

Waller County Court at Law

Policies and Procedures

GENERAL PROVISIONS

The objective of the rules of the Waller County Court at Law is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law and established rules of procedural law. To the end that this objective may be attained with the greatest dispatch and, as may be practicable, with the least expense to litigants and the county, these rules shall be applied to ensure that, so far as reasonably possible, all matters are brought to trial or final disposition in conformity with this objective.

CONDUCT AND DECORUM OF COUNSEL

- a. Each attorney is expected to conduct himself or herself in accordance with the State Bar of Texas Code of Professional Responsibility, the Texas Rules of Civil Procedure, the Texas Code of Criminal Procedure, the Regional Rules of Administration for the Second Administrative Region, these local rules, and such other rules of conduct as may be published by the courts of this county and state. All attorneys, litigants, and witnesses shall be expected to act in a manner calculated to promote decorum, respect for the judicial system and the prompt and fair administration of justice.
- b. In addressing the Court, attorneys shall rise and remain standing at their positions at counsel table. They shall not approach the bench except with permission or upon request of the Court. When the Court is addressing an attorney, that attorney shall rise and remain standing until the court finishes speaking. Attorneys shall not lean on the Bench or appear to engage the Court in a confidential manner. All remarks of Counsel to the Court shall be addressed to the Court and not the Judge as an individual.
- c. Attorneys shall be responsible for advising their clients and witnesses of the formalities of the courts. Any clients or witnesses who are inappropriately dressed or act in a manner disrespectful of the court or other participants may be removed from the courtroom.
- d. All counsel are admonished to respect the letter and spirit of all canons of ethics particularly those dealing with discussion of the facts or law of the case with the Court outside of the Courtroom and not in the presence of opposing counsel.

- e. When Court is in session there will be no talking in the courtroom other than regarding the case before the bench. Attorneys wishing to discuss other cases should ask to be excused from the courtroom.

WITHDRAWAL OF COUNSEL

Withdrawal of counsel will only be permitted upon the filing of a motion and order granting leave to withdraw. All motions must either be agreed by both the attorney's client and opposing counsel or be set for hearing. If the motion is not agreed, counsel must forward a copy of the motion and notice of hearing by certified mail to the client and opposing counsel. Leave to withdraw may be denied if the motion is presented so near trial as to require delay. A copy of the leave to withdraw shall be forwarded to client, along with notice of current deadlines and settings by certified mail.

ATTORNEY VACATIONS

Each attorney desiring to assure that he/she will not be assigned for trial during a vacation period not to exceed four consecutive weeks of a given year may advise the Court Coordinator in writing not less than ninety days prior to the first day of such vacation. In the event an attorney already has a setting at the time the vacation notice is filed, it shall be the attorney's responsibility to notify opposing counsel and the Court Coordinator and either file an agreed reset or a motion for continuance and obtain a ruling by the Court.

CERTIFICATE OF CONFERENCE REQUIREMENT

A CERTIFICATE OF CONFERENCE IS REQUIRED WITH ALL MOTIONS REQUESTING A HEARING. If a motion will be opposed or is not agreed to, counsel for a party shall not file, nor shall the clerk accept for filing, any motion, except a Motion for Summary Judgment, a Plea to the Jurisdiction, Motions for Default Judgment, Motions for Voluntary Dismissal, Nonsuit, Motions for New Trial, and Motions Involving Service of Citation or other motion that would be dispositive of the case, unless accompanied with a "Certificate of Conference" signed by counsel for movant in the form set out below. The Court Coordinator will not set any motion for hearing until the Court has received a Certificate of Conference or the Motion/Order meets one of the exceptions.

If a motion is unopposed or is agreed to, a Certificate of Conference is not required; however, the moving party shall accompany the motion with a proposed order signed by all counsel indicating approval of same and include "AGREED" or "UNOPPOSED" in the title.

To comply with the requirements of a Certificate of Conference, movant shall attempt to contact counsel for the respondent to hold or schedule a conference to resolve the disputed matters. Unless an emergency exists, counsel for the movant shall make at least three (3) attempts to contact counsel for the respondent. The attempts shall be made during regular business hours on at least two separate business days.

If an opposing counsel/party fails to respond to movant's request for conference, movant should select 3 dates of their choosing from the Court's Calendar and include them in their setting request. The Court will set the hearing from those dates regardless of opposing counsel's objections.

This form may be used for the **Certificate of Conference** in a family law case and **this form** may be used in all other civil cases OR counsel may include the appropriate language from below as one would a Certificate of Service or other certificate required by a motion.

Choose the appropriate language from the following four paragraphs:

- Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to resolve those matters presented. Counsel have further conferred and _____ do / _____ do not agree to the setting dates listed in the Setting Request.
- Counsel for movant has personally attempted to contact the counsel for respondent to resolve the matters presented as follows: (Dates, times, methods of contact, results). Counsel for the movant has caused to be delivered to counsel for respondent, and counsel for respondent has received a copy of the propose motion. At least three (3) attempts to contact the counsel for respondent followed the receipt by counsel for respondent of the proposed motion. Counsel for respondent has failed to respond or attempt to resolve the matter presented.
- An emergency exists of such a nature that further delay by contacting opposing party would cause irreparable harm to the movant, as follows: (details of emergency and harm justifying inability to contact opposing counsel or party).
- Other reason Counsel/Party is unable to discuss the setting and matter addressed by the Motion with opposing counsel/party: (describe reason movant cannot contact opposing counsel/party).

A Certificate of Conference may be waived by the Court for good cause.

Rule 1. Civil Cases

Jurisdiction. The County Court at Law of Waller County and the 506th Judicial District Court have concurrent jurisdiction in civil cases in which the matter in controversy exceeds \$500 and does not exceed \$250,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs. For those cases where the Waller County Court at Law and the 506th Judicial District Court have concurrent jurisdiction, by local rule, the cases are to be filed in the County Court at Law. The 506th Judicial District Court and the County Court at Law reserve the right to transfer cases by agreement, or on motion of a litigant for good cause. A case is not transferred until the order transferring is accepted by the receiving court.

RULE 1.

The Court will, so far as reasonably possible, ensure that all civil cases, other than family law cases, are brought to trial or final disposition in conformity with the following:

- a. Civil jury cases- within 18 months from appearance date
- b. Civil non-jury cases—within 12 months from appearance date
- c. Expedited cases—will be scheduled as provided by TRCP 169

Upon receipt of an answer to any civil lawsuit, other than family matters, the court will enter docket control orders. Sample docket control orders are attached as Exhibit 1, Civil and Exhibit 2, Civil expedited.

RULE 1.01 REQUESTS FOR SETTINGS

a. Submission Without Hearing

Upon filing of any matter, the movant or the Court may give notice to all attorneys of record and parties pro se that the matter will be submitted to the Court for a ruling without any hearing. The notice shall clearly state that any party may either request a hearing or submit a written response on or before a specific submission date that is at least ten (10) days after service of such statement.

If no hearing is requested prior to the submission date contained in the notice, the Court shall examine the pleadings, authorities cited, and other papers submitted. After such examination the court may either set the matter for a hearing or make such rulings as the court deems proper, note a memorandum to all of attorneys of record and parties pro se. Submission of orders, judgments or other documents necessary to effectuate the memorandum ruling of the Court shall be

accomplished in accordance with Rule 1.05

b. Contested Hearing/Trial

(1) No case will be set for final trial unless mediation has been completed or the court has waived the requirement of mediation.

(2) Any party or attorney of record may obtain a setting of a contested proceeding by (a) contacting the coordinator for an agreed setting or (b) filing a setting request on the form provided as Exhibit 3. Each setting request must specify the cause number and style of the case, the nature of the hearing or trial sought, the name, address and telephone number of each attorney of record or pro se party, the amount of time estimated by the requesting party to be required for both sides. Opposing counsel will have five days to contact the Court and oppose the time estimate. The request will be forwarded to the court coordinator (or obtained from the coordinator) who will complete the section listing available court dates and send the form to the requesting attorney. Requesting attorney shall attempt to reach an agreement with opposing counsel and forward the form for signature. If counsel are unable to reach an agreement, the form shall be returned to the coordinator with confirmation that counsel attempted to agree to a setting date but were unable to do so.

(3) The attorney or party filing the setting request shall mail or deliver to all attorneys of record and all pro se litigants in the case a copy of the setting request.

If the request is for a jury trial, or non jury expected to take more than one day, the request must contain verification that the case has gone or is scheduled for mediation.

(4) The coordinator will mail Notice of Setting to each attorney of record and party pro se at the address shown on the Setting Request. If a date is set without prior agreement, any counsel with a conflict has 5 days after receipt of notice to contact the

court to notify the Coordinator of a scheduling conflict. After five days the setting is final and an agreement or motion for continuance will be required to reschedule.

c. Uncontested Matters

Uncontested matters may be set by phone, in person or in writing to the Court Coordinator.

RULE 1.02 RESETS

No setting shall be passed except by:

- a. Settlement agreement announced in open court or in writing
- b. Written agreement of all parties with court's approval; or
- c. A motion for continuance granted by the court

RULE 1.03 DISMISSAL DOCKET

At least once a year, cases which have not been disposed of within the time limits set forth in these rules may be dismissed for want of prosecution. Notice of intention to dismiss shall be given in accordance with Rule 165a of the Texas Rules of Civil Procedure.

Unless good cause is shown, such cases will be dismissed on or after the date stated therein.

Notification of the dismissal order shall be as provided in Rule 306a of the Texas Rules of Civil Procedure.

Written motion to retain, together with requested trial setting will be required to be filed by any party desiring to maintain the case on the docket.

RULE 1.04 PRE-TRIAL CONFERENCES

- a. Any party may request that a case be set for pre-trial conference. A pre-trial conference may also be set on the Court's own motion and will be set in the docket control order.
- b. At the pre-trial conference, the Court may hear and consider all pre-trial motions and other matters as directed by the court.

- c. Counsel for each party will submit a proposed Charge, Witness list and Exhibit list no later than noon on Thursday preceding the jury week for which the case is set.

RULE 1.05 SUBMISSION OF ORDERS, JUDGMENTS AND INSTRUMENTS

After a ruling the attorneys shall get an entry date from the Court Coordinator. If an order signed by all attorneys and parties is received prior to the entry date, appearance is not required. Continuances on entry shall be as in any other hearing date. Failure to follow through can result in a case being dismissed for want of prosecution.

All judgments and orders in uncontested matters (except those settled on the hearing date) shall be presented at the time of the hearing on such matter, except for good cause shown, and signed by all attorneys and pro se parties.

Occupational Licenses

If after filing a petition for issuance of an occupational license you have filed with County Clerk a waiver signed by an assistant District Attorney (where notice is required), driving record, SR 22 and an order granting the occupational license, the County Clerk will submit the file to the Court. The ordered will either be approved or the case will be set for hearing once the Judge has reviewed the file. If you have not received notice of a hearing date or signed order within seven day, contact the County Clerk.

Rule 2. Family Law Cases

The Waller County Court at Law and the 506th Judicial District Court have concurrent jurisdiction on all family law matters, Exhibit 9. By local rule, all family law cases are to be filed in the County Court at Law.

However the County Court at Law and the 506th Judicial District Court reserve the right to transfer cases by agreement between the courts. The County Court at Law, on its own motion, or the motion of a party, with good cause can request to transfer a case to the 506th Judicial District Court and the 506th Judicial District Court can either accept or reject such transfer.

2.01 TIME STANDARDS

The Court will, so far as reasonably possible, ensure that all family law cases are brought to trial or final disposition in conformity with the following time standards.

(1) Uncontested Family Law Cases. Within three months from the appearance date or within three months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

(2) Contested Family law cases

Within six months from appearance date or within six months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

2.02 ANCILLARY PROCEEDINGS, TEMPORARY ORDERS AND EMERGENCY MATTERS

The County Court at Law and the 506th Judicial District Court have a Standing Restraining Order (see attached Exhibit 9) which applies to all family law cases. Anyone serving a Respondent with citation or having respondent sign a waiver must provide respondent with a copy of the Standing Restraining Order. The Standing Restraining Order is a comprehensive document and therefore, the Court will not entertain any other alternative Temporary Restraining Order. **THEREFORE, DO NOT FILE AN EX PARTE TEMPORARY RESTRAINING ORDER** because the Standing Restraining Order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen (14) days after the date of the filing of the original petition. If no party contests the Standing Restraining Order by presenting evidence at a hearing on or before fourteen (14) days after the date of the filing of the original petition, the Standing Restraining Order shall continue in full force and effect as a temporary injunction until further order of the Court. **INSTEAD OF FILING AN EX PARTE TEMPORARY RESTRAINING ORDER, SIMPLY FILE A NOTICE OF HEARING FOR TEMPORARY ORDERS.**

TEMPORARY RESTRAINING ORDER and CUSTODY:

No ex- parte order which in effect establishes or changes custody will be signed by this court. If there is an immediate genuine danger to a child, Child Protective Services or law enforcement should be contacted.

TEMPORARY ORDERS HEARINGS

Prior To Setting A Temporary Orders Hearing:

ABSENT GOOD CAUSE SHOWN, ALL PARTIES AND THEIR ATTORNEYS ARE REQUIRED TO ATTEND MEDIATION PRIOR TO ANY TEMPORARY ORDERS. If the case is inappropriate for mediation, a motion to waive mediation must be filed with a notice of hearing which shall be heard prior to setting a hearing for temporary orders. Parties are encouraged to agree on a mediator. If the parties are unable to agree, the Court will appoint a mediator.

If a hearing is required, all parties **MUST** file the following

- a. A financial information sheet (in the form attached at Exhibit 4 hereto);
- b. Tax returns for the past two years;
- c. Pay stubs for the past three months;
- d. Information regarding Health Insurance coverage on the parties and their children; and
- e. A Request for Relief setting out the specific relief requested for temporary orders.

CAUTION: IF YOU DO NOT HAVE THESE DOCUMENTS FOR YOUR TEMPORARY ORDERS HEARING, THE COURT MAY REFUSE TO PROCEED WITH THE TEMPORARY ORDERS HEARING AND RESET YOUR HEARING FOR A LATER DATE.

Upon completion of a Temporary Orders Hearing, whether by agreement or contest, the attorneys shall confer with the Court coordinator to generate an agreed docket control order. If the attorneys fail to do so, the coordinator will generate one without consulting the attorneys.

2.03 FINAL DISPOSITION

PRIOR TO FINAL TRIAL:

ALL PARTIES AND THEIR ATTORNEYS ARE REQUIRED TO ATTEND MEDIATION BEFORE A TRIAL DATE EVEN IF THE PARTIES MEDIATED PRIOR TO TEMPORARY ORDERS. If the case is inappropriate for mediation, a motion to waive mediation must be filed with a notice of hearing which shall be heard at least 10 days prior to trial. Parties are encouraged to agree on a mediator. If the parties are unable to agree, the Court will appoint a mediator.

Contested Matters

Upon the filing of an answer the Court coordinator will generate a docket control order in conformity

with the form attached hereto as Exhibit 5. In all cases in which no docket control order has been entered by the court the parties will request final trial setting in writing as per the form attached hereto as Exhibit 3.

Uncontested Matters

Request for hearing of uncontested matters and ex parte matters may be made in person, by telephone, or in writing to the Court Coordinator. Requesting party shall notify all attorneys of record and pro se parties of such setting.

2.04 REQUESTED RELIEF

In all contested matters tried to the court, each side should prepare a sheet containing an outline of whatever relief is being requested from the court.

INVENTORIES

In all cases requiring a division of property (other than uncontested matters) each party should prepare and file with the court an inventory in substantially the same form generated by the State Bar in conformity with the docket control order. In the absence of a docket control order, the inventories should be filed within 75 days of filing of the original petition. Those 75 days can be extended by agreement and will be extended for parties not timely served.

2.05 CHILD SUPPORT

Child support shall be set in accordance with the current Child Support Guidelines adopted by the Supreme Court of Texas. Child support will not be waived, even upon agreement of the parties unless there is proof provided to the court that it would be in the Child's best interest.

2.06 KIDS COUNT or FOR KIDS SAKE

In all actions involving the custody of children, both Petitioner and Respondent will attend a parent education class approved by the Court. Both parents must attend the same class (not the same session but the same provider.) Only certificates from the programs approved by the County Court at Law will

be accepted. Certificates of completion must be on file with the court PRIOR to setting the case for final disposition, whether uncontested or contested. No other program certificates will be accepted unless the parties have received written permission from the court to complete a different program.

2.07 PRO SE LITIGANTS

Upon filing of a pro se divorce, litigants must obtain a waiver or have the Respondent served with citation. Service must contain the court's standing rules as well as instructions regarding Kids Count and /or Kids First course if there are children of the marriage.

Upon completion of waiver or service of citation, the pro se litigant must prepare the following

Documents:

- (a) Waiver of Service, Divorce decree, Bureau of Vital Statistics form
- (b) Default divorce (Respondent was served but did not answer)
Divorce decree, Bureau of Vital Statistics form, Certificate of last known address, and Non military affidavit

Settings

After completion of all necessary documents, pro se litigants can set uncontested cases by bringing those documents, as well as completion of Kids Count Program if there are children of the marriage to the district clerk. Once the court has had an opportunity to review the paperwork, the court coordinator will contact the requesting party with a court date.

Contested settings will be set as all other contested matters, refer to Section 2.03 of these rules.

ADOPTIONS

a. Social Studies - upon filing of a suit for termination of parental rights/and or adoption, the parties are required to provide an order for social study. Under the requirements of Section 107.153 Texas Family Code Social Studies are mandatory and will not be waived by the Court.

b. Ad Litem- The Court will appoint an attorney ad litem as required by Sec. 107.021 Texas

family code unless evidence is provided sufficient for the court to find that the child's interest is adequately represented by a party to the suit whose interests are not in conflict with the child's interests. Attorneys will need to file the motions and orders for those appointments. If counsel will be asking to waive the appointment of an Amicus/Attorney Ad Litem, a motion must be filed and set for a hearing.

3.07 Adoption Order from Foreign Country

a. An adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of Texas and enforced as if the order were rendered by a court of Texas unless:

- another law provides otherwise; *or*
- the adoption law or process of the foreign country violates the fundamental principles of human rights, or the laws or public policy of this state. Tex. Fam. Code § 162.023(a).

b. A person who adopts a child in a foreign country may register the order in Texas, and the order may be combined with a petition for a name change.

- If the order meets the requirements above, the court shall order the state registrar to:
 - register the order under Chapter 192, Health & Safety Code; *and*
 - file a certificate of birth for the child 192.006, Health & Safety CodeTex. Fam. Code § 162.233(b)

There is no requirement of residency within the County set forth by statute, therefore Waller County will accept Applications for Registration of foreign adoptions, regardless of the County within which the applicant resides. Since the statute requires the court to determine if the adoption law or process of the foreign country violates the fundamental principles of human rights, or the laws or public policy of this state. Tex. Fam. Code § 162.023(a).,* these cases will be set for hearing before the court, unless a Hague Certificate of Adoption is filed at the time of filing the application.. If there is not evidence presented sufficient for the court to make the required findings, the court may appoint an attorney ad litem and/or order the completion of a home study.

What you should file:

Your application for registration of foreign adoption, the original adoption and a translated copy of the adoption, a copy of the child's visa and the parents visas, a Hague convention certification of adoption. If you do not have a Hague certificate of adoption, you should file your USCIS

approved home study as well as any other documentation you may have relating to your foreign adoption process.

RULE 3. CRIMINAL CASES

3.01 FILING OF CASES

The Waller County District Attorney is responsible for the filing of all misdemeanor criminal cases in Waller County.

3.02 SETTING OF CASES

Upon filing of a misdemeanor case by the District Attorney, the court coordinator will mail notice of setting to the defendant at the address provided on the bond, to the bondsman, and to the attorney, if there is one of record.

Cases will be scheduled as follows:

First setting. At this non-trial setting the case will be reset one time to another non-trial setting if the defendant request time to retain counsel.

Upon retention or appointment of counsel, a docket control order will be issued setting case for pre trial and trial in substantially the same form as attached as Exhibit 6. No pleas will be accepted after pretrial.

3.03 DOCKET CALL

Docket call begins promptly at 9:00 a.m. No negotiations or other communications are allowed while the docket is being called. After docket call, the Court will hear any pleas that have been worked out prior to court. After those pleas have been heard, the Court will recess to allow the District Attorneys time to discuss other cases. All cases resolved will be taken up by the court on the same day.

All cases not resolved will be reset or set on a docket control order.

3.04 PLEAS

All pleas must be ready with a proposed judgment filled out and presented at the time of the plea.

PLEA NEGOTIATIONS

The State should make its final plea offer on or prior to the pre-trial hearing. No settlement negotiations should occur after this date.

3.05 MOTIONS/PRE-TRIAL HEARINGS

All motions must be filed at least 7 days prior to pre-trial in accordance with Code of Criminal Procedure Rule 28.01. Those matters not filed and ruled on at pre-trial are deemed waived unless the court grants permission, with good cause shown.

Counsel should provide a proposed jury charge to court and opposing counsel at the pre-trial conference.

Pre-trial is the last opportunity to plea a case, no pleas will be taken on date of trial.

All attorneys shall contact the court on the Thursday proceeding Monday jury selection to confirm the order of trial.

3.06 TRIAL PROCEDURE

Jury selection begins at 8:30 a.m. All other settings are at 9:00 a.m. unless otherwise scheduled by the court.

No pretrial matters will be heard on trial day unless leave has been granted by the court.

All counsel will rise when addressing the Court, requesting permission to approach the Court Reporter or witness, perform any demonstrations, or when passing a witness.

Counsel will not request witness or Court personnel to perform demonstrations.

Once trial begins, the parties shall have their witnesses ready and no avoidable delays will be tolerated.

No phone calls will be made by counsel in front of the jury.

All exhibits should be pre-marked.

Attorneys should have proposed jury charge prepared prior to trial.

Rule 4. Probate Proceedings

4.01 FILING

All filings will be in compliance with the Estates Code. This court has no additional rules regarding filing of probate matters. The contact information for the County Clerk is 836 Austin, Suite 217, Hempstead, Texas (979)826-7711.

4.02 HEARINGS

All uncontested probates that do not require a record can be scheduled at 8:30 a.m. in Chambers prior to the 9:00 a.m. docket call on any day court is in session. You are still required to set the cases with the coordinator so that the files will be pulled prior to your arrival.

All other uncontested matters can be scheduled by phone or written request with the coordinator.

Contested matters will be scheduled in the same manner as all other civil suits.

4.03 GUARDIANSHIPS

Guardianship cases will always be heard in court, on the record with ad litem and proposed ward present unless a waiver of appearance has been obtained.

After completion of the proceedings there are two forms which must be completed and returned to the Court, those forms are attached hereto as Exhibit 7, and Exhibit 8.

Counsel should take particular steps to make sure that the guardians understand their reporting responsibilities.

Attorneys for the application for guardian of the estate will remain attorney of record until a withdrawal is signed and approved by the court. Clients should be made aware that they are not allowed to represent the estate and cannot file annual accountings pro se.