## *RULES OF PRACTICE IN THE 198TH & 216TH JUDICIAL DISTRICT COURTS*

## *BANDERA, GILLESPIE, KENDALL & KERR COUNTIES*

### *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.

B. 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 198th & 216th Judicial District Courts.

C. 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 in conservative business attire. Blue Jeans, resort wear, sportswear, jumpsuits and similar clothing are not considered appropriate courtroom attire.

3. Counsel shall rise and remain standing while addressing the Court.

4. Counsel shall address all statements, requests and objections to the Court and not to opposing counsel.

5. Counsel shall not interrupt or talk over opposing counsel, except to state formal objections.

6. Counsel shall neither make nor insinuate derogatory or insulting remarks about opposing counsel, including the use of nicknames, or any discriminatory or inappropriate classification.

7. Counsel shall request leave of court before approaching the bench or to approach the witness when necessary to work with documentary or tangible evidence.

8. Counsel shall advise counsel's clients, witnesses and others subject to counsel's control of these rules of conduct and courtroom decorum.

## D. 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 and in a manner reasonably befitting the dignity and solemnity of court proceedings. Tank tops, T-shirts that are tattered or soiled or which contain lewd or inappropriate language, shorts and clothing that is tattered or soiled are among those items not considered appropriate courtroom attire. No hats, caps or sunglasses shall be worn in the courtroom.

2. No tobacco use in any form is permitted.

3. No bottles, beverage containers, paper cups or edibles are allowed in the courtroom, except as permitted by the Court.

4. No gum chewing 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. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags or containers in the courtroom without the prior approval of the bailiff.

9. No person shall be permitted any verbal or physical contact with a prisoner without the prior approval of the bailiff.

10. 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. Counsel may bring cellular telephones or computers into the courtroom as long as the devices are on silent or are turned off and are not used to record the Court's proceedings.

## E. ENFORCEMENT

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

## *CIVIL CASES*

***At the bottom of all ORDER SETTINGS, please list all the parties who need to be notified. If the parties are represented by attorneys, please list the attorney's fax numbers. If they are pro se litigants, please give their addresses.***

***At the end of all MOTIONS, please include the opposing counsel's name, address, phone number and fax number under the Certificate of Service. Please do not put "...a copy has been sent to all opposing counsel." (This will let the Court know who the attorneys are since we do not have immediate access to all files in every county).***

A. REQUEST FOR SETTING - JURY CASES:

Jury Trial

1. Request for Setting

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Coordinator **at the Kerr County Office**. The party requesting a setting should not file the Request for Setting with the Clerk.

The Request for Setting shall contain the following:

a. The style and number of the case, and the county where the case is pending;

b. The name, address, telephone and fax numbers of the attorney making the request and the party represented by said attorney;

c. The name address, telephone and fax numbers of opposing counsel. If no opposing counsel, name and address of pro se party.

d. The date on which the jury fee was paid;

e. A statement that the pleadings of the party requesting the setting are in order;

f. A statement that mediation has been completed or none is required.

(1) Pending mediation, all discovery is abated unless otherwise ordered by the Court.

g. A statement that all discovery has been completed or none is desired.

(1) If discovery is pending the request shall contain the date on which discovery is expected to be completed;

h. A statement that all pre-trial matters have been disposed of or none is pending.

(1) If pre-trial matters are pending the request for setting shall state the nature of same, the party asserting same, the estimated time for hearing same and possible dates for a pre-trial hearing **which have been cleared with opposing counsel;**

i. A statement that the party requesting the setting has made a good-faith effort to negotiate a settlement of the case and further efforts appear futile;

j. Possible dates for the trial of the case **which have been cleared with opposing counsel.**

(1) If opposing counsel will not agree to a date for trial, the dates proposed and the reason for opposing counsel's refusal to agree to same;

k. The estimated time of trial;

l. A certificate that a copy of the Request for Setting has been served on all counsel in the case, the name and address of each attorney and the date of service;

m. The signature of the attorney making the Request.

n. An Order Setting with an agreed date should be attached to the Request.

2. Upon receipt of the Request and Order Setting, the Court will set the case for trial on the merits and deliver a copy of the same to the District Clerk to certify who will then deliver a certified copy to each attorney. If item g. (1) in the Request for Setting is applicable, please send an Order Setting with an agreed hearing date and the Court will set a pre-trial hearing.

3. At the time the parties announce ready, each party shall submit to the Court proposed jury questions.

***When setting a civil case for pre-trial, jury trial, non-jury trial or post trial hearing, please call the Court Coordinator, prior to sending your Motion and Order Setting, to obtain available hearing dates. After you have available dates, please contact opposing counsel to obtain a date that is agreeable to all parties. Once you have an agreed date, fill that date in on your Order Setting and forward both your Motion and Order, along with a statement that the date is an agreed date, to the Court Coordinator for entry with the Court.***

***THE DATES PROVIDED ARE NOT CONFIRMED UNTIL THE ORDER SETTING IS RECEIVED AND SIGNED BY THE COURT.***

***If setting a case for jury trial, an Agreed Scheduling Order shall be submitted to the Court. All Parties shall agree on the Scheduling Order and only in the event said agreement cannot be reached shall the parties set a hearing before the Court to enter a Scheduling Order.***

B. REQUEST FOR SETTINGS - NON-JURY CONTESTED CASES:

Non-Jury Trial

1. Request for Setting

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Coordinator **at the Kerr County Office**. The party requesting a setting should not file the Request for Setting with the Clerk. The contents of the Request for Setting shall be the same as a Request for Setting for jury trial except for item c.

2. Order Setting

The same procedure will be followed as for Jury Trial.

a. A setting will be made only in response to a proper written Request for Setting.

3. Failure to Agree on Setting

a. If the parties fail to agree on a hearing date, the Court will set matters for trial based on the Court's schedule.

C. DISMISSAL DOCKET; INVOLUNTARY DISMISSAL:

Dismissal for Want of Prosecution.

If no action is taken by a party seeking affirmative relief in non-family civil matters within nine (9) months directed toward a trial on the merits, the Court will proceed to dismiss the case for want of prosecution in accordance with Rule 165a, R.C.P. Contested family law matters will be subject to DISWOP after 180 days. Uncontested family law matters will be subject to DISWOP after 90 days if no affirmation action is taken.

Failure of counsel for a party seeking affirmative relief to appear for a pre-trial or preliminary hearing, particularly if there has been a previous FTA may result in a DISWOP.

D. UNCONTESTED AND DEFAULT MATTERS:

1. When requesting a setting for uncontested divorces, agreed divorces, defaults, name changes or adoptions, you do not need to send an Order Setting. These matters can be set over the phone by contacting the Court Coordinator.

2. When a case is heard out of county, but within the district, it is the attorneys responsibility to transport the case file to the Judge in the County for which the hearing will be held. The attorney shall contact the District Clerk in the county for which the case is filed to let them know they will be picking the file up to transport it to another county for hearing. It is the attorney's responsibility to return the file to the District Clerk's Office the same day, unless prior arrangements are made with the District Clerk.

E. TEMPORARY RESTRAINING ORDERS AND PROTECTIVE ORDERS:

1. An application for a Temporary Restraining Order and/or Protective Order, to be granted without notice to the adverse party, will be considered only upon the applicant's verified complaint or affidavit accompanying the application, and, except for an 83.06 Family Code Motion, no testimony will be heard. No Temporary Restraining Order or Protective Order will be granted without notice to the adverse party unless the applicant's verified complaint or affidavit accompanying the application contains "specific facts," as required by Rule 680, T.R.C.P., and "a plain and intelligible statement of the grounds for such relief," as required by Rule 682, T.R.C.P. No such Temporary Restraining Order shall be granted upon a complaint or affidavit containing mere conclusions, even if verified.

2. The "Standing Order Regarding Property and Conduct of Parties in Divorce and Suits Affecting the Parent-Child Relationship" attached hereto as Appendix 1, is to be attached by counsel to the original citation in all suits of divorce and suits affecting the parent-child relationship. The Order attached as Appendix 1 will remain in effect throughout the pendency of a suit unless specifically modified or set aside by the Court.

   Ex Parte Orders in family law matters must meet the requirements of Section 11.11 and 71.15 of the Family Code.

F. 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:

1. To the best of counsel's knowledge, the party against whom the relief is sought is not represented by counsel; or

2. If the party against whom the relief is sought is represented by counsel, that (a) such counsel has been notified of the application and does not wish to be heard by the Court thereon; or (b) 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.

## *CRIMINAL CASES*

A. GRAND JURY:

The Court will be present in the following counties of the district on the following dates for the purpose of having grand juries in session:

| | |
|---|---|
| Kerr County (198th) | - 4th Tuesday of each month |
| Bandera County | - 2nd Tuesday of each month |
| Kendall County | - 1st Monday of each month |
| Gillespie County | - 2nd Monday of each month |
| Kerr County (216th) | - 3rd Monday of each month |

(The dates may vary as determined by the District Attorney and Grand Jury Foreman).

B. CONTINUANCES/RESETTING/POSTPONEMENT:

1. Continuances

All continuances shall be in accordance with Arts. 29.01 through 29.13, C.C.P. and Art. Tx. Civil Prac. & Rem. Code 30.003.

Non-agreed continuances filed less than seven (7) days prior to hearing are presumptively DENIED and the filing party should not rely on the Continuance Motion without a signed Order.

2. Agreed Continuances

If you have a continuance that is agreed to by all parties, please contact the Court Coordinator and advise her of this and she will consult with the Judge prior to removing the matter from the docket. **Continuances are not automatic upon agreement by the parties. Mere filing of a Motion for Continuance does not mean the continuance will be granted.**

3. Resettings

a. To obtain a resetting date, please contact the Court Coordinator for available dates, then contact opposing counsel to obtain a date that is available and agreeable to all counsel.

b. Send an Order Resetting with a cover letter advising the Coordinator of the date the parties have agreed on.

C. SETTINGS/SCHEDULING:

1. Settings

Criminal cases will be set for trial pursuant to a Scheduling Order or at the request of the District Attorney. Should a defendant desire a trial for which the District Attorney has not requested a setting, the case will be set in response to the defendant's request. A pre-trial hearing, as provided by Art. 28.01, C.C.P., will be conducted in each case prior to trial.

2. Continuances

There will be no summary or automatic "first continuances." All continuances shall be in accordance with Arts. 29.01 through 29.13, C.C.P. and Art. 30.003, Texas Civil Prac. & Remedies Code.

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.

b. 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 priority set forth in the 6th Judicial Regional Rules, Rule 10:

1. Criminal cases
2. Cases given statutory preference
3. Preferentially set cases, other than those given statutory preference
4. The earliest set case
5. Case with earliest filing date

D. PAYMENT OF COURT APPOINTED ATTORNEYS:

All court appointed attorneys shall provide the Court an itemized statement reflecting the number of hours spent in Court in representation of an indigent defendant and the number of hours spent out of Court representing said defendant.

1. An Order Paying Court Appointed Attorney should be attached to the itemized statement.
2. The itemized statement shall be presented to the Court concurrent with an agreed Plea.

E. STANDING DISCOVERY CONTROL ORDER

Both Courts have a Standing Discovery Control Order that applies in all criminal cases. A copy of this Order may be obtained through the District Attorney's Office.

Parties should not file Motions which duplicate the Standing Order.

## *FAMILY LAW CASES*

1. The trial of family law cases involving children may be given preference over the trial of other civil cases as determined by the Judge.
2. The attorneys in all contested hearings concerning support shall prepare complete written income and expense statements as to their respective clients and present same to the Court prior to the hearing.
3. In all contested cases involving the division of property where value of assets in dispute exceeds $250,000 the attorneys shall prepare a complete written inventory of the assets and liabilities of the marital estate and of the separate estate of their respective client and submit same to the Court prior to trial.

## *ALTERNATIVE DISPUTE RESOLUTION*

1. Policy

It shall be the policy of the 198th & 216th Judicial District Courts 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.

2. ADR Mandatory

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

3. 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. The Court may, in its discretion, forward an Order of Referral to Mediation to all parties.

4. 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 to proceed to trial on the merits.

## *ORDERS AND DECREES*

1. Reduction to Writing within Sixty (60) Days

Within sixty (60) days after rendition, announcement of the Court's ruling or announcements 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.

2. 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.

3. Procedure for Entry of Order

If counsel is unable to secure all opposing counsel's approval as to form, counsel may file a Motion for entry of the proposed judgment, order or decree and secure an agreed hearing hearing for the same, 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

## *RULES TO GOVERN FILINGS AND RECORDS*

All parties shall adhere to the December 13, 2013 Joint Supreme Court and Court of Criminal Appeals Order adopting rules to govern electronic filing. District Clerks shall maintain both paper and electronic versions of the documents unless otherwise directed by the Court.

## *GENERAL RULES*

The following rules apply to all cases:

1. District Clerks in the 198th & 216th District Courts shall maintain paper files of all Court cases filed in the 198th & 216th District Courts.

2. When setting or resetting a case for trial, pre-trial, etc., please contact the Court Coordinator for available dates. Then, contact all other counsel and obtain a date that everyone is available.

   a. Submit an Order Setting to the Court, with a Request for Setting when obtaining a trial date, or a letter when obtaining a pre-trial date, stating the date the parties have agreed to.

   b. If you cannot obtain a date that is agreeable to all counsel, Please contact the Court Coordinator and she will advise you on how to proceed regarding a hearing date.

   **ALWAYS ADVISE THE COURT IN YOUR REQUEST OR COVER LETTER THAT YOU HAVE CONTACTED THE OPPOSING COUNSEL AND THAT THEY ARE AVAILABLE FOR HEARING ON THE DATE YOU HAVE REQUESTED.**

3. When setting or resetting a case for trial, pre-trial, etc., please advise the Court the estimated time you will need for the hearing and whether or not the case has been mediated.

4. The Court will set your case for hearing as quickly as possible. In an effort to do so, the Court may set your case in another county within the District, other than the county the case is filed in. It is the obligation of the attorneys to transport the Court's file to the county where the hearing will be held and then to see that it is returned to the appropriate Clerk's Office with which it is filed.

5. If for any reason, you have to cancel a hearing, please contact the Court Coordinator as soon as possible.

6. Hearings conducted by telephone conference call are acceptable in some cases and subject to facility limitations.

7. Any attorney practicing in the 198th & 216th Judicial District Courts shall have access to a fax machine that will be operative 24 hours a day, seven days a week. Said number shall be provided to the Court, the Clerks of Court, and all opposing counsel. All communications between the Courts and attorneys via fax to the numbers provided shall be deemed received. This does not include filing documents with the District Clerks.

The foregoing rules of Practice are promulgated pursuant to rule 3A, R.C.P., and a copy of same has been furnished to the Supreme Court of Texas.

SIGNED AND ORDERED FILED in the Minutes of the Court in each County of the District this the 20 day of January, 2015.

M. REX EMERSON
Presiding Judge
198th Judicial District of Texas

N. KEITH WILLIAMS
Presiding Judge
216th Judicial District of Texas