting in cases set for dismissal.

2.10.4 Dismissal Docket

Each court may keep a dismissal docket and, at the Judge's sole discretion, may determine which cases are placed on that docket. In most cases, notice on the citation will serve as notice that failure to appear for court will result in the case being placed on the dismissal docket for immediate dismissal for the benefit of court efficiency and economy.

2.10.5 Including all Pending Claims

References in this chapter to a "case" include all pending claims in the case.

2.10.6 Drafts of Judgments and Orders

So far as practicable, every draft of a judgment or order to be signed by a judge should be approved as to form by attorneys for all parties before it is presented to the judge.

A draft of an order shall not be typed on the same page with a pleading, motion, certificate of service, or any part thereof, and each such draft shall have a heading showing the cause number, the style of the case, and the court in which it is pending.

The word “entered” should not be used in the line provided immediately above the judge’s signature to show the date on which a judgment or order is signed.

2.10.7 Motions to Withdraw as Attorney

Except as provided in Rule 8 and 10, Texas Rules of Civil Procedure, a motion to withdraw will be granted without a hearing only if the moving attorney:

- (a) Files written consents to the withdrawal signed by attorneys for all parties;
- (b) Files a written consent to the withdrawal signed by the client, or includes in the motion a specific statement of the circumstances that justify the withdrawal and the circumstances that prevent the moving attorney from obtaining the client’s written consent; and
- (c) Files a certificate stating the last known mailing address of the client.

If all requirements above are not satisfied, a motion to withdraw or to substitute another attorney must be presented at a hearing after notice to the client and to all other parties.

2.10.8 Court Holidays

When any date mentioned in these rules falls on a court holiday, then the applicable date shall be the first court business day following the holiday. The court holidays shall be determined by the Washington County Commissioner’s Court and are posted on the Washington County Website and Courthouse Notice Board.

2.10.9 Authorization to Serve Citation (Rule 103).

A person wishing to be authorized by written order of the court to serve citations and other notices may file a written affidavit in application for authorization on a form supplied by the Court or a similar suitable application. Court may, upon approval of the application, authorize service by the applicant in all appropriate suits pending in that Justice Court. Prior to, or in conjunction with the filing of return of service in any suit, the person the return shall also file an affidavit that he or she is not a party to and has no interest in said suit. The affidavit be part of the verified return required by Rule 107, Texas Rules of Civil Procedure

Chapter 3 Criminal Cases

3.1 Filing Cases

Justice Court cases should be filed in the precinct where the offense is alleged to have occurred, However, a class C misdemeanor may be filed in any Justice Court of Washington County. The only exception is school attendance cases shall be filed in accordance with Texas Education Code 25.09462. As a matter of local practice, these cases are currently heard by the Precinct Four Justice Court, unless otherwise filed.

3.2 First Appearance

Unless otherwise directed, defendants will appear by mail or in person at the Justice Court in which the case is filed, according to the date and location written on their citation or summons.

Subsequent appearances will be as scheduled by the Court.

3.3 Setting Cases

Cases are set at the request of defense attorneys or defendants in the Justice Court in which the case is docketed.

Attorneys or defendants may request reset of cases in writing (no faxes or emails)no later than 24 hours before the current setting in accordance with court rules.

Defendants may discuss their cases at a scheduled pretrial hearing with a prosecutor, plead guilty or no contest to resolve the case, or reset the case for trial.

(a) Pretrial

Pretrials may be conducted in fine only offenses on any day prior to trial. Pretrial settings must be requested and approved by the Court. Pretrial motions must be filed and served on the County Attorney twenty-one (21) days prior to any pretrial hearing.

All pretrial hearings will be held on the day set unless a written State or Defense motion for continuance is granted. All defendants must appear, in person, whether or not represented by an Attorney, per Texas Code of Criminal Procedure 28.01.

(b) Trial before the Court (TBC)

All cases shall be tried when set unless a written State or Defense motion for continuance is granted.

(c) Jury Trial

Defense attorney and defendant shall appear at the scheduled jury setting. If the defendant waives jury, a written waiver, signed by counsel and/or defendant must be presented.

3.4 Plea of Guilty or Nolo Contendere

Defendants may enter a written plea of guilty or no contest at any time, with or without a plea agreement. Each Justice Court shall maintain a list of "standard" fines for various offenses.

Defendants may elect to enter a written plea of guilty or no contest and address the Judge regarding punishment.

3.5 Appointment of Counsel.

Indigent defendants are not entitled to a court appointed attorney, as a matter of Texas law, when charged with a fine-only offense.

3.6 Motions to Withdraw or Substitute

An attorney becomes attorney of record in a misdemeanor case by listing his or her name on pleadings or by setting or resetting the case. He or she remains attorney of record until relieved by written order of the Court. Presiding Judge may require a "letter of representation" at the presiding Judge's sole discretion.

An attorney's motion to withdraw will be heard at any time when the defendant has had notice to appear or whenever the defendant agrees in writing. Adequate notice is by certified mail, return receipt requested.

Motions to substitute counsel will be granted without hearing so long as the scheduling of trial will not be delayed by the change of counsel.

Chapter 4 Rule of Decorum

4.1 Opening Procedure

Immediately before the scheduled time for the first court session on each day the Clerk, Judge or bailiff, if present, may direct all persons present to their seats and shall cause the courtroom to come to order. As the Judge enters the courtroom the bailiff or court clerk may state:

“ALL RISE, JUSTICE OF THE PEACE COURT, PRECINCT ____ OF WASHINGTON COUNTY, TEXAS IS NOW IN SESSION, JUDGE _____, PRESIDING”

All present, if able, shall stand and remain standing until requested to take their seats by clerk, bailiff or judge. All opening procedures to the Court are at the sole discretion of the Presiding Judge.

4.2 Recess

When the Judge announces a recess, the Clerk, bailiff or Presiding Judge may state “ALL RISE, THE COURT IS NOW IN RECESS”

And those present, if able, shall remain standing until the Judge leaves the courtroom.

Before a recess of a jury trial, the jury will be excused, all other persons present shall remain seated while the bailiff, if present, conducts the jury from the courtroom into the jury room.

After recess, the Clerk, bailiff or Presiding Judge, may direct all jurors from the jury room. The Clerk, bailiff or Presiding Judge may then bring the Courtroom to order and instruct all present in the same manner as a non-jury trial. All present shall, if able, rise and remain standing as the jury reenters the jury box and the order from the Presiding Judge is given to be seated.

4.3 General Rules of Courtroom Conduct

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

In the courtrooms there shall be:

- (a) no tobacco used;
- (b) no chewing gum;
- (c) no excessively short pants, shorts, tanktops or bare midriffs;
- (d) no reading of newspapers, books, use of game systems, laptops, I-pads, electronic books or similar devices(Court officer's may use electronic devices for court purposes only);
- (e) no audible cell phones or pagers (all devices should be in silent mode);
- (f) no bottles, cups or beverage containers except court water, pitchers and cups or as otherwise permitted by the Judge;
- (g) no edibles;

4.3 General Rules of Courtroom Conduct – Continued

- (h) no propping of feet on tables or chairs;
- (i) no noise or talking that interferes with court proceedings;
- (j) no caps or hats shall be worn in the courtroom;
- (k) no unattended packages, briefcases, bags, boxes, luggage or any type of container may be left unattended in the courtroom;
- (l) no video, photo or audio recording devices allowed in the Courtroom;
- (m) no disruptive expressions or hand gestures or noises are allowed in the courtroom. The Presiding Judge has sole discretion as to what is disruptive.

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

All officers of the court should dress appropriately for court sessions. Proper Court attire is required for attorneys. The Presiding Judge, at the Judge's sole discretion, may grant a waiver of this requirement.

4.4 Attorneys

(a) Attorneys should observe the letter and spirit of all canons of ethics, including those dealing with discussion of cases with representatives of the media and those concerning improper ex parte communications with the Judge.

(b) Attorneys should advise their clients and witnesses of Local Rules of Decorum that are applicable.

(c) All objections, arguments, and other comments by counsel shall be directed to the Presiding Judge or Jury and not to opposing counsel.

(d) While another attorney is addressing the Judge or jury, an attorney should not stand for any purpose except to make an appropriate motion, request or objection to the Court.

(e) Attorneys should not approach the bench without leave of court and must never lean on the bench.

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

- (1) When the Judge enters or leaves the bench;
- (2) When addressing the Judge or jury; and
- (3) Whenever it may be proper to handle documents, exhibits, or other evidence (leave of court is not required)

(g) Attorneys should anticipate any need to move furniture, audio/visual equipment, or easels, and should make advance arrangements with the court. Tables should not be moved during court sessions, unless approved by the Presiding Judge.

4.5 Broadcast Media

Requests to broadcast or video/audio record court proceedings shall be determined by each Presiding Judge on a case by case assessment, the Presiding Judge may consult all parties to a case before rendering a decision. The Presiding Judge's decision is final.

Chapter 5
Exchange of Benches

5.1. Civil Cases

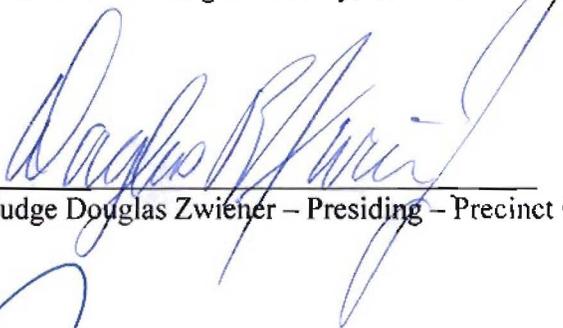
- (a) At the judge's discretion, a Justice of the Peace Court may exchange benches a pending civil case to another Justice of the Peace court in Washington County, Texas, provided that receiving Judge has no objection to the exchange.
- (b) The parties lack standing to contest or request the exchange.

5.2. Criminal Cases

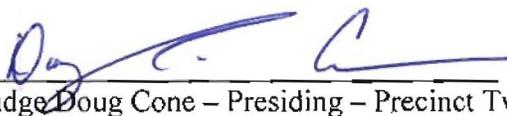
- (a) A judge may exchange benches in a pending misdemeanor case to another Justice of the Peace court in Washington County, Texas, provided that the receiving Judge has no objection to the exchange.
- (b) The defendant has 10 days to object in writing to the exchange.

15

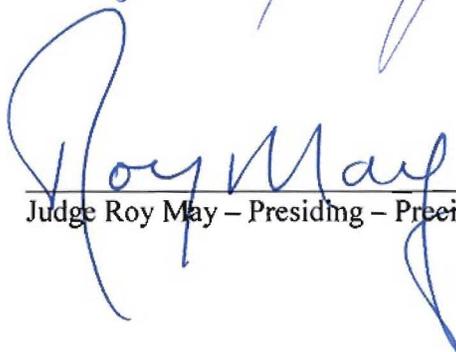
These Local rules for the Justice Courts of Washington County are hereby adopted by the Judges of the Justice Courts of Washington County, Texas on this the 27 day of December, 2011.



Judge Douglas Zwiener – Presiding – Precinct One



Judge Doug Cone – Presiding – Precinct Two



Judge Roy May – Presiding – Precinct Three



Judge James McCune – Presiding – Precinct Four