

Civil Rule 3  
Final Draft

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CIVIL CASES

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## **Rule 3 Civil Cases**

### **RULE 3.10(a) FILING AND ASSIGNMENT OF CASES**

A case in the civil trial division shall be randomly assigned using the central filing system in accordance with the current order adopted by the council of judges. Once assigned to a Court, a case shall remain on the docket of that Court unless transferred as provided in Rule 3.12.

Any claim for relief based upon a prior judgment shall be assigned to the Court of original judgment. Every suit or proceeding seeking to enforce, attack, avoid or set aside a judgment, order or decree of a court, (including suits in the nature of a bill of review, writ of habeas corpus, or otherwise), shall be assigned to the Court in which such judgment, order or decree was rendered. All proceedings which have previously been dismissed and are re-filed shall be assigned to the Court to where the previous suit or proceeding was assigned.

If a claim is dismissed and is later re-filed and it is determined that there is a substantially same identity of parties and causes of action in both cases, then the re-filed case shall be assigned by the local administrative judge or transferred by the presiding judge to the Court where the prior case was pending, with written notice to the district clerk.

A motion to consolidate cases shall be heard in the Court where the lowest numbered case is pending. If the motion is granted, the consolidated cases will be given the number of the lowest numbered case and assigned to that Court, with written notice to the district clerk.

### **3.10(b) RULES GOVERNING THE PROCEDURE FOR THE DISTRICT CLERK OF WEBB COUNTY TO RECEIVE AND FILE ELECTRONICALLY TRANSMITTED COURT DOCUMENTS**

The following rules govern the procedure for the District Clerk of Webb County (“the clerk”) to receive and file electronically transmitted court documents.

1. The clerk is authorized to accept for filing via electronic transmission any document which might be filed in a court action except: (a) returns of service on issuances of citation; (b) bonds; (c) signed orders or judgments.
2. Documents electronically transmitted for filing will be received by the clerk on a plain paper facsimile and printed by a laser printer, thereby rendering the copy of archival quality. No document printed on thermal paper shall be filed.

3. No document electronically transmitted shall be accepted by the clerk for filing until court costs and fees have been paid. Court costs and fees may be paid by Mastercard or Visa or through an escrow account established with the clerk. Documents tendered to the clerk electronically without payment of court costs and fees, or with incomplete information on the charge authorization or request, or which do not conform to applicable rules, will not be filed.

4. A fee schedule for electronic filing shall be adopted annually by the clerk and approved by the local courts.

5. An electronically transmitted document accepted for filing will be recognized as the original record for file or for evidentiary purposes when it bears the clerk's official date and time file stamp.

6. Every document electronically transmitted for filing shall conform to the requirements for filing established by the Texas Rules of Civil Procedure, i.e., shall be on paper measuring approximately 8-1/2 x 11 inches, shall be signed individually by the party or the party's attorney of record, and shall contain that individual's State Bar of Texas identification number, if any, address, telephone number and fax number. The quality of the original hard copy shall be clear and dark enough to transmit legibly.

7. The sender shall maintain the original of the document with original signature affixed as required by section 51.806, Texas Government Code.

8. A cover sheet must accompany every transmission which shall: (a) clearly identify the sender, the documents being transmitted, and the number of pages; (b) have clear and concise instructions concerning issuance or other request; and (c) have complete information on the charge authorizing or escrow debit for court costs and fees.

9. The clerk upon receipt of an electronically transmitted document shall verify the completeness of the transmission.

10. The clerk, when satisfied that the transmission is complete, shall confirm the charge authorization or escrow account debit and note the authorization code on the cost receipt. Thereafter, the documents tendered electronically shall be deemed accepted for filing and the clerk shall affix the clerk's official date and time file stamp to the document.

11. If the transmission is found to be incomplete or court costs or fees, if required, are not paid, the clerk will notify the sender as soon as practicable that the transmission has not been filed and the reason.

12. After the filing an electronically transmitted document, the clerk will electronically transmit to the sender an acknowledgment of the filing, together with cost receipt, if any.

13. No citation or writ bearing the official seal of the court may be transmitted electronically.

14. Electronic transmission of a document does not constitute filing. Filing is complete when the clerk's official date and time file stamp is affixed to the document.

15. Each page of any document received by the clerk will be automatically imprinted with the date and time of receipt. The date and time imprinted on the last page of a document will determine the time of receipt but not time of filing. Transmissions completed during a normal business day before 5:00 p.m. and accepted for filing will be filed on the day of receipt. Transmissions completed after 5:00 p.m., on weekends or holidays will be verified and filed before 10:00 a.m. on the first business day following receipt of transmission. The sender is responsible for determining if there are any changes in normal business hours.

### **RULE 3.11 FILING ON HOLIDAYS**

No local rule

### **RULE 3.12 TRANSFER OF CASES; DOCKET EXCHANGE; BENCH EXCHANGE AND SIGNATURE OF ORDERS WHEN PRESIDING JUDGE IS UNAVAILABLE**

#### **A. Transfer**

Any case may be transferred from one court to another court of concurrent jurisdiction by agreement of: all counsel and/or parties pro se, the court transferring the case, and by the transferee court, provided that the transfer and acceptance be in writing with notice to the local administrative judge and the district clerk.

The presiding judge of the court may, upon notice and hearing, transfer the case(s) from his/her court to any other court having subject matter jurisdiction including but not limited to the following types of cases:

- a. Any case arising out of the same transaction or occurrence as did an earlier case.
- b. Any suit for a declaration concerning the alleged duty of an insurer to provide a defense for a party to the earlier suit.

The rules governing transfer shall not be used to circumvent the central filing system.

#### **B. Post-Trial Matters**

The judge who presided over the trial of any civil case, shall preside over any post-trial matters. However, in those cases where the judge who presided over the trial is unavailable to preside over a post-trial matter, the local administrative judge shall assign another judge, unless all parties agree otherwise.

### **C. Docket and Bench Exchange**

The local administrative judge of the civil trial division may transfer cases between courts in the manner provided by Section A of this Rule and may assign cases from one court to another court for hearing if he/she finds that a court has an inequitable burden due to illness, trial schedule, or other sufficient reasons. Any judge whose court has subject matter jurisdiction may sit in as judge of another court in cases assigned for trial on the merits. If a case is on the docket of a court by any manner other than as prescribed by these rules, the local administrative judge of the civil trial division shall, in writing, transfer the case to the proper court with notice to the district clerk.

### **D. Signature of orders when Presiding Judge is unavailable**

Any judge of a Webb County District court, or a judge of a Webb County Court at Law for matters filed in county court or any family law matter, may hear, decide and sign any necessary orders or other documents in cases involving hearings on applications for temporary restraining orders, issuance of writs of sequestration, garnishment and attachment, whether such matters shall be heard ex-parte or otherwise, entries of default judgment, writs and process, and/or any other emergency matter for which the presiding judge in whose court that case is pending is unavailable; provided, however, that a staff member of the unavailable judge takes the proposed order to the respective judge who is being asked to sign the order or document. If the staff of the respective court is also unavailable, then the local administrative judge of the respective court (County or District) may sign the appropriate order or document. If the local administrative judge is also unavailable, then any judge with subject matter jurisdiction (District or County) may sign the proposed order or document.

## **RULE 3.13 REQUEST FOR TRIAL SETTINGS-NON-JURY**

All requests for non-jury trial settings shall be by motion with accompanying fiat and heard pursuant to Local Rule 3.19 or by Rule 11 agreement approved by the Court. See also 3.15, 3.33 and 3.35.

## **RULE 3.14 DISPOSITION OF UNCONTESTED MATTERS, WALK-IN PROCEDURES**

### **A. Procedure for Walk-Ins on Uncontested Matters**

Walk-in hearings on uncontested matters will be allowed at all times that do not conflict with on-going jury or non-jury trials or with complex discovery conferences or hearings. Attorneys shall coordinate the settings with the court coordinator of the respective Court

by giving the Court 24-hour notice to allow the court coordinator, or clerk, time to prepare a "walk-in" list; and, to verify that the case is ready for the hearing or trial. A court nonetheless retains the discretion to hear uncontested matters at the time of request. **Each Court will post specific days and times available for hearings on uncontested matters.**\*

## **B. Uncontested Matters**

The following matters are considered to be uncontested:

- a. Default, agreed and waiver divorces;
- b. Agreed orders (including discovery matters);
- c. No-answer default judgments;
- d. Non-Suits;
- e. Friendly Suits;
- f. Annulments;
- g. Occupational Driver's License;
- j. Motion for alternate/substitute service of citation;
- h. Adoptions;
- i. Expunctions;
- j. Non-Disclosures; and
- k. Change of name.

## **RULE 3.15 REQUEST FOR TRIAL SETTINGS (JURY OR NON-JURY)**

Cases shall be set for trial by order of the Court pursuant to a pre-trial guideline order. See Appendix A (Not Submitted until after Administrative Board Meeting)

## **RULE 3.16 JURY FEE AND JURY DEMAND**

A case will be set on the non-jury docket unless a demand for jury is on file and the jury fee is paid thirty (30) days before the trial setting and in accordance to Tex. R. Civ. P. 216.

## **RULE 3.17 TRIAL ANNOUNCEMENTS**

In all cases set for trial in a particular week, counsel are required to make announcement on their readiness for trial to the Court at the Pre-Trial setting in accordance with the Pre-Trial guideline order. An announcement of "ready" or "ready subject to" another Court engagement may be made to the Court.

## **RULE 3.18 ASSIGNMENT OF CASES FOR TRIAL**

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## **A. Date of Setting**

Cases shall be set for trial for a date certain. If a case is not reached on the date set for trial, the Court shall reset the case to a date certain. Unless all parties agree otherwise and/or by the direction of the Court, the new setting must comply with all requisites of Tex. R. Civ. P. 245. All new settings shall include the submission of a new Pre-Trial Guideline Order with/without new deadlines subject to the Court's discretion.

## **B. Assignment to Trial**

A case is assigned to trial when counsel is called to the court to commence the jury or non-jury trial on the merits.

## **C. Dead Weeks**

Except with the consent of all parties and the respective Court, no court will assign cases to trial on the merits during:

1. The week of the spring, the state, the regional, or the annual judicial conference;
2. The last two weeks in December.

## **RULE 3.19 CONFLICTING SETTINGS AND ASSIGNMENTS OF COUNSEL**

**A. Inter-County:** The Rules of Procedure of the Fourth Administrative Judicial Region control conflicts in settings of all kinds between Webb County court(s) and courts not in Webb County.

**B. Intra-County:** Among the trial courts sitting in Webb County.

1). *Attorney already in trial in another court:*

a. When informed that an attorney is presently in trial, the court will determine where and when assigned. This information will be verified upon request of opposing counsel. The case will be placed on "hold" or reset, depending on when the attorney will be released.

b. If the attorney is not actually in trial as represented by the attorney or his or her agent, the case will be tried without further notice.

2)*Attorney assigned to two courts for the same date:* All attorneys having conflicts with other court settings and who will be late for docket call or other court settings or hearings/conferences, shall notify the court coordinator and opposing counsel of such conflict as soon as it becomes apparent, and shall state:

- (a) The nature of the conflict;
- (b) Where counsel may be reached;

- (c) What announcement counsel wishes to make;
- (d) The time that the Presiding Judge should expect counsel to personally appear;  
and

3) Preferences amongst conflicting settings:

(a) It is the duty of an attorney to call the affected Judges' attention to all dual settings as soon as they are known.

(b) Insofar as practicable, Judges should attempt to agree on which case has priority, otherwise, the following priorities shall be observed by the judges of the respective courts.

1. Trial/Trial. A trial setting that is assigned takes precedence over a conflicting trial setting not yet assigned.
2. Trial/Non-Trial. Trial setting take precedence over conflicting non-trial settings; and
3. Cases assigned to jury trial in a United States Court.
4. Criminal cases.
5. Cases given preference by statute.
6. Preferentially set cases.
7. Case set at earliest date.
8. Case with earliest filing date.
9. Courts in a multi-court county should yield to courts in rural counties in all other instances of conflicting settings.

4) Waiver. The Court with precedence may yield.

5) Lead Counsel Attorney in Charge. This rule operates only where lead Counsel/Attorney in Charge, as defined by Texas Rules of Criminal Procedures 8, is affected, unless the Court expands coverage to other counsel.

### **RULE 3.20 PREFERENTIAL SETTINGS**

Motions for preferential setting shall be written, verified and specific. Upon request of counsel, such motions shall be granted in the following cases:

- A. Cases entitled to preferential setting by law; or
- B. A case that the Court has determined because of its nature, circumstances and litigation history, requires a priority trial setting.

### **RULE 3.21 RESETTING CASES**

The parties may not agree to reset a trial setting unless prior notice is given to the court or a timely motion for continuance is filed and the court approves either the reset or continuance. A motion for continuance will not be deemed timely if it is filed after the Thursday before the Monday of jury selection without good cause. A motion for continuance on a non-jury case must be filed no less than four (4) days prior to non-jury trial date.

### **RULE 3.22 DISMISSAL DOCKET; INVOLUNTARY DISMISSAL**

Each court shall periodically schedule a dismissal docket at which time counsel shall appear and show good cause why the case should not be dismissed for want of prosecution.

### **RULE 3.23 SUSPENSE DOCKET:**

If a case has been stayed because it relates to a bankruptcy proceeding, suggestion of death or to abatement by previous order of the court, such case is to be transferred to a suspense docket for suspension of further action and the file delivered to the clerk's office subject to later reassignment in accordance with these rules when it becomes appropriate.

### **RULE 3.24 HEARING ON PRE-TRIAL PLEAS AND MOTIONS**

#### **A. Opposed Motions:**

1. Conference requirement. No counsel for a party shall file, nor shall any clerk set for hearing, any motion unless accompanied with a "certificate of conference" signed by counsel for movant in one of the forms set out herein. Prior to the filing of a motion, counsel for the potential movant shall personally attempt to contact counsel for the potential respondent to hold or schedule a conference to resolve the disputed matters. Counsel for the potential movants shall make at least three attempts to contact counsel for the potential respondent. The attempts shall be made during regular business hours on at least two business days. For the purposes of this rule, a "certificate of conference" shall be in the following form (verbatim):

(a) "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.

Certified to on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
(counsel for movant) and (counsel for respondent)

(signature of counsel for movant) (signature of counsel for respondent),”

(b) “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 proposed motion. At least one attempt to contact counsel for respondent followed the receipt of the proposed motion. Counsel for respondent has nonetheless failed to respond or attempt to resolve the matters presented.

Certified to on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
(counsel for movant)

(signature of counsel for movant),”

(c) Counsel for movant has personally attempted to contact counsel for respondent as follows: (dates, times, methods of contact)

An emergency exists of such a nature that further delay would cause irreparable harm to the movant, as follows: (details of emergency and harm)

Certified to on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
(counsel for movant)

(signature of counsel for movant)” or

(d) “I, the undersigned counsel for movant, hereby certify to the court that I have conferred with opposing counsel in an effort to resolve the issues contained in this motion without the necessity of court intervention, and opposing counsel has indicated that there is no opposition.

Certified to on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
(counsel for movant)

(signature of counsel for movant).”

2. Sanctions: Counsel who refuse to confer, or who ignore attempts to confer, as required by this Rule may be sanctioned by the Court up to an amount which is equivalent to at least three hours of attorney time at the usual and customary hourly rate prevailing in Webb County.

3. Exceptions to conference requirement: Section (A)(1) of this Rule does not pertain to dispositive motions, motions for summary judgment, motions for

default judgment, motions for voluntary dismissal or nonsuit, post-verdict motions, and motions involving service of citation.

#### 4. Form of Motion

Every opposed motion presented for filing shall state with particularity the relief or order sought. A separate proposed order granting the relief sought shall accompany the motion. A memorandum of legal authorities, when deemed appropriate, may be filed with the motion or no later than three days before the hearing.

#### **B. Motions to Quash Depositions**

Any party who files a motion to quash depositions must comply with the applicable Texas Rules of Civil Procedure. Upon receipt of the motion, the respondent may ask for a hearing, to be heard within 72 hours but not less than 24 hours subject to the Court's discretion. (The Court may provide a telephonic conference).

#### **C. Unopposed Motions**

If any motion is unopposed by all counsel of record, counsel may simply so state conspicuously on the face of the motion. In such event, the motion will be submitted by the clerk to the judge for approval and will be granted routinely without a hearing unless the judge is of the view that the granting of such motion is not in the interest of justice. A separate proposed order granting the relief sought shall accompany the motion.

#### **D. Setting of Hearings on Motions**

Moving counsel seeking a hearing on a filed motion may submit a written fiat or order setting hearing to the Court coordinator in which the case is pending. The fiat or order setting hearing must:

- (1) specifically identify the cause number;
- (2) contain the style or caption;
- (3) state the matter to be heard;
- (4) identify the party requesting the hearing;
- (5) leave blank spaces for the time, day, and month for the requested hearing;
- (6) provide a signature line for the coordinator or the judge;
- (7) estimate the total amount of in-court time necessary to dispose of the matter; and
- (8) be served on all counsel of record at the same time and in the same manner that it is presented to the coordinator.

Included with the fiat or order setting hearing shall be at least three (3) proposed hearing dates and times by order of preference and in accordance with any applicable Texas Rules of Civil Procedure (e.g. 21, 87(1), 166a). *If unavailable on all proposed hearing dates or if in disagreement with the time estimate, a non-moving counsel may inform the coordinator and moving counsel in writing and propose at least 3 alternate hearing dates and times or a competing time estimate within three business days of receiving the fiat or order setting hearing. A non-moving counsel's failure to provide alternate hearing dates will preclude a later attempt to continue or reschedule a set motion on the basis of prior unavailability.*<sup>†</sup> The coordinator must then set the matter for hearing within five business days of receiving the fiat or order setting hearing, or advise moving counsel as to why the matter cannot be set for hearing.

**E. Motion Days:** Insofar as practical, separate dockets will be scheduled and maintained for criminal, tax, and civil cases so as to prevent delay amongst those distinct dockets. Preferably, criminal dockets will be scheduled and noticed to commence at least 1 hour before civil dockets. Tax dockets will be scheduled at 2:00 p.m., Monday through Thursday, so as not to interfere with either civil or criminal dockets. Civil docket calls will be further scheduled and noticed according to whether a matter is uncontested, contested, or complex.

1. Uncontested Civil Matters: Unopposed motions, agreed divorce decrees, default judgments, and similar uncontested matters that may be resolved in less than 5 minutes of in-court time are to be scheduled and noticed at least 30 minutes before Contested Civil Matters.
2. Contested Civil Matters: Matters requiring less than 1 hour of in-court time to resolve are to be scheduled and noticed after uncontested civil matters but before complex civil matters.
3. Complex Civil Matters: Matters requiring more than 1 hour of in-court time will be scheduled and noticed after contested civil matters.
4. Docket Calls. Courts shall call the criminal, tax, and civil dockets for announcements at the noticed times. When their case is called, counsel for the parties should announce whether they are ready or not, conferring, or if the matter is to be reset, dropped, or disposed of by agreement. If a hearing is necessary, counsel for the parties should confirm the amount of in-court time necessary to resolve the matter,

## **F. Waiver of Hearing:**

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<sup>†</sup> If the italicized language in this paragraph is included as an admonition in a fiat properly served on non-moving counsel, a subsequent non-conforming request to continue or re-schedule based on unfamiliarity with the Webb County Local Civil Rules will be denied.

Hearings on any motion may be waived if all counsel of record agree and notice of same is given to the court. Argument in summary judgment matters may be waived by agreement of counsel and court by written notice to the court. (*See Rule 3.31*)

**G. Request for Ruling:** If a motion has not been ruled upon within 3 weeks of its hearing or submission, any party affected by that motion may request a ruling pursuant to Appendix &&&. A certificate of conference is not required. The court will have an additional week to rule on the underlying matter from the date of filing a request for ruling and the Court coordinator will set the matter for entry of order/judgment within 10 days from the filing of the request for ruling.

**H. Ex Parte Applications:** Every application for relief *ex parte* shall contain a certificate signed by counsel that:

- (1) to the best of his or her knowledge the party against whom relief is sought *ex parte* is not represented by counsel in the matter made the basis of the relief sought;
- (2) counsel for the party against whom relief is sought *ex parte* has been notified of the application and has stated whether he or she wishes to be heard; or
- (3) diligent attempts to notify counsel for the party against whom *ex parte* relief is sought have been unsuccessful, and the circumstances do not permit additional efforts to give notice.

### **RULE3. 25 ATTORNEY APPEARANCES AND AUTHORITY**

A. All hearings, scheduling conferences and pre-trial conferences shall be attended by the attorney-in-charge or co-counsel who is/are familiar with the case and who is/are fully authorized:

- (1) to state the clients position on the law and the facts;
- (2) to make agreements as to scheduling;
- (3) to enter into stipulations;
- (4) to stipulate to the admissibility, and/or authenticity of exhibits; and
- (5) to negotiate settlement.

Attorneys for all parties shall be physically present at the scheduling conference unless arrangements have been made for such conference to be held by telephone.

B. Each attorney shall bring their trial calendar in order to arrange settings which do not conflict with previous engagements of counsel. Under no circumstances may an attorney be represented at any scheduling conference or pre-trial conference, whether held by telephone or otherwise, by any secretary or other non-lawyer personnel.

C. Under no circumstances will an attorney be permitted to condition or limit an appearance on behalf of a client at a hearing, scheduling conference or pretrial conference in deference to an attorney-in-charge who is not present.

### **RULE 3.26 NON-COMPLIANCE WITH APPEARANCE AND AUTHORITY PROCEDURES**

When counsel for either party, after notice, and without good cause, fails to appear or is unprepared for a hearing, scheduling conference or pre-trial conference, the court may:

- A. Make all scheduling decisions and rule on all motions, exceptions or other matters;
- B. Declare any motions or exceptions that have been prepared as having been waived;
- C. Alter the trial setting or other scheduling matters, decline to set the case for trial, cancel the setting previously made, or take such other action that is deemed just and proper; and
- D. Pass and reset the hearing or conference in which case the party represented may be entitled to recover reasonable attorney's fees and expenses.

### **RULE 3.27 DISCOVERY DISPUTES**

#### **A. Discovery Motions**

Any motion for discovery may be treated as premature unless counsel for movant has:

- 1. Made a good faith effort to obtain such discovery or relief from opposing counsel by agreement;
- 2. Complied with the applicable Rules of Civil Procedure, and has been unsuccessful, or shows good cause for not making such an effort; and
- 3. Includes a proposed order and certificate of conference pursuant to Local Rule 3.24

All parties shall complete discovery not less than thirty (30) days prior to the date said case is set for trial unless otherwise ordered by the Court or agreed upon by parties.

#### **B. Effect of Motion to Quash Deposition and/or for Protection**

- 1. The filing of a motion to quash a deposition with the district clerk and service on opposing counsel or parties shall be in accordance with Local Rule 3.24 and with Texas Rules of Civil Procedure. Otherwise, the filing of a motion to quash does not stay a deposition.

2. The parties may, by Rule 11 agreement, agree to proceed with a partial deposition while still reserving part or all of the objections made in the motion for protection.

### **RULE 3.28. SEVERANCES**

All motions to sever will be controlled by the provisions of Rules 41 and 174, Texas Rules of Civil Procedure, and such rules will be strictly construed.

### **RULE 3.29. CONTINUANCES**

No trial setting shall be passed except by:

- A. Settlement, in writing or on the record;
- B. Written agreement/motion for continuance of all parties, with consent of the court;
- C. A motion for continuance timely filed under the Texas Rules of Civil Procedure with consent of the court;
- D. Such motions shall be heard on the Court's motion day or sooner, if necessary.

### **RULE 3.30. DEFAULT JUDGMENTS**

All uncontested proceedings shall be heard expeditiously on a walk – in basis pursuant to Rule 3.14.

### **RULE 3.31. SUMMARY JUDGMENTS**

- A. All motions for summary judgment will be controlled by the provisions of Rule 166a of the Texas Rules of Civil Procedure.
- B. Counsel of record may agree to submit the motion for summary judgment without oral argument by filing jointly, a written waiver five (5) days prior to the setting.

### **RULE 3.32. Removed**

### **RULE 3.33 COMPLEX CASE DESIGNATION**

It is recognized that in especially complex cases or cases involving special circumstances, modifications to the docket control and scheduling order may be required. Therefore, cases where the issues are complex may, upon motion of any of the parties or

the Court's own motion, be designated as a "Complex Case." If a case is designated as complex by the Court, the parties shall file a Complex Designation Order and submit a Complex Case Docket Control and Scheduling Order in the form prescribed in Appendixes B and C for the Court's approval.

### **RULE 3.34 ALTERNATIVE DISPUTE RESOLUTION**

### **RULE 3.35 PRE-TRIAL GUIDELINE ORDER AND SCHEDULING CONFERENCES**

Upon the filing of a new lawsuit with the assignment of a cause number and court, the parties will be set for hearing for the entry of a pre-trial guideline order. If all parties to the litigation submit an Agreed Pre-Trial Guideline Order on the approved form by the Webb County District Courts and County Courts at Law and the respective court approves same prior to the hearing date, then the parties do not need to appear at the hearing for Entry of Pre-Trial Guideline Order. Assignment of trial dates will be governed by the Court's calendar which is prepared in accordance with Rule 1.11.

### **RULE 3.36 CERTIFICATE OF PROGRESS.**

In Level 3 and cases designated as Complex Cases pursuant to Local Rule 3.33, all parties are required to submit a joint Certificate of Progress to the Court 60 days before the Final Pre-Trial Hearing. The joint Certificate of Progress shall advise of the court: (1) the status of mediation; (2) all pending motions for which any party is requesting a ruling prior to the Final Pre-Trial Hearing and submit/re-submit any proposed orders thereon; (3) any outstanding discovery or concerns as to whether discovery will be completed prior to the discovery deadline; and (4) good faith identification of those matters for which the parties anticipate a need for hearing at the final pre-trial hearing and estimated time of argument on each dispute. Upon submission of the Certificate of Progress, the court or any party may set the cause for a pre-trial conference prior to the parties appearance at the Final Pre-Trial Hearing. See Appendix D.

### **RULE 3.37 FINAL PRE-TRIAL HEARING**

All parties are required to submit a Joint Final Pre-Trial Report seven days before the final pre-trial hearing on the approved form for the Webb County District Courts and the County Courts. See Appendix E

All parties are required to exchange Exhibit Lists and Witness Lists at the Final Pre-Trial Hearing. All parties are required to make their exhibits available for inspection on the date of the Final Pre-Trial Hearing or on any other date upon reasonable notice and request.

The parties shall disclose all witnesses who are anticipated as being called by way of deposition and identify the corresponding video or written deposition testimony by page and line 10 days before the Final Pre-Trial Hearing. Any objections and/or cross-line page and line designations to video or written deposition testimony shall be filed 7 days before the Final Pre-Trial Hearing.

### **3.38 TRIAL WITNESSES AND EXHIBITS**

Each Attorney shall pre-mark and identify their exhibits prior to trial by the date ordered by the court. Each attorney shall prepare a list of trial exhibits and provide the court and opposing counsel a copy of this list prior to trial.

A proffering counsel must file and serve line and page designations for deposition testimony that will be offered at trial at least 1 week before the final pretrial conference. An opposing attorney must then file and serve a request for ruling on any objection lodged to the deposition testimony and cross line and page designations at least 3 days before the final pretrial conference. Rulings on objections to deposition testimony and optional completeness requests will be made at the final pretrial conference.

### **RULE 3.39. DISPOSITION CONFERENCES.**

No local rule under this subdivision.

### **RULE 3.40. SETTLEMENTS.**

Counsel of record shall immediately notify the court coordinator and/or the court of the fact that the parties have reached a settlement, notwithstanding that the agreement is reached over a weekend.

### **RULE 3.41. JURY SELECTION.**

All jury panels will be summoned to the central jury area and qualified there. Voir dire will be conducted in the courts on Mondays and subsequent days.

### **RULE 3.42. JURY CHARGE QUESTIONS AND INSTRUCTIONS.**

Attorneys whose cases are on the jury docket shall report to court at 8:15 a.m. on the date set for trial and jury selection and submit to the court, in proper written form, their proposed initial jury questions/instructions, and legal authorities in support of same, unless ordered to do so earlier. Other jury questions and instructions may be submitted during trial as the evidence may dictate.

**RULE 3.43. SUBMISSION OF ORDERS, JUDGMENTS, INSTRUCTIONS.**

**A. All Cases** - The order and judgment shall be forwarded to opposing counsel for signature for approval as to form with seven (7) days. Opposing counsel shall file any objections to the proposed judgment and/or order within three (3) working days of receipt of the proposed judgment. The judgment and/or order and all accompanying forms should be presented to the court no later than fourteen (14) days after final hearing.

**B. Contested Divorce Actions** - In contested divorce cases the petitioner's attorney, or pro-se petitioner, shall prepare and submit the proposed decree of divorce and the bureau of vital statistics form in with Rule 3.43 and 4.10.

**C. Uncontested Divorce Actions** - In uncontested divorce cases, the petitioner's counsel or pro-se petitioner shall be responsible for submitting the proposed divorce decree, bureau of vital statistics form, assignment of wages order, notice to employer, order withholding income for support.

**D. All Divorce Cases or Cases Ordering Child Support** – In divorce cases the attorney for the party receiving child support shall file the order of assignment of wages, which will conform with the decree of divorce and must be properly completed, especially as it relates to the employer, amount to be paid weekly, biweekly, or monthly. Further, no order of assigning wages is complete, unless accompanied by notice to employer and request for issuance of the order withholding wages. Before the date of final trial, all cases must have on file the Bureau of Vital Statistics form (except for date of hearing which will be filled in on date of hearing) and the order for assignment of wages (leave blanks for monetary amounts).

In all post divorce decree matters, ie., motions to modify, to enforce, etc., the prevailing party through their attorney shall submit the appropriate Orders as granted by the court, to the court, copy to adverse counsel, and/or pro se party, after which the court will process it for entry, as stated above.

**RULE 3.44. WITHDRAWAL AND COPYING OF DOCUMENTS.**

No local rule under this subdivision.

**RULE 3.45. OTHER LOCAL RULES.**

**A. Miscellaneous Pleadings** - Every pleading of a party shall be properly titled. The motion and order must be properly identified, e.g. "Plaintiff's Motion for Summary Judgment" and "Order Setting Plaintiff's Motion for Summary Judgment."

**B. Deposit of Monies in Registry of Court** - In cases where monies are deposited into the registry of the court, it shall be the responsibility of all counsel and

attorneys ad litem to make certain that the order or judgment instructs the district clerk about the disposition of the monies. Any order or judgment filed under this section shall also include the names, social security numbers, addresses and phone numbers of all interested parties. Appropriate forms to effectuate the purpose and intent of this rule may be obtained at the Webb County district clerk's office. Failure to comply will result in the district clerk depositing the funds in non-interest bearing accounts.

APPENDIX B

Cause No. \_\_\_\_\_

Style: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COMPLEX CASE DESIGNATION ORDER (LR 3.33)**

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, [on the Court’s own motion] [came on to be heard the \_\_\_\_\_ motion] to designate the above styled and numbered cause as a complex case. It appearing that the case may merit special attention as complex litigation, the Court ORDERS:

1. All parties shall appear for a conference with the undersigned on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at \_\_\_\_\_ a.m./p.m. at the \_\_\_\_\_ [court’s court].
2. The conference will be held for the purposes of determining the (a) nature of the case; (b) whether the litigation should be handled in phases; (c) to determine if dispositive matters are present that can be resolved before litigating the merits of the case; (d) to discuss the entry of a scheduling order; and/or (e) set forth a schedule for compliance with Local Rule 3.36’s Certificate of Progress. Counsel are encouraged to confer on proposed deadlines and discovery limitations set forth in Appendix \_\_\_\_\_ [the scheduling order].
3. Counsel are expected to be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.
4. Three days before the conference, counsel will submit to the court a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in this proceeding or in any later proceedings.
5. To assist the court in identifying any problems of recusal or disqualification, counsel will submit to the court by [DATE], a list of all companies affiliated with the parties and all counsel associated in the litigation.
6. Pending the conference, all outstanding discovery proceedings are stayed and no further discovery shall be initiated. This order does not (1) preclude voluntary informal discovery regarding the

identification and location of relevant documents and witnesses; (2) preclude the parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request for production or disclosure. Relief fro this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

7. No motion shall be filed prior to the conference without leave of court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the mater without court action.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

PRESIDIING JUDGE

APPENDIX C

Cause Number:

Style: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMPLEX CASE DOCKET CONTROL & SCHEDULING ORDER (LR 3.33)**

1. New Parties shall be joined and served by this date. \_\_\_\_\_

2. Deadline for written discovery to opposing party(ies) (Requests for Disclosure, Interrogatories, Requests for Production and Requests for Admission). \_\_\_\_\_

3. Deadline to produce all documents requested by the parties. \_\_\_\_\_

4. Lay –witness depositions

Noticed by Plaintiffs

Noticed by Defendants/Third Party Plaintiffs

Notice by Third Party Defendants

5. Experts by Party(ies) Seeking Affirmative Relief:

Deadline to designate

Deadline for submission of reports

Deadline to depose experts of party(ies) seeking affirmative relief

6. Experts by Responding Party(ies):

Deadline to designate

Deadline for submission of reports

Deadline to depose experts of responding party(ies)

7. Deadline to file *Daubert/Robinson* motions. \_\_\_\_\_

8. Production of proposed computerized summaries and samples:

Plaintiff(s) Deadline \_\_\_\_\_

Defendant(s) Deadline \_\_\_\_\_

Third Party Defendant(s) Deadline \_\_\_\_\_

9. Deadline for designating factual witnesses. \_\_\_\_\_

10. Deadline to file all dispositive motions. \_\_\_\_\_

11. Except for good cause shown:

Relief from the this schedule shall not be granted and all discovery shall be completed by: \_\_\_\_\_

Discovery Shall be limited to matters occurring after [DATE] and before [DATE]

No more than \_\_\_\_\_ interrogatories (including subparts) may be propounded to any party (exclusive of interrogatories seeking identity of people with particular knowledge and documents).

No more than \_\_\_\_\_ hours of deposition of lay witnesses may be taken by each side, and no single deposition may take more than \_\_\_\_\_ hours.

No more than \_\_\_\_\_ hours of deposition of expert witnesses may be taken by each side, and no single deposition may take more than \_\_\_\_\_ hours.

12. AMENDED PLEADINGS: Party(ies) seeking affirmative relief will file by this date. Responding party(ies) will be filed within ten (10) days of this date. \_\_\_\_\_

13. Plaintiff's deadline to designate video deposition testimony for use at trial. \_\_\_\_\_

14. Defendants' and Third Party Defendants' deadline to designate video deposition testimony for use at trial. \_\_\_\_\_

15. Plaintiff's deadline to submit exhibit list to opposing counsel. \_\_\_\_\_

16. Defendants' and Third Party Defendants' deadline submit exhibit list to opposing counsel. \_\_\_\_\_

17. ALL TRIAL MOTIONS, OBJECTIONS TO THE OTHER PARTY'S DESIGNATION OF VIDEO TESTIMONY AND TO EXHIBITS, MOTIONS IN LIMINE AND PROPOSED JURY QUESTIONS AND INSTRUCTIONS SHALL BE FILED. FAILURE TO FILE by this date will cause a show cause order to be issued for contempt and/or for the imposition or any other sanctions against trial \_\_\_\_\_

counsel and/or the parties.

18. ALTERNATE DISPUTE RESULTION. The parties or their duly \_\_\_\_\_ authorized representatives and, in any case involving insurance, a representative or the insurance carrier, who is authorized to settle the case, are all ordered to attend the mediation or arbitration session. Failure to do so will result in imposition of sanctions. Attorneys and the mediator are ordered to bring to the attention of the court any failure of any party or attorney to comply with this order.

19. PRE-TRIAL CONFERENCE will be held at \_\_\_\_\_ a.m./p.m. All trial motions, including motion in limine and objections to deposition testimony and to exhibits, will be heard at the pre-trial conference.

20. Jury Trial will start at 9:a.m. \_\_\_\_\_

The parties that this Complex Case Docket Control and Scheduling Order shall constitute a binding agreement between the parties as defined by Rule 11 of the Texas Rules of Civil Procedure and shall serve as a modification of the discovery procedure as provided for in Rule 191.1 of the Texas Rules of Civil Procedure. Leave of court is required for any modification to this order.

All responses to motions, supporting briefs and/or copies of case law counsel are \_\_\_\_\_ on are to be filed three (3) days before the date of any hearing.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
PRESIDIING JUDGE

APPENDIX D

_____	, Plaintiff	§	IN THE DISTRICT COURT
		§	
v.		§	WEBB COUNTY, TEXAS
		§	
_____	, Defendant	§	JUDICIAL DISTRICT

**JOINT CERTIFICATE OF PROGRESS**

I. PARTIES. The current Parties to the litigation are as follows:

- a. Plaintiff(s): \_\_\_\_\_
- b. Intervenor(s): \_\_\_\_\_
- c. Defendant(s): \_\_\_\_\_
- d. Third-Party Defendant(s): \_\_\_\_\_

II. MEDIATION.

- a.  All current Parties *have* participated in mediation.
- b.  All current Parties *have* participated in mediation but would like to participate in another mediation prior to trial.
- c.  All current Parties *have not* participated in mediation but will have done so prior to the Final Pre-Trial Hearing.

III. TRIAL.

- a.  The Parties are ready for trial a  jury trial/  bench trial.
- b.  The Parties *are not ready* currently ready for trial *but will be ready* for trial by the Final Pre-Trial Conference.
- c.  The Parties *are not ready* currently ready for trial and *do not anticipate being ready* for trial because of the following: \_\_\_\_\_  
\_\_\_\_\_

IV. DISCOVERY.

- a.  The Parties have completed all necessary discovery to proceed to trial.
- b.  The Parties *have not completed* all necessary discovery to proceed to trial but *will have completed* all necessary discovery by the Final Pre-Trial Conference. The following discovery remains outstanding that will be completed by the Final Pre-Trial Conference: \_\_\_\_\_  
\_\_\_\_\_
- c.  The Parties *are not ready* currently ready for trial and *do not anticipate being ready for trial* because of the following outstanding discovery: \_\_\_\_\_  
\_\_\_\_\_

V. PENDING RULING. The following matters are pending ruling:

DATE OF FILING	TITLE OF PLEADING OR MOTION	DATE OF HEARING/SUBMISSION	PROPOSED ORDER FILED

VI. PENDING HEARING. The following matters are in need of a hearing prior to or at the Final Pre-Trial Hearing.

TITLE OF PLEADING OR MOTION	ESTIMATED TIME FOR MOVANT	ESTIMATED TIME FOR RESPONDENT	PROPOSED ORDER FILED	HEARING NEEDED PRIOR TO FINAL PRE-TRIAL


APPENDIX E

JOINT FINAL PRETRIAL REPORT

1. APPEARANCE OF COUNSEL. List each party, its counsel, and counsel's address and telephone number in separate paragraphs.
2. STATEMENT OF THE CASE. Give a brief statement of the case, one that the judge could read to the jury panel for an introduction to the facts and parties; include names, dates, and places.
3. JURISDICTION. Briefly specify the jurisdiction of the subject matter and the parties. If there is an unresolved jurisdictional question, state it.
4. MOTIONS. List pending motions.
5. CONTENTIONS OF THE PARTIES. State concisely in separate paragraphs each party's claims.
6. ADMISSIONS OF FACT. List all facts that require no proof.
7. CONTESTED ISSUES OF FACT. List all material facts in controversy.
8. AGREED PROPOSITIONS OF LAW. List the legal propositions that are not in dispute.
9. CONTESTED PROPOSITIONS OF LAW. State briefly the unresolved questions of law, with authorities to support each.
10. EXHIBITS.
  - a. On a form similar to the one provided by the clerk, each party will attach two lists of all exhibits expected to be offered and will make the exhibits available for examination by opposing counsel. All documentary exhibits must be exchanged before trial, except for rebuttal exhibits or those whose use cannot be anticipated.
  - b. A party requiring authentication of an exhibit must notify the offering counsel in writing within five (5) days after the exhibit is listed and made available; failure to object in advance of trial in writing concedes authenticity.
  - c. Within reason, other objections to admissibility of exhibits must be made at least three (3) days before trial; the Court will be notified in writing of disputes, with copies of the disputed exhibit and authority.

- d. Parties must mark their exhibits to include the date and case number on each.
- e. At the trial, the first step will be the offer and receipt in evidence of exhibits.

11. WITNESSES.

- a. List the names and addresses of witnesses who may be called with a brief statement of the nature of their testimony. Include the qualifications of expert witnesses; these will be used to qualify the expert at trial.
- b. Include:
  - “If other witnesses to be called at the trial become known, their names, addresses and subject matter of their testimony will be reported to opposing counsel in writing as soon as they are known; this does not apply to rebuttal or impeachment witnesses.”

12. SETTLEMENT. State that all settlement efforts have been exhausted, that the case cannot be settled, and that it will have to be tried.

13. TRIAL. State the probable length of trial; logistical problems including the availability of witnesses, out-of-state people, bulky exhibits and demonstrations.

14. ATTACHMENTS. Include these required attachments:

- a. For a jury trial: proposed charge (including instructions, definitions, and special interrogatories, with authority).
- b. For a non-jury trial: proposed findings of fact (without repeating uncontested facts) and conclusions of law, with authority.

\_\_\_\_\_ [date] \_\_\_\_\_  
PRESIDING JUDGE