

LOCAL RULES FOR THE 79TH JUDICIAL DISTRICT COURT

ARTICLE I. ATTORNEY *AD LITEMS*, GUARDIAN *AD LITEMS* AND *AMICUS* ATTORNEYS IN CIVIL CASES

A. QUALIFICATIONS, APPOINTMENT AND DUTIES

- 1.01. An attorney who desires to accept appointment as attorney *ad litem*, guardian *ad litem* or an *amicus* attorney must be a member of and in good standing with the State Bar of Texas. The attorney must have demonstrated proficiency and commitment in providing services as attorney *ad litem*, guardian *ad litem* or an *amicus* attorney. Additionally, attorneys who desire to accept appointments on behalf of incapacitated persons (as that term is defined under Texas Estates Code (TEC) Sec. 1002.017) must also be certified by the State Bar of Texas under TEC Sec.1054.201.

An attorney who desires to accept appointment as attorney *ad litem*, guardian *ad litem* or an *amicus* attorney shall comply with all requirements mandated by law to accept such appointments, including but not limited to the following:

- (a) An attorney who desires to accept appointment as attorney *ad litem* for a proceeding under Texas Family Code (TFC) Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), Subtitle E (Protection of The Child) shall also comply with the minimum continuing legal education requirements mandated by TFC Sec. 107.004(b) and (b-1); and,
 - (b) An attorney who desires to accept appointment as attorney *ad litem* for a parent under Texas Family Code (TFC) Sec. 107.013 shall also comply with the minimum continuing legal education requirements mandated by TFC 107.0131(1)(J).
- 1.02. Each attorney who desires to accept appointments as attorney *ad litem*, a guardian *ad litem* or *amicus* attorney shall submit a letter of intent to accept such appointments to the Court Manager for the county in which the attorney desires to accept appointments. The attorney must also specify the types of cases to which the attorney desires appointments under section 1.07 of these rules. If required by other provisions of these rules, the letter of intent must also be accompanied with any additional documentation that establishes the attorney is eligible for appointments under these rules.

- 1.03. The trial court shall comply with the provisions of the Texas Government Code (TGC) Sec. 37.004 for the appointment of an attorney *ad litem*, guardian *ad litem* or *amicus* attorney and shall maintain appointment lists in accordance with these provisions.
- 1.04. The trial court shall promptly inform the appointees of an appointment. Appointees may be informed by telephone, fax, email, in person or by any other means likely to give the appointee notice of the appointment.
- 1.05. In addition to duties mandated by law, individuals appointed shall make every reasonable effort to do the following from the date of appointment:
 - (a) contact and interview the client as soon as practicable; and,
 - (b) contact all parties or their legal counsel of record as soon as practicable to obtain all agreed upon discovery, if applicable, and discuss resolution of all disputed issues and claims.
- 1.06. Individuals appointed shall represent the client until the case has been disposed of or dismissed, appeals are exhausted, or the appointed individual is relieved of duties by the trial court.
- 1.07. The trial court shall establish four (4) appointment lists as follows:
 - (a) Torts;
 - (b) Suits by a Governmental Entity to Protect the Health and Safety of a Child;
 - (c) Enforcement Actions in Suits Affecting the Parent/Child Relationship Cases; and,
 - (d) All other cases.

The trial court shall prepare the appointment lists of individuals eligible and qualified to accept appointments as attorney *ad litem*, guardian *ad litem* or *amicus* attorney on or before the first day of January of each year and shall post the list at the courthouse of the county in which the court is located and on any Internet website of the court.

**B. COMPENSATION AND EXPENSES OF APPOINTED ATTORNEYS
PAID BY TRIAL COURT**

- 1.20. In cases where the Court is required to provide for the compensation of an appointed attorney *ad litem*, guardian *ad litem* or *amicus* attorney, attorneys shall be compensated at an hourly rate set by the Court. Due to the complexity and/or uniqueness of a given cause, the Court may award hourly compensation more than the established fee in the interest of justice. Attorneys shall be compensated in accordance with the following fee schedule:

Flat Fee Schedule:

CPS:

Adversary, Status, Permanency (before and after final order), and Final hearings:	\$375.00
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Appeal:	Itemize
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Child Support:

Enforcement, Final, Compliance and Deferred Commitment hearings:	\$375.00
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Appeal:	Itemize
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Mental Health:

Probable Cause, Commitment and Modification hearings:	\$375.00
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Appeal:	Itemize
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<u>Hourly fees for vouchers that are itemized:</u>	\$125.00-\$225.00
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The Flat Fee Schedule is based upon the amount of time typically expended by an attorney on a routine case that does not involve unique factual or legal issues. Although itemization is not required on a request for a payment of a flat fee, attorneys are still advised to maintain a detailed record involving the legal services provided. Attorneys are reminded that it is the Court's responsibility to ensure that indigent parties are provided adequate legal representation as provided by law. In the event of a complaint is made against an appointed attorney regarding legal representation, the Courts will be requesting this type of information from the attorney.

(Sec. 1.20 amended Aug. 25, 2023, to become effective on Sep. 1, 2023; increasing attorney fee compensation.)

- 1.21. Except as provided by Rule 1.22, prior court approval is required for reimbursement of investigative, expert and other litigation expenses. Requests for approval of litigation expenses shall be filed in the trial court setting forth good cause for the incurrence of these expenses. The request may be submitted *ex parte*. The request must include:
 - (a) a description of the type of investigation to be conducted, the type of expert to be retained, or the type of any other litigation expense;
 - (b) specific facts that show that the investigation will result in discovery of admissible evidence, that the services of an expert are reasonably necessary to assist in the preparation of the client's case, or the incurrence of any other litigation expenses is necessary to adequately represent the client; and,
 - (c) an itemized list of anticipated expenses for each investigation, expert or other litigation related expense.
- 1.22. Appointed attorneys, both trial and appellate, shall be reimbursed for reasonable and necessary incidental expenses such as copying, telephone, mileage, etc., incurred without prior approval of the Court. Appointed attorneys will not be reimbursed for mileage for travel to and from Court hearings and trials.
- 1.23. Not later than thirty (30) days after the case is disposed by the trial court or all appeals are exhausted, the appointed attorney shall prepare and submit to the trial court a voucher for the payment of fees and expenses on a form provided by the trial court. The voucher shall include all services provided to a single client, regardless of the number of cases disposed. In cases in which final disposition may be prolonged or which require a significant amount of the attorney's time, the Court may consider periodic requests for payment.
- 1.24. The trial court shall determine the reasonableness of the amount requested based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel. If the trial court disapproves the requested amount, the trial court shall make written explanation for such findings.
- 1.25. If the trial court disallows part or all of any fees or expenses submitted, appointed counsel may file written objections to the trial court's action and request a hearing to show the trial court reasons that justify the amount requested on or before the

expiration of thirty (30) days from the day that the trial court disallowed the fee or expense.

THE APPOINTED COUNSEL MUST TIMELY REQUEST A HEARING UNDER THIS RULE. IF THE APPOINTED COUNSEL FAILS TO TIMELY REQUEST A HEARING, THE APPOINTED COUNSEL SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTIONS TO THE TRIAL COURT'S AWARD OF ATTORNEY *AD LITEM*, GUARDIAN *AD LITEM* OR *AMICUA* ATTORNEY FEES OR EXPENSES.

C. COMPENSATION AND EXPENSES OF ATTORNEY *AD LITEMS*, GUARDIAN *AD LITEMS* AND *AMICUS* ATTORNEYS

- 1.30. Compensation of attorney *ad litem*s, guardian *ad litem*s and *amicus* attorneys that are not required to be paid by the trial court shall be in accordance with the provisions of Texas law.

D. REMOVAL AND REINSTATEMENT FROM APPOINTMENT LIST

- 1.40. An attorney appointed as attorney *ad litem*, guardian *ad litem* or *amicus* attorney under these rules may be removed from the appointment list if the attorney:
- (a) fails to comply with the duties required of attorneys imposed by the provisions of these rules;
 - (b) submits a claim for services not performed or expenses that have not been incurred;
 - (c) fails to maintain compliance with each of these rules;
 - (d) has been found by a Court to have provided ineffective assistance;
 - (e) has violated a rule of professional responsibility;
 - (f) has been convicted of or received a deferred adjudication for any criminal offense, other than an offense punishable by a fine only;
 - (g) is under indictment or being formally charged with a criminal offense, other than an offense punishable by a fine only; and,
 - (h) for any good cause shown to the Court.
- 1.41. Prior to removing an attorney from the appointment list, the Court shall notify the attorney in writing of the grounds that form the basis for the removal and provide the attorney an opportunity to respond. The attorney may file a response to the

grounds for removal on or before the expiration of ten (10) business days from the date of the receipt of the Court's notice under this rule.

- 1.42. An attorney who has been removed from the appointment list may apply for reinstatement once the circumstances that led to the removal have been rectified.

ARTICLE II. RULES OF ADMINISTRATION BETWEEN THE 79TH JUDICIAL DISTRICT COURT AND THE JIM WELLS COUNTY COURT AT LAW

- 2.01. All civil cases within the concurrent civil jurisdiction of the 79th Judicial District Court sitting in Jim Wells County and the Jim Wells County Court at Law shall be filed with the District Clerk.
- 2.02. The District Court and the County Court at Law shall be in session at least once per week and at all other intervals that will result in efficient court administration.
- 2.03. The Judges of the District Court and County Court at Law shall coordinate any plans for judicial vacation, sick leave, attendance at educational programs, and similar matters to always ensure availability of the Courts to the public.
- 2.04. The following cases within the concurrent jurisdiction of the 79th Judicial District Court sitting in Jim Wells County and the Jim Wells County Court at Law shall be assigned to the Jim Wells County Court at Law by the Jim Wells County District Clerk:
 - a. All cases under Titles I, II, IV and V of the Texas Family Code;
 - b. All civil cases in which the matter in controversy exceeds \$500 but does not exceed \$250,000. If a party (1) fails to plead an amount in controversy that would be within the jurisdiction of the Jim Wells County Court at Law or (2) fails to state in the pleading that the amount in controversy is within the jurisdictional limits of the Jim Wells County Court at Law, then the District Clerk shall assign the case to the 79th Judicial District Court; and,
 - c. All appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

This rule applies to all cases filed in Jim Wells County, those transferred to Jim Wells County on a change of venue, and those cases in Jim Wells County ordered reassigned by a recusing or transferring Judge. Nothing herein will prevent Judges from exchanging benches, sitting for another Judge, or transferring cases between themselves, when allowed by law or these local rules.

- 2.05. In the event of the assignment of a case to a Court that does not have subject matter jurisdiction, the Judge shall transfer, either *sua sponte* or on the motion of any party, said case to Court with subject matter jurisdiction if venue is proper in Jim Wells County.
- 2.06. A civil case may be transferred from one Court to another having jurisdiction:
- (1) upon motion of a party, for good cause shown;
 - (2) in the event the Judge is disqualified to hear⁴ or recuses himself or herself from hearing the case;
 - (3) when the case should be transferred in the interest of justice;
 - (4) to facilitate docket control as provided by law or by Court rules; or,
 - (5) when at least one common party and substantially similar questions of fact or law appear in each case.

If a case is transferred under (5) above, the case having the higher cause number shall be transferred to the Court having jurisdiction over the case with the lowest cause number.

- 2.07. Cases assigned to a specific Court shall remain pending in that Court until final disposition, provided that any case may be transferred to another Court by Order of the Judge of the Court in which the case is pending with the consent of the Judge of the Court to which the case is transferred.
- 2.08. The Judge of the District Court and the Judge of the County Court at Law may act for the other in any case in which the Courts have concurrent jurisdiction regardless of which Court a case was assigned.

ARTICLE III. REMOTE PROCEEDINGS

- 3.01. Civil and criminal court proceedings may be held via teleconferencing using the Zoom application as provided by Texas Rules of Civil Procedure Rule 21d, Texas Code of Criminal Procedure Art 27.18, or any other applicable law.
- 3.02. All setting requests for non-jury court proceedings to be conducted by teleconference shall be submitted as provided by Rule 4.01 below.
- 3.03. Exhibits for teleconference court proceedings. It is the intent of this rule that all evidence shall be submitted in an electronic format suitable for electronic filing and storage. The party who offers the exhibit is responsible for submitting the exhibit in the format required by this rule. Exhibits must not be password protected, encrypted, or protected by rights management.

All exhibits shall be in the proper electronic format and provided to the Court Reporter prior to the commencement of the trial. Each exhibit shall be contained in a single file (i.e., one exhibit per file name).

Exhibits a party intends to offer into evidence and all other documents a party intends to present to the Court for consideration shall be:

- (a) placed in a Dropbox Shared Folder before the court proceeding no later than 4:00 p.m. the day before the scheduled court proceeding. If the date falls on a Monday, the exhibits shall be placed in the Dropbox folder no later than 4:00 p.m. the previous Friday;

A party or a party's attorney must contact the following to be included on a Dropbox Shared Folder and also provide the date of hearing, cause number, and style for a requested shared folder:

Sonia Trevino, Official Court Reporter
sgtrevino@co.jim-wells.tx.us

- (b) formatted as follows:
 - (1) documents must be in 300 dpi PDF searchable format;
 - (2) photographs must be of a resolution of not less than 2,048 x 1,536 pixels (approximately 3 megapixels). Grayscale images are encouraged;
 - (3) audio and video files that can be played with the current version, including any extensions, of: (i) Windows Media Player, (ii) Apple Quicktime, or (iii) VideoLAN VLC MediaPlayer, must be submitted in its original format. If an audio/video file cannot be played on one

of the three players, it must be converted by the attorney/party presenting the audio/video file at trial to a format that can be played on one of the players listed. The converted video must then be submitted electronically;

- (c) clearly labeled with the exhibit number (utilizing Arabic numerals in numerical order), cause number and provide a title for the exhibit (e.g., ABC Hospital Records for Plaintiff Jane Doe, Photographs of Accident Scene, etc.);
 - (d) individually uploaded to the Dropbox Shared Folder; and,
 - (d) Bates stamped or numbered at the bottom, right corner of each page if the exhibit contains more than one page. If an exhibit contains multiple photographs marked as a single exhibit number, each photograph shall be marked by a letter of the alphabet in alphabetical order.
- 3.04. Attorneys, parties, witnesses, and other attendees shall attend the video court proceeding through Zoom by using a desktop computer, laptop, tablet, iPad, or smartphone that has video and audio capability.
- 3.05. All witnesses shall be alone in the physical room where they are testifying. The witness, prior to testifying and at the conclusion of testimony, at the request of the Court, shall scan the room with his or her camera to ensure that this rule is complied with. All electronic devices, other than the webcam being used to broadcast the Court's proceedings, shall be turned off. Attorneys or other interested parties shall not be allowed to pass the functional equivalent of notes by electronic means to the witness while testifying.
- 3.06. The attorney calling the witness shall be responsible for ensuring that the witness has a separate video and audio source. Attorneys shall be prohibited from sharing a connection with a witness. It shall be the responsibility of the attorney offering the witness to provide the link to the court proceedings and that the witness has access to all exhibits to which the witness may provide testimony.
- 3.07. All attorneys, parties, witnesses, and other attendees shall download and familiarize themselves with the Zoom software at www.zoom.us prior to all video court proceedings.
- 3.08. If a party to the court proceeding is *pro se* and does not have access to electronic equipment that is necessary to attend the video court proceeding, that party must contact the appropriate court, at least seventy-two (72) hours in advance of the scheduled court proceeding. The court will make appropriate arrangements so that the *pro se* party can attend and participate in the court proceedings.

The District Court may be contacted at:

Jim Wells County: Tel. No.: 361-668-5718
email: districtcourt@co.jim-wells.tx.us

Brooks County: Tel. No.: 361-325-5604, ext. 183
Email: acarbajal@co.brooks.tx.us

- 3.09. All court proceedings shall be televised live on YouTube. These proceedings may be viewed by the general public on the following YouTube channels:

<https://www.youtube.com/channel/UC90iekrRu11mlv0KxJyNDYw>

NOTICE

UNDER THE OPEN COURTS PROVISION OF THE TEXAS CONSTITUTION, ALL COURTS ARE REQUIRED TO MAINTAIN PUBLIC ACCESS. IN GENERAL, COURT PROCEEDINGS ARE PRESUMPTIVELY OPEN TO THE PUBLIC IN TEXAS STATE COURTS. TO COMPLY WITH THIS PROVISION, LIVE PROCEEDINGS WILL BE BROADCAST ON YOUTUBE LIVE. HOWEVER, RECORDING THESE PROCEEDINGS IS STRICTLY PROHIBITED. PARTICIPANTS AND VIEWERS ARE HEREBY ADMONISHED THAT VIOLATORS ARE SUBJECT TO THE COURT'S CONTEMPT POWERS. THE PUNISHMENT FOR CONTEMPT OF A COURT ORDER IS A FINE OF NOT MORE THAN \$500, OR CONFINEMENT IN THE COUNTY JAIL FOR NOT MORE THAN SIX (6) MONTHS, OR BOTH SUCH A FINE AND CONFINEMENT. (TEXAS GOVERNMENT CODE SEC. 21.002).

- 3.10. All court proceedings conducted by videoconferencing are courtroom proceedings and are to be treated as if all participants were physically present in the courtroom. All participants in court proceedings shall comply with all rules of decorum established by the courts.

ARTICLE IV. MISCELLANEOUS PROVISIONS

- 4.01. Settings For Non-Jury Court Proceedings: Settings for non-jury court proceedings for civil and criminal cases may be set by the Court *sua sponte* or upon request to the Court Manager. Such a request shall be made by the requesting party utilizing the Setting Request Form provided on the Court's website. A party seeking a setting for a temporary injunction hearing (including those where a temporary restraining order is being requested) must contact the Court Manager for a hearing date. Pre-trial hearings in criminal cases will be scheduled and conducted in accordance with Texas Code of Criminal Procedure Art. 28.01.

- 4.02. Civil Jury Trial Settings: Civil jury trial settings may be requested by submitting a Setting Request Form requesting a Docket Control Conference. All Docket Control Conferences shall be set by the Court and shall be conducted telephonically by the Court Manager with all parties or their legal counsel participating.
- 4.03. Approvals for Court Orders and Judgments: All proposed orders or judgments concerning rulings of the Court in civil cases shall be submitted to opposing counsel or *pro se* party for approval as to form only. All signatures must be original. An attorney may sign on behalf of another attorney with a notation that the order was signed "with permission" of said attorney. If approval cannot be obtained within seven (7) business days, the parties may submit proposed orders directly to the Court for consideration. The transmittal correspondence to the Court shall include:
- (a) the date on which the proposed order was submitted to opposing counsel or *pro se* party and the manner of transmittal,
 - (b) a statement as to whether opposing counsel or *pro se* party has communicated with counsel concerning the proposed order, and
 - (c) if communication was had, a summary of the contents of said communication.
- 4.04. Summary Judgment: All hearings on Motions for Summary Judgment shall be by submission only.
- 4.05. Exhibits: Counsel shall meet before commencement of trial or a court proceeding and, if possible, reach an agreement concerning the admissibility of exhibits. Prior to the trial or court proceeding, all exhibits shall be marked numerically, and an exhibit list shall be furnished to the Court reporter. Exhibits must be clearly marked on the front of the exhibit and include the cause number. If an exhibit consists of more than one page, each page shall be Bates stamped or numbered. All Sensitive Data, as defined in Rule 21c of the Texas Rule of Civil Procedure and Rule 4.1 of the Rules Governing Electronic Filing in Criminal Cases, contained in exhibits or witness statements shall be redacted prior to admission into evidence.

All video and/or audio exhibits which contain a statement made by a party or witness shall be transcribed by the party offering same and a copy of the transcription shall be provided to all opposing parties in a timely manner. In criminal cases, transcriptions of video and/or audio statements by a party or a witness shall be made and disclosed in accordance with the Texas Code of Criminal Procedure.

4.06. Courtroom Decorum: All persons in the Courtroom shall be attentive to the proceedings and cause no distraction. The following is hereby prohibited in the Courtroom unless authorized by the Court:

- (a) Talking unless involved in a matter presently being heard by the Court;
- (b) Sitting on railings, tables, desks, chair arms, propping feet on furniture, or fixtures, or leaning on the Court's bench;
- (c) Sleeping, reclining, or slouching in Courtroom seats;
- (d) Possession or consumption of beverages, food, chewing gum, and candy;
- (e) Use of tobacco products;
- (f) Use of communication devices, computers, recording devices, etc. (All such devices must be turned off unless authorized by the Court);
- (g) Wearing attire or accouterments that contain any commercial or campaign advertising that may create a bias or prejudice for or against a party or participant in a proceeding before the Court, or that may disrupt the orderly proceedings of the courtroom;
- (h) Gestures, facial expressions, sounds, signs, or other actions indicating approval or disapproval of any proceedings should be avoided; and,
- (i) Reading newspapers, magazines, books, etc.

All persons in the courtroom (including proceedings conducted remotely) shall be attired in a manner reflecting the dignity of the Court. All attorneys shall be dressed in appropriate business attire (blue jeans, running shoes, etc. are not business attire). All male attorneys must wear either a suit or blazer and slacks with a tie. All female attorneys must wear either a dress, full length pants or skirt with blouse or other appropriate professional attire. All parties, witnesses and spectators shall be dressed appropriately. Shorts, beachwear, flip flops, and other similar recreational clothing is strictly prohibited.

Attorneys shall address each other formally and without familiarity. The use of first names shall be avoided.

The Presiding Judge of the 79th Judicial District Court of Texas establishes these rules and procedures for the 79th Judicial District Court.

Signed on the date indicated below to be effective on January 1, 2024.

Date:

1/8/2024



Richard C. Terrell
Judge Presiding
79th Judicial District Court