

LOCAL RULES - FOR THE JUSTICE OF THE PEACE COURTS POLK COUNTY, TEXAS EFFECTIVE JANUARY 1, 2023

1 GENERAL

1.1 Objective

These rules are put into effect to provide for the fair, impartial, and prompt disposition of matters properly before the Justice Courts of Polk County.

1.2 Scope

These rules govern cases filed in the Justice Courts of Polk County, Texas. They are put into effect pursuant to Section 27.061 of the Texas Government Code.

1.3 Jurisdiction

The Justice Courts of Polk County hear:

(a) Civil debt/small claims cases in which the amount in controversy is \$20,000.00 or less

(b) Eviction cases, both residential and commercial, including writs of re-entry.

(c) Criminal offenses which are fine only, both traffic and Class C.

(d) Cases involving animal cruelty and neglect.

(e) Peace Bonds

(f) All other cases permissible under Texas law, including Section 27.031-27.034 of the Texas Government Code.

1.4 Organization

Each Justice Court in Polk County has a specific geographical area of jurisdiction, which is generally described as follows: Precinct One, Precinct Two, Precinct Three and Precinct Four. Each court has its own clerks, which are responsible for setting cases on the individual docket of their court.

1.5 Calendar

Each Justice Court will keep a docket of scheduled hearings and trials. Days and hours of operation will be posted on the doors of the court, as well as scheduled closings for holidays and/or trainings. The elected judges will generally be available as indicated by these rules and the calendar. However, when a judge is not available due to vacation, at a judicial or educational conference, or has medical or dental needs, it is the policy of the Justice Courts to exercise the Bench Exchange agreement so there will be no interruption in the work of each court.

1.6 Jury Selection

The Justice Courts utilize the electronic method of selecting names of persons assigned for jury service. Jury impaneling is conducted in cooperation with the District and County Courts. In such circumstances that enough potential jurors do not show for a scheduled jury trial; the Constable for that court shall go and summon enough jurors to fulfill the requirements to carry on with the scheduled proceedings. Questions about the jury impaneling process may be directed to the District Clerk's office at 936-327-6814.

2 CIVIL CASES

2.1 Filing Cases

All civil cases shall be filed in the Justice Court where one or more defendants may reside, except as otherwise provided by law. Eviction cases shall be filed in the Justice Court where the /leased occupied premises are located. All other civil cases may be filed according to any applicable jurisdiction and venue laws. It is the responsibility of the party filing a case to file in the correct court.

2.2 Mediation

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

Any party receiving notice of a referral to mediation has 10 days from date of notice to file a motion objecting to the referral. If any party to a case files a motion objecting to the referral to mediation, and the court finds that there is a reasonable basis for the objection, the case may be excused from the referral. If either party fails to attend mediation or if no resolution is reached, the case is to be promptly set for trial. Consistent with Rule 503.6(b) of the Texas Rules of Civil Procedure, the Justice Courts will not order mediation or any alternative dispute resolution process in an eviction case if it would delay trial.

2.3 Setting Cases

Each Justice court shall be responsible for the setting of hearings and trials in each court and for the notices thereof. All civil cases are scheduled as promptly as is reasonable for pre-trial, trial or final disposition and the court will consider any pre-trial motions, which would address any applicable matters.

2.4 Demand for Jury

A party requesting a civil jury trial shall file a written request with the court in which the case is filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause. The jury fee shall be paid or a Statement of Inability to Afford Payment of Court Cost shall be filed upon filing the request. Once the demand is made and the fee paid or a Statement of Inability to Afford Payment of Court Cost, the request cannot be withdrawn without written approval of both parties. Jury fees are non-refundable.

A party requesting an eviction jury trial shall file a written request with the court in which the case is filed at least 3 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived. The jury fee shall be paid or the Statement of Inability to Afford Payment of Court Costs shall be filed upon filing the request. Once the demand is made and the fee paid, the request cannot be withdrawn without written approval of both parties. Jury fees are nonrefundable.

2.5 Continuances

Motions for Continuance should be filed no later than three days preceding any scheduled court appearances. The notice and pleading requirements of law must be followed.

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

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

2.6 Uncontested Docket

Uncontested matters and routine matters of very short duration may be heard at the uncontested docket as scheduled by each court.

The parties are responsible for arranging in advance with the court's clerk to have the files pulled and available for the court. If more than two cases will be presented at the uncontested docket, please inform the clerk of the cause number and style of each case at least 24 hours in advance.

2.7 Matters Preliminary to Trial on the Merits

Except for motions for continuance based on new circumstances, all motions in *limine*, exceptions and all pre-trial motions and pleas in each jury case shall be presented and heard at pre-trial hearing. For all non-jury cases all exceptions, motions and pleas must be filed three days before the scheduled trial before the court.

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

2.8 Hearings Conducted by Telephone

At the discretion of the judge, a party or attorney may appear by telephone conference call. A request by a party or attorney for such an arrangement must be made in advance. In rare cases, in the interest of justice, the court may permit a witness to appear by telephone conference call. A judge will not initiate a conference call. All arrangements with telephone operators must be made by the requesting party. At any time, even after the completion of a conference call, a judge may determine that a hearing by telephone will not be sufficient and may require a hearing in court upon notice to all parties.

2.9 Dismissal for Want of Prosecution by the Court

2.9.1 Case selection

The following cases are eligible for dismissal for want of prosecution *sua sponte* by the court:

- (a) Cases on file for more than 120 days in which no answer has been filed;
- (b) Cases that have been on file for more than 12 months that are not set for trial and have had no filings or settings within 180 days; (c) Any other case designated by the court.

2.9.2 Notice

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

2.9.3 Docket Settings

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

2.9.4 Procedures for Retaining Cases and Objecting to Motions to Retain

- (a) Motions to retain shall be filed with the court at least 10 working days prior to the date specified in the notice of dismissal for want of prosecution.
- (b) Any party who files a motion to retain shall state in writing the factual and legal basis why the case should not be dismissed for want of prosecution.
- (c) Parties objecting to a motion to retain shall state in writing the basis for any objection to the motion to retain within 3 days of service of a motion to retain.
- (d) The court shall notify all parties of the court's ruling on a motion to retain.

2.9.5 Cases Not Requiring Oral Argument

Oral arguments on motions to retain or objections to motions to retain, may be permitted by the court.

2.9.6 Cases Requiring Oral Argument

The court shall notify the parties of the court's decision to permit oral argument and shall notify the parties of any hearing on motion to retain.

A party wanting to argue a motion to retain or an objection to retention may appear on the date and time set for dismissal of the case.

2.9.7 Retained Cases

If the court decides to retain the case, the court will set the case for trial at the convenience of the court. The court will notify the parties of the next setting.

2.9.8 Includes all Pending Claims

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

2.10 Drafts of Judgments and Orders

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

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

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

2.11 Motions to Withdraw as Attorney

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

(a) Files written consents to the withdrawal signed by attorneys for all parties; and

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

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

2.12 Holidays

When any date mentioned in these rules falls on a court holiday then the applicable date shall be the first date following the holiday. The court holidays shall be published on the County's website www.co.polk.tx.us.

2.13 Authorization to Serve Citation

Authorization to serve citation is governed by Rule 501.2 of the Texas Rules of Civil Procedure and any other applicable rules and laws.

CRIMINAL CASES

3.1 Filing Cases

Justice Court cases shall be filed in accord with Article 4.12 of the Texas Code of Criminal Procedure. Offenses alleged to have been committed in more than one precinct may be filed in any precinct that the offense, or any portion of the offense, is alleged to have occurred.

3.2 First Appearance

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

Subsequent appearances will be as scheduled by the court.

Request for language interpreter or special assistance for persons with disabilities shall be made at the time a plea is entered. A telephone call does not constitute an appearance.

3.3 Setting Cases

All criminal cases are to be brought to trial or final disposition as promptly as practicable. Each Justice court shall be responsible for the setting of dockets, hearings, and trials in each court and for the notices thereof.

Announcement Docket/Pretrial Docket: Defendants may discuss their cases with a prosecutor, plead guilty or no contest to resolve the case, or reset the case for trial.

Pretrial Hearing on Written Motions: Pre-trials on written motions are normally conducted in Class C cases on the day of trial. Special pretrial settings on written motions must be requested and approved by the court. Pretrial motions must be filed and served on the County Attorney 21 days prior to any such hearing.

All pretrial hearings will be held on the day set unless a written State or Defense motion for continuance is granted. **Trial before the Court (TBC):** Attorneys and defendants should not waive jury unless they intend the case to be tried on the TBC docket. All cases shall be tried when set unless a written State or Defense motion for continuance is granted.

Jury Trial: Defense attorney and/or defendant shall appear at the scheduled jury setting. State and Defense must either announce ready or file a written motion for continuance. If the defendant waives jury at the docket call, a written waiver, signed by counsel and/or defendant must be presented.

3.4 Plea of Guilty or Nolo Contendere

If not represented by an attorney, a defendant (or if represented by an attorney, the defendant's attorney) may enter a plea of guilty or no contest at any time, with or without a plea agreement. If not represented by an attorney, a defendant (or if represented by an attorney, the defendant's attorney) may also elect to enter a plea of guilty or no contest and address the judge regarding punishment.

3.5 Appointment of Counsel

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

3.6 Motions to Withdraw or Substitute

An attorney becomes attorney of record in a misdemeanor case by listing his or her name on pleadings or by setting or resetting the case. He or she remains attorney of record until relieved by written order of the court.

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

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

4 RULES OF DECORUM

4.1 Opening Procedure

Immediately before the scheduled time for the first court session on each day the bailiff shall direct all persons present to their seats and shall cause the courtroom to come to order. As the judge enters the courtroom the bailiff or the court clerk shall state: "All rise."

And while everyone is still standing, the bailiff may briefly introduce the judge presiding. After the judge sits, the bailiff shall state: "Please be seated."

4.2 Recess

When the judge announces a recess, the bailiff shall state: "All rise." And all shall remain standing until the judge leaves the courtroom, whereupon the bailiff shall announce: "The court is now in recess".

In reconvening after a recess, the bailiff shall call the courtroom to order and request everyone to rise as the judge enters and shall state: "Please be seated."

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

After a recess, the bailiff shall direct all jurors to the jury room and shall call the courtroom to order and request everyone to rise as the judge enters, as in non-jury trials. The jury shall be returned to the jury box from the jury room, upon the instruction of the judge.

4.3 General Rules of Courtroom Conduct

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

In the courtrooms there shall be:

- (a) no tobacco or tobacco substitute in any form, including electronic cigarettes and vaping devices used.
- (b) no chewing gum.
- (c) no excessively short pant, short skirts, or bare midriffs.
- (d) no reading of newspapers.
- (e) no audible cell phones or pagers.
- (f) no bottles, cups or beverage containers except court water, pitchers and cups or as otherwise permitted by the judge.
- (g) no edibles.
- (h) no propping of feet on tables or chairs.
- (i) no noise or talking that interferes with court proceedings.

No tape recorders, cameras, or other electronic devices for recording proceedings without prior written approval by the court

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

All officers of the court should dress appropriately for court sessions.

4.4 Attorneys

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

Attorneys should advise their clients and witnesses of Local Rules of Decorum that may be applicable.

All objections, arguments, and other comments by counsel shall be directed to the judge or jury and not to opposing counsel.

While another attorney is addressing the judge or jury, an attorney should not stand for any purpose except to make an appropriate motion, request or objection to the court.

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

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

- (a) when the judge enters and leaves.
- (b) when addressing the judge or jury; and
- (c) whenever it may be proper to handle documents, exhibits, or other evidence (leave of court is not required.)

Attorneys should anticipate any need to move furniture, appliances, or easels, and should make advance arrangements with the court. Tables should not be moved during court sessions, unless approved the court.

4.5 Broadcast Media

Requests to broadcast court proceedings shall be determined by each judge on a case-by-case assessment after consultation with all the parties to a case.

4.6 Open Courtrooms

The public doors to the courtroom shall remain unlocked during court sessions. All persons shall be permitted to enter the courtroom and observe any public proceeding during court sessions unless their exclusion is authorized by law.

5 Transfer of Cases

5.1 Civil Cases

(a) At the judge's discretion, a Justice of the Peace court in one precinct may transfer a pending civil case to another Justice of the Peace court in Polk County, provided that the receiving judge has no objection to the transfer.

(b) The parties lack standing to contest or request the transfer.

(c) Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.

5.2 Criminal Cases

(a) A judge may transfer a pending misdemeanor case to another Justice of the Peace court in Polk County, provided that the receiving judge has no objection to the transfer.

(b) The defendant has 10 days to object in writing to the transfer.

(c) Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.

5.3 School Attendance Cases

A Justice Court may transfer a school attendance case to Gardner-Betts Juvenile Court whenever a defendant also has pending juvenile cases at Gardner-Betts. The transfer of other cases between Justice Courts shall be done in accord with Section 5.2 of these Justice Court Rules.

5.4 Bench Exchange Agreement

Pursuant to Texas Government Code Sec. 27.054, the Justices of the Peace in Polk County hereby agree to exchange benches as a standing order, to exchange whenever convenient. This order shall automatically renew every five days until rescinded.