

**LOCAL SMITH COUNTY RULES OF CIVIL TRIAL
JUDICIAL DISTRICT COURTS AND COUNTY COURTS AT LAW
SMITH COUNTY, TEXAS**

The following local rules of civil trial are adopted for use in non-family law civil trials in the 7th Judicial District Court, 114th Judicial District Court, 241st Judicial District Court, 321st Judicial District Court, County Court at Law, County Court at Law No. 2, County Court at Law No. 3 and the County Court of Smith County, Texas.

It is ORDERED that these rules shall be published, in a manner reasonably calculated to bring the rules to the attention of attorneys practicing before the Smith County courts, on or before November 23, 1998.

These rules shall be interpreted in a manner consistent with the Texas Rules of Civil Procedure and any rule of the First Administrative Judicial Region.

The Smith County District Clerk and the Smith County Court Clerk shall make the Local Smith County Rules of Civil Trial available, upon request, for review to citizens and members of the bar.

It is ORDERED that these rules are effective beginning on April 1, 1999 or upon their approval by the Texas Supreme Court pursuant to T.R.C.P.3a, whichever occurs later.

RULE 1. The objective of the Rules of Civil Trial 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 as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, the rules shall be applied to ensure that, so far as reasonably possible, all matters are brought to trial or final disposition in conformity with the rules established by the Texas Supreme Court and laws of the State of Texas.

RULE 2. MOTIONS.

2.1 Certification of Conference. Before filing a motion, counsel for a moving party must confer or certify that a reasonable effort has been made to confer with the counsel, if known, of all parties affected by the requested relief to determine whether or not the contemplated motion will be opposed. Such a conference is required for all motions except motions to dismiss the entire action, motions to quash, motions for protection, temporary restraining orders, motions for judgment on the pleadings, motions for summary judgment, and motions for new trial.

The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought.

If a motion to compel or for sanctions is sought, the Court will not consider the motion unless the movant certifies that the movant has conferred with or made a reasonable effort to confer with opposing counsel in an effort to resolve the dispute without the necessity of Court intervention and that the attempt has failed.

2.2 Form. Motions shall be in writing and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument. All pleadings, motions, orders and other papers filed with the Court shall be consecutively numbered at the bottom of the page.

2.3 Submission. Motions shall state a date of submission at which time the Motion will be considered without a hearing, unless both a request for oral argument and a response are filed. The movant shall select the date of submission which shall be no sooner than the Monday following fifteen (15) days from date of filing, except on leave of Court. The motion will be submitted to the Court for ruling on that date or later.

Submission date on motions for summary judgment shall be no sooner than the expiration of thirty (30) days from the date of filing of the motion for summary judgment. A response, if any, to a motion for summary judgment shall be filed and served seven (7) days before the submission date pursuant Tex. R. Civ. Proc. Rule 166a. However, the Court will not actually hear oral argument on a motion for summary judgment unless (i) properly requested pursuant to Local Rule 2.7., and (ii) the Court determines that oral argument will substantially aid the Court in ruling on the motion for summary judgment. Counsel are encouraged to include citations and copies of any cases believed to be controlling as part of the motion or response.

2.4 Opposed Motions. All opposed motions must include either (i) a certificate which states that a conference was held and indicates the date of the conference and the attorneys who conferred, or (ii) a certificate explaining why it was not possible to hold the conference. Each contested motion must be accompanied by a separate proposed order and by a brief setting forth the movant's contentions of fact and law, unless a brief or proposed order is not required.

The clerk of the court is directed not to submit opposed motions to the judge unless there has been compliance with this rule.

2.5 Unopposed Motions. All unopposed motions must be accompanied by agreed proposed orders, signed by the parties or their attorneys. Motions without opposition and their orders must be captioned "Agreed."

2.6 Responses and Replies. Failure to respond to a motion is deemed to be a representation of no opposition unless objections are already on file. Responses to motions must be filed at least two working days before the date of submission, be in writing and supported by authority, and be accompanied by a separate form order denying the relief sought, unless the Texas Rules of Civil Procedure provide otherwise.

2.7 Oral Argument. The motion or response shall include a request for oral argument, if desired, in the requesting party's motion or response. A request for an oral argument alone is not a response under Rule 2.6.

2.8 Motions for Continuance or Postponement.

- (1) All Motions for Continuance or Postponement must be filed in writing with the Court at least seven (7) days prior to the hearing in the cause, except for good cause shown, and a copy properly served upon opposing counsel or unrepresented opposing parties.
- (2) No request to continue, pass, postpone or reset any trial, pretrial or other hearing shall be granted unless counsel for all parties involved consent, or unless all parties not joining in such request or their counsel have been notified and have had opportunity to object. It is discretionary with the Court as to whether or not to grant any requested continuance or postponement even if such request is unopposed.
- (3) All second or subsequent Motions for Continuance must be personally approved and signed by the client for whom a postponement is requested, or if the client is unavailable or out of state, counsel may certify that his client has been mailed a copy of the motion by certified mail, return-receipt requested with a cover letter stating in a separate paragraph in bold face type, **The postponement is being sought by (attorney's name) for (the party's name).**

RULE 3. PRETRIAL.

3.1 Civil Case Joint Questionnaire

The Court orders that the Civil Case Joint Questionnaire, provided by the Smith County District or County Clerk's office, be completed and filed by the Plaintiff after conferring with all counsel and pro se parties. The questionnaire must be filed within ninety (90) days of the date of the filing of the case.

3.2 Discovery Control Plan and Scheduling Order. The Court will enter a discovery control plan and scheduling order which will control the course of litigation and may not be amended without leave of Court.

Level 1 Discovery Control Plan shall apply to any suit as provided by 190.2 of the Texas Rules of Civil Procedure.

Level 2 Discovery Control Plan shall apply to any suit as provided by 190.3 of the Texas Rules of Civil Procedure.

The plaintiff or defendant may certify to the Court in writing at the time of the filing

of plaintiff's pleading or the defendant's answer that the litigation is complex and should proceed under a 190.4 (Level 3) Discovery Control Order. If the Court concurs, the Court will enter a scheduling order to accommodate complex litigation as provided by 190.4 of the Texas Rules of Civil Procedure.

The Court may modify a discovery control plan at any time and shall do so when the interest of justice requires or when required under 190.5 of the Texas Rules of Civil Procedure. The date for the discovery deadline may be extended by Agreed Motion signed by all parties, so long as the proposed extension does not adversely affect the other dates or deadlines on the Scheduling Order.

3.3

Exhibits.

(1) Each counsel will file a list of all potential exhibits to be offered, provide a copy to opposing counsel, and make all such exhibits available for examination by opposing counsel, and do so before the Pre-Trial Conference or at least seven (7) days before trial, whichever occurs first. The only exceptions to this rule are rebuttal exhibits which cannot be anticipated. Designation of substantially more documents than an attorney or party reasonably expects to actually introduce at trial will subject the offending party to sanctions and/or contempt of Court. Failure to comply with this rule will subject the offending party to sanctions and/or contempt of Court.

(2) A party's production of a document in response to written discovery is self-authenticated as provided by Section 193.7 of the Texas Rules of Civil Procedure. Any counsel requiring authentication of any other exhibits not covered by Section 193.7, must so notify in writing the offering counsel at least fifteen (15) days before trial or pre-trial conference, whichever is earlier, except on leave of Court for good cause. Failure to do so is an admission of authenticity.

(3) Any other objections to admissibility of exhibits must, where possible, be made at least fifteen (15) days before trial or pre-trial conference, whichever is earlier, except on leave of Court for good cause, and the Court notified in writing with copies to all counsel accompanied by supporting legal authorities and copies of the exhibits in dispute. All objections will normally be ruled upon by the Court prior to trial.

(4) The offering party must pre-mark and pre-number his or her own exhibits prior to trial and must provide a list of exhibits to be offered at trial to the court reporter before jury selection.

(5) All exhibits will be offered and received in evidence as the first item of business at the trial.

3.4

Joint Pretrial Order.

(1) Filing. A joint pretrial order shall be filed by the Plaintiff's attorney at least fifteen (15) days before the scheduled date of trial unless specified otherwise in the

Scheduling Order. If an attorney for either party does not participate in the preparation of the joint pretrial order, the opposing attorney shall file a separate pretrial order with an explanation of why the joint order was not submitted.

(2) Contents. The pretrial order must contain; (1) a summary of the claims and defenses of each party; (2) pending motions needing resolution; (3) a statement of the stipulated facts; (4) a list of the contested issues of fact; (5) a list of those legal propositions not in dispute; (6) a list of contested issues of law; (7) names and addresses of witnesses and each party shall designate whether the witness will testify by deposition or in person; subject to change only upon good cause affirmatively established to the Court; (8) a statement that settlement efforts have been exhausted; (9) an estimate of the length of trial; (10) the signature of each attorney; and (11) a place for the date and signature of the Court.

(3) Video Presentations. Attorneys proposing to use video presentations must present the page and line numbers to opposing counsel at the time assigned for the entry of the joint pretrial order. Objections by opposing counsel must be presented to the Court and the offering attorney prior to the joint pretrial conference. Any edited video depositions shall be presented for exhibition to opposing counsel to examine any piecemeal editing, relocation of testimony, exhibition out of context, etc. Opposing counsel shall be entitled to assert the rule of Optional Completeness and have portions of the deposition proposed by opposing counsel or the entire deposition introduced after the initial presentation unless counsel agree to have a single presentation whether edited or in its unedited entirety. Any objections to the proposed video depositions shall be made prior to the pretrial conference and rulings will be made by the Court at the pretrial conference so that the video presentation of a party may be made uninterrupted.

(4) Objections. Objections to any matters set forth in the pretrial order shall be filed with the Court prior to the pretrial conference. All such objections will be ruled upon by the Court at the pretrial conference.

3.5 Exclusion. The parties may file, within twenty (20) days of the date of the scheduling order, an agreed motion and proposed order requesting exclusion of certain cases, i.e. collection suits, worker's compensation, simple car wrecks, slip and fall, etc., from the requirements of a joint pretrial order and pretrial conference and the Court will consider and rule upon such motion.

3.6 Pretrial Conference. A pretrial conference will be held according to the scheduling order entered by the Court which will normally be ten (10) days prior to the case's trial setting or at such other dates as set by the trial Court.

RULE 4. TRIALS.

4.1 Manner of Setting. Cases shall be set for trial by order of the Court.

4.2 Date of Setting. Cases shall be set for trial for a date certain. If a case is not tried by

the second Friday after the date it was set, whether because of a continuance or because it was not reached, the Court shall reset the case to a date certain. Unless all parties agree otherwise, the new setting must comply with all requisites of T.R.C.P. 245.

- 4.3. Witness Attendance. Each party is responsible for the attendance at trial of its proposed witnesses, and may not rely on another party's list for attendance of a witness. Witnesses under subpoena are not affected by this rule.
- 4.4 Witness Numbers. Each party or parties with the same alignment on a disputed issue will be allowed up to two (2) witnesses on any disputed issue, such as expert witnesses, character witnesses, etc., except on good cause shown.

RULE 5. SUBMISSION OF ORDERS, DECREES AND JUDGMENTS.

Within ten (10) days after rendition of an order, an agreed order, decision, judgment or an announced settlement by counsel, counsel for the moving party shall cause, unless ordered otherwise, all such orders, decisions, or judgments, or documents to be reduced to writing and delivered to opposing counsel with an appropriate signature line to allow opposing counsel to acknowledge "approved as to form" or "approved as to form and substance," as appropriate. Opposing counsel must then return such order, decision, judgment, or document to the originating counsel within ten (10) days either with signature subscribed thereon or with objections in writing. Once attorneys for all parties have signed the document, it should be forwarded to the court coordinator for signature by the trial judge. If objections to the form or the substance of the order are made, the moving counsel is required to either amend the order to alleviate the objections and resubmit it to opposing counsel or forward it to the Court with a request for a hearing. If a response as required herein is not provided within ten (10) days of receipt of the proposed order, originating counsel may present the order and evidence of opposing counsel's receipt to the Court for signature and rendition.

If either counsel or a party cause or require a hearing that a reasonable and prudent party or attorney in the same or similar circumstances would not have caused or required, the Court shall award attorney's fees against such party or attorney in favor of the other party including any reasonable fees or expenses incurred as a result of causing or requiring the hearing. If counsel for the moving party or alternate counsel ordered by the Court to prepare the order, decision, judgment or other document fail to comply with the provisions of this rule, the Court shall award attorney's fees against the failing party in favor of the other party for fees and expenses incurred reasonably by the other party's counsel in preparing the order or document. The Court may consider any requests for extensions of time under this rule for good cause shown only.

RULE 6. DISMISSAL DOCKETS.

The following cases are eligible for dismissal for want of prosecution pursuant to T.R.C.P. 165a:

- (a) Cases on file for more than 180 days in which no answer has been filed or is required by law;
- (b) Cases which have been on file for more than twelve (12) months and are not set for trial;
- (c) Cases in which any party seeking affirmative relief fails to appear for any hearing or trial of which the party has notice.

RULE 7. SETTLEMENT.

Counsel is to notify the Court immediately of settlements that obviate Court settings as unnecessarily summoned jury panels are disruptive to the Court and jurors.

RULE 8. VACATIONS OF COUNSEL.

An attorney may designate not more than four (4) weeks during the year as vacation, during which time he will not be assigned to trial or required to engage in any pretrial proceedings. **A separate written designation in each cause must be filed with the Court Coordinator at least 45 days in advance of the vacation period unless the case has been set for trial prior to counsel's vacation designation.** This rule operates only where lead counsel, as defined by T.R.C.P. 8 is affected, unless the Court expands coverage to other counsel.

If a case is set by the Court during the designated vacation period, counsel must timely file with the Court a written Motion for Continuance to bring to the Court's attention the filed vacation designation.

RULE 9. APPEARANCES.

Attorneys must make court appearances in person unless all matters to be considered in the hearing have been agreed by all parties and such agreement is reflected in a letter or fax, signed by all affected attorneys, to the Court through its court coordinator. If a fax is sent to manifest such agreement, the court coordinator should be notified by telephone when the fax is actually transmitted.

The Court may allow, upon request, counsel to appear by telephone conference call. This, however, is discretionary with each individual Court.

RULE 10. EFFECTIVE DATE.

These rules shall become effective upon their approval by the Texas Supreme Court pursuant to T.R.C.P.3a or April 1, 1999, whichever occurs later.

ORDERED AND SIGNED on this the ____ day of _____, 1999.

LOUIS B. GOHMERT, JR.

Judge, 7th Judicial District Court
Smith County, Texas

CYNTHIA STEVENS KENT

Judge, 114th District Court
Smith County, Texas

DIANE DEVASTO

Judge, 241st District Court
Smith County, Texas

CAROLE CLARK

Judge, 321st District Court
Smith County, Texas

THOMAS DUNN

Judge, County Court at Law
Smith County, Texas

RANDALL ROGERS

Judge, County Court at Law No. 2
Smith County, Texas

FLOYD GETZ

Judge, County Court at Law No. 3
Smith County, Texas

LARRY CRAIG

Judge, Smith County Court
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