

ORDER OF THE SUPREME COURT OF TEXAS

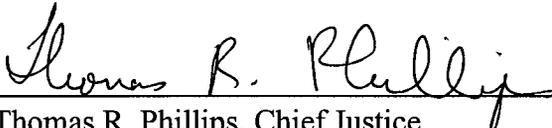
Misc. Docket No. 99-9068

Approval of Local Rules for the District Courts in Hidalgo County

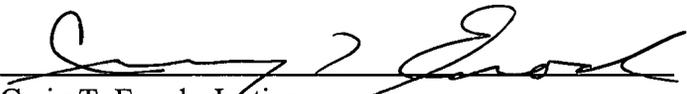
IT IS ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court of Texas approves the attached Local Rules for the District Courts in Hidalgo County, Texas. The approval of these rules is temporary pending further orders of the Court.

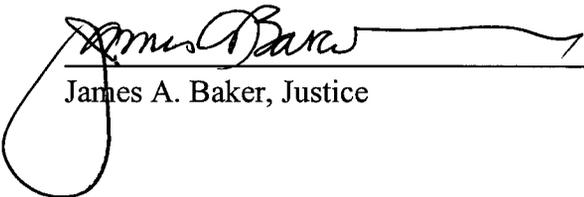
By the Court, en banc, in chambers, this 8th day of April, 1999.

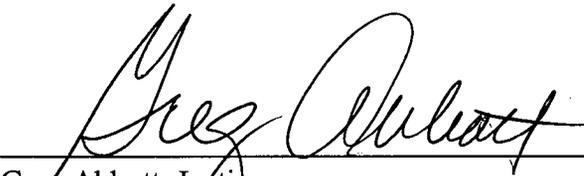

Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice

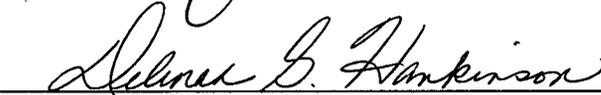

Craig T. Enoch, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice



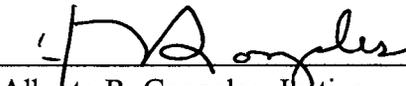
Greg Abbott, Justice



Deborah G. Hankinson, Justice

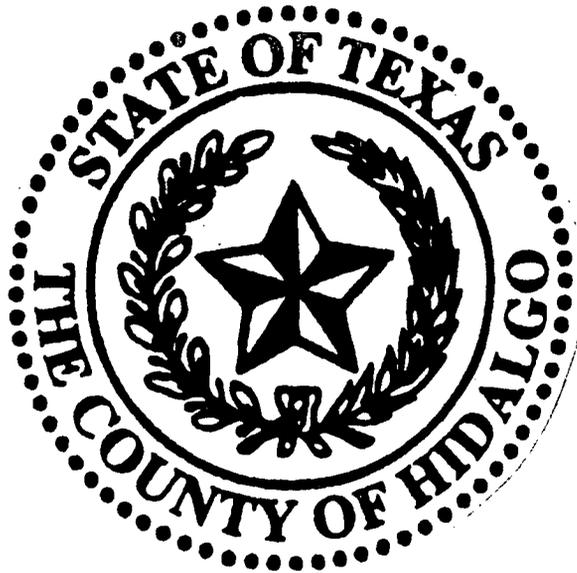


Harriet O'Neill, Justice



Alberto R. Gonzales, Justice

LOCAL RULES
OF



DISTRICT COURTS



**ORDER of the District Courts
of Hidalgo County, T E X A S**

On this, the 19 day of March, A.D., 1999, the following has been brought to the attention and consideration of the District Courts of Hidalgo County, Texas and the Board of Judges of Hidalgo County, Texas:

1. That the Proposed New Local Rules attached hereto as Exhibit A be recognized as the New Local Rules, and be followed by our district courts in district court practice.

Now THEREFORE be it known that the District Courts of Hidalgo County, Texas and the Board of Judges of Hidalgo County, Texas, after due consideration and vote, hereby ORDERS & APPROVES as follows:

1. It is ORDERED & APPROVED, that the Proposed New Local Rules attached hereto as Exhibit A are hereby adopted, and further requests that the Local Presiding Judge submit these Proposed New Local Rules for final approval by the Texas Supreme Court, in accordance with the applicable codes and statutes.

Handwritten signature of Judge Noè Gonzalez.

Judge Noè Gonzalez, 370th District Court
Local Administrative Judge

Handwritten signatures of Judge Ed Aparicio and Judge Fernando Mancias.

Judge Ed Aparicio, 92nd District Court Judge Fernando Mancias, 93rd District Court

Handwritten signatures of Judge Leticia Hinojosa and Judge Rose Guerra Reyna.

Judge Leticia Hinojosa, 139th District Court Judge Rose Guerra Reyna, 206th District Court

Handwritten signatures of Judge Juan Partida and Judge Mario Ramirez.

Judge Juan Partida, 275th District Court Judge Mario Ramirez, 337th District Court

PROPOSED LOCAL RULES FOR THE DISTRICT COURTS IN HIDALGO COUNTY

Rule 1. **Filing, Assignment, and transfer of cases.**

- 1.1 **Filing and Assignment.** On being filed, a case shall be assigned randomly to the docket of one of the district courts with civil jurisdiction. Once assigned to a court, a case will remain on the docket of that court for all purposes unless transferred as provided by these rules.
- 1.2 **Transfer of cases.**
- 1.2.1 **Agreement.** Any case may be transferred from one court to another by written Order of the Presiding Judge or by written Order of the judge of the court from which the case is transferred; provided in that latter instance the transfer must be with the written consent of the court to which the case is transferred.
- 1.2.2 **Presiding for another.** In all cases where a court presides for another court, the case shall remain pending in the original court.
- 1.2.4 **Prior Judgment.** Any claim for relief based upon a prior judgment shall be assigned to or transferred to the court of original judgment.
- 1.2.5 **Consolidation.** A Motion to Consolidate cases shall be heard in the court where the first case was filed. If the motion is granted, the consolidated case will be given the cause number of the first case and assigned to the court where the first case was filed.
- 1.2.6 **Garnishment Suits.** Every Garnishment Suit shall be assigned to the court in which the principal suit is or was pending, and if the principal suit is transferred to another court, the garnishment shall be likewise transferred.
- 1.2.7 **Improper Court.** If a case is on the docket of a court by any manner other than as prescribed by these rules, the Presiding Judge shall transfer the case to the proper court.

CIVIL DISTRICT COURT RULES FOR CIVIL CASES

Rule 2. Pre-Trial Motions

- 2.1 **Form.** Motions should be in writing and if filed shall be accompanied by an Order Setting Hearing and a Certificate of Conference.
- 2.2 **Order Setting Hearing.** The Order Setting Hearing shall include the names and mailing address of all counsel of record.
- 2.3 **Certificate of Conference.** All counsel are expected to engage in good faith negotiations prior to filing pre-trial motions. All discovery motions or requests for hearings relating to discovery must contain a certificate by the party filing the motion or request that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed.
- 2.4 **Pre-Trial Hearings.** Pre-Trial Hearings may be scheduled by the Court Coordinator for each Court. No Pre-Trial Hearing involving a discovery dispute shall be scheduled unless Rule 2.3 has been complied with.
- 2.5 **Summary Judgment Motions.** Summary Judgment Motions shall be heard by submission only unless an oral hearing is ordered by the Court.
- 2.6 **Temporary Orders.** Except in emergencies when the clerk's office is not open for business, no application for immediate or temporary relief shall be presented to the judge until it has been filed and assigned to a Court as provided in these rules. If the judge of the court to which such case is assigned is absent or is occupied with other matters, such application may be assigned by the Presiding Judge to any other judge, who may sit for the judge of the court to which the case is pending, and shall make all Orders, writs and process returnable to that court. Hearings or applications for temporary injunctions, temporary receiverships, and the like shall be set in the court to which the case is assigned and that court shall be responsible for all proceedings thereafter. All applications for ex-parte relief shall state whether or not, within the knowledge of the applicant, and his attorney, the opposing party is represented by counsel, and the name of such counsel.

Rule 3. **PreTrial Orders and Pre-Trial Conferences**

- 3.1 **Pretrial Conference.** Pretrial conferences may be scheduled by the court as necessary. A final pretrial conference will be held on the Friday before the trial is scheduled or as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.
- 3.2 **Pretrial Orders.** A Joint Pretrial Order shall be filed by the parties at least 14 days before the final pretrial conference scheduled by the court. The Joint Pretrial Order shall contain the information set out in Appendix A.

Rule 4. **Trials**

- 4.1 **Docket Control Conferences.** A Docket Control Conference may be set at any time following the filing of an answer in said suit, upon the request of either party or upon the Court's own Motion. If no Docket Control Conference has been held by the expiration of 120 days from the date suit is filed, then such conference shall be automatically scheduled by the Court. If no Docket Control Conference has been scheduled in family law cases by the expiration of 60 days from the date suit is filed, then such conference shall be automatically scheduled by the Court. At any time such a conference is scheduled, the Court in which the case is pending shall notify all attorney's in charge of the date and hour the attorneys are to appear in the office of the court coordinator for the purpose of conducting such conference.
- 4.2 **Telephonic Docket Control Conference.** The Docket Control Conference may be held by telephone. The movant shall be responsible for arranging the conference call at the date and time scheduled by the court or court coordinator. If the attorney requesting the docket control conference appears in person, those parties participating by telephone shall be responsible for arranging the conference call on the date and time scheduled by the court coordinator.
- 4.3 **Attendance at Docket Control Conference.** An attorney for each party with knowledge of the case shall be present at the Docket Control Conference either in person or by telephone. Each attorney shall have with him his calendar in order to

arrange settings that do not conflict with any previous engagements.

- 4.4 **Purpose of Docket Control Conference.** The Docket Control Conference shall be conducted informally, and shall be for the purpose of arriving at a trial date and to consider such other matters as are necessary and proper under the circumstances in regard to the handling of the case.
- 4.5 **Scheduling Order.** The Court shall enter an Order which sets forth the trial date and recites any action taken or agreements made at the docket control conference.
- 4.6 **Failure to Appear at Docket Control Conference.** When an attorney for either party after notice and without good cause fails to appear for a Docket Control Conference, the Court may:
- (1) Make all scheduling decisions in the absence of such counsel; or
 - (2) Pass and re-set the Docket Control Conference.
- 4.7 **Continuances.** All Motions for Continuance of a Trial Setting including joint motions of all parties must be ruled on by the Court. Joint Motions for Continuance are not automatically granted. Upon granting a Motion for Continuance, a docket control conference shall immediately be held. The Order granting such Motion for Continuance shall contain an Order resetting the case for trial. If the other deadlines set out in the Court's prior scheduling order change due to the new trial date, a new scheduling Order shall be entered.
- 4.8 **Announcements for Trial.** In all cases set for trial in a particular week, counsel are required to make announcements to the court on the proceeding Friday at the court's morning docket call or at any time that day scheduled by the Court. Every ground for postponement or continuance not brought to the Court's attention prior to or at the announcement's hearing may be deemed waived and may not be considered unless grounds arise after that time, or unless said grounds could not have been discovered by counsel in the exercise of reasonable diligence before such time.

Rule 5 **Withdrawal of Counsel**

- 5.1 **Withdrawal of Counsel.** No attorney of record should be permitted to withdraw from any case without presenting a Motion and obtaining from the Court an Order granting leave to withdraw. Such motion shall include the client's written consent to such withdrawal or a certificate by another lawyer that he has been employed to represent the client in the case, or a copy of such motion shall be mailed to the client at his last known address with a letter advising that the motion will be presented to the court on a particular date and any objection to such withdrawal should be made to the Court in writing. A copy of such letter shall be attached to the Motion. A copy of the motion shall be delivered or mailed to opposing counsel. Such leave may be denied when the motion is presented so near the trial date as to require delay of the trial. If leave is granted to withdraw, the withdrawing attorney shall notify the party of such action and advise the party of any trial settings and advise the party that he may secure other counsel.

Rule 6 **Mediation.**

- 6.1 **Mediation.** Mediation is mandatory for every contested case unless an objection is filed and the parties are excused by the court at least 60 days before trial. Otherwise, a mediation conference must be held prior to the deadline for filing the Joint Pretrial Order. If mediation is unsuccessful, the result shall be reported in the Joint Pre-Trial Order filed with the Court pursuant to Rule 3.

CRIMINAL DISTRICT COURT RULES FOR CRIMINAL CASES

Rule 7 Filing Criminal Cases.

- 7.1 **Filing Felony Indictments.** The Hidalgo County District Clerk shall implement a system for filing felony indictments that:
- (a) assures that no court is assigned more criminal cases than another unless a court does not have civil jurisdiction, then said court will be assigned more criminal cases in order to assure an equitable distribution of work to the courts;

- (b) prevents any person, other than the clerk who accepts indictments for filing, from discerning which court will receive which indictment before the clerk assigns the indictment to a particular court; and
- (c) otherwise respects filing requirements stated in these rules to the extent that a clerk accepting indictments for filing has access to information that invokes one or more of these rules.

7.2 **Subsequent Indictments.** Subsequent indictments shall be filed under the same cause number and in the same court as the original indictment. By filing a subsequent indictment, the State replaces its previous indictment as its live pleading in the case. Documents filed in the case prior to the subsequent indictment automatically apply to the subsequent indictment unless a court orders to the contrary.

7.3 **Indictments returned against Co-Defendants.** When indictments are returned against two or more co-defendants, the court in which the first indictment is filed shall receive all such indictments.

7.4 **Several indictments against same Defendant.** When several indictments are returned against the same defendant, the court in which the first indictment is filed shall receive all such indictments.

7.5 **Indictment against previously convicted Defendant.** When an indictment is returned against a defendant who has previously been convicted in a district court in Hidalgo County, the court in which the defendant was convicted shall receive the indictment.

Rule 8 **Defense Counsel**

8.1 **Appearance for Defendant.** An attorney who appears at a record hearing on behalf of a defendant, or who signs a motion filed in a defendant's case, shall be presumed by the court to represent the defendant for all purposes in the criminal case unless at the record hearing or within the motion, the attorney specifically limits his or her scope of representation and the court approves said limitation.

8.2 **Conflict of Interest.** Any attorney who perceives that a conflict of interest precludes continued representation of a defendant shall immediately notify the court and seek permission to withdraw. It shall be presumed that a conflict

exists when a convicted defendant expresses an intent to raise the effectiveness of defense counsel's representation at trial as an issue on appeal.

8.3 **Withdrawal from representation.** No attorney may withdraw from representing a defendant without written permission of the court for good cause shown. Before permitting withdrawal of a criminal defense attorney, the court that hears the motion to withdraw shall ascertain whether the defendant is indigent, and upon finding the defendant indigent, refer the case to the Presiding Judge for appointment of new counsel.

8.4 **Registration Letter.** Attorneys who wish to be paid for representing indigent criminal defendants in Hidalgo County's district courts shall register to do so by submitting a signed letter to the Court coordinator for each district court. In separate paragraphs, the letter shall state:

- (a) the attorney's name, office address, telephone and telecopier numbers, Texas Bar Number and its date of issuance;
- (b) a brief narrative describing the attorney's experience practicing criminal law in Texas;
- (c) a brief narrative describing any experience through which the attorney has acquired a special expertise as lead counsel, e.g. mental-health cases, capital cases, or appeals;
- (d) any limitations on the types of cases that the attorney would accept; and
- (e) a statement that the attorney understands these local rules and pledges to comply.

Rule 9 **Fees and Expenses**

9.1 **Compensation Rates.** Appointed counsel shall be compensated for time reasonably spent representing an indigent defendant as follows:

- (a) out-of-court-time--\$40.00 per hour, depending on the experience and ability of counsel as determined by the judge to whom the case is presented for decision;
- (b) in-court-time--\$70.00 per hour; and
- (c) the compensation rate may be raised at the discretion of the Judge presiding over the case based upon the complexity of the case and qualifications of counsel.

- 9.2 **Reimbursement for Expenses.** Appointed counsel shall be reimbursed for expenses that are reasonably necessary to provide adequate representation to indigent defendants, as determined by a district judge. An appointed attorney may secure a judge's approval by describing why the expense is or was necessary and why the amount of the expense is or was reasonable. Counsel may formally request approval in each felony case by: (a) incurring the expense and then filing a motion arguing in favor of expense approval before or after conclusion of the case; or (b) filing a sealed ex parte or unsealed pretrial motion at any time in the court with jurisdiction over the case for which preapproval of the expense is sought; or (c) filing a sealed ex parte pretrial motion for approval with the Presiding Judge;

Rule 10 **SETTINGS IN CRIMINAL CASES**

- 10.1 **Defendant's address.** As a condition of pretrial release, every felony defendant and defense attorney is responsible to keep the District Clerk apprised of the defendant's correct physical and mailing address at all times during the pendency of criminal proceedings.
- 10.2 **Notification of Arraignment Date.** The District Clerk shall notify each defendant of the arraignment in the defendant's criminal case by certified mail, return receipt requested, as soon as practicable after a court sets the case for a hearing. The District Clerk shall also notify the defendant's attorney of the arraignment by facsimile transmission or by regular mail. The District Clerk shall file the correspondence and mailing receipts in each defendant's case.
- 10.3 **Notification to Sheriff.** The District Clerk shall deliver a copy of every arraignment notice to the District Attorney's office. The District Clerk shall provide a copy of each arraignment notice concerning a jailed defendant to the Sheriff, who must transport each jailed defendant to the arraignment.
- 10.4 **Attendance at Criminal Hearings.** Counsel and defendants must attend criminal hearings as directed by the court in its written or oral notice unless the court allows otherwise prior to the time of the hearing.
- 10.5 **Waiver of Arraignment.** Where allowed by the court in which an indictment is filed, a defendant may waive arraignment only by filing a statement containing the

defendant's plea and signature, and the signature of the defendant's attorney, no later than the day before arraignment is scheduled.

- 10.6 **Certification of Waiver.** Before a defendant may waive arraignment, the defendant's attorney must certify in writing to the court that the defendant waived arraignment after understanding the purpose of arraignment.
- 10.7 **Arraignments in Capital Cases.** All arraignments in capital cases shall be conducted by the judge of the court to which the case is assigned.
- 10.8 **Pre-Trial Motions.** Pre-Trial motions in criminal cases will be heard immediately preceding jury selection unless the proponent of any motion specifically requests an earlier hearing and secures a hearing date from the coordinator of the court in which the case is pending.
- 10.9 **Trial Settings.** The District Attorney, defense counsel, or the defendant may submit a written request to any district judge that a case be tried at or by a certain time, but the sole authority to determine the date of trial remains with the Judge of the district court in which the indictment is filed.
- 10.10 **Order of Trial.** In deciding the order that cases assigned to each court will be tried, each judge shall consider:
- (a) the time elapsed since the alleged offense;
 - (b) the gravity of the alleged offense;
 - (c) whether the defendant is jailed pending disposition of the case;
 - (d) the estimated time of trial;
 - (e) special needs of prosecution or defense witnesses; and
 - (f) other factors the judge believes are necessary to the efficient disposition of the cases on his or her docket.
- 10.11 **Continuance due to conflicts.** If an attorney moves for continuance due to conflicting settings, the attorney must file a verified motion that states the cause number, style, and court of the conflicting setting. Failure to submit a verified motion with the required information may cause the court to deny the motion without a hearing.

- 10.12 **Appearance of Counsel and Defendant.** Mere filing of a motion for continuance does not excuse the absence of counsel or the defendant at a scheduled hearing. If a defendant fails to appear, the court may issue a warrant of arrest, order bail forfeiture, or change the conditions of pretrial release even if a motion for continuance has been filed but not yet ruled upon. If counsel fails to appear due to conflicting settings and has filed a verified motion for continuance describing the conflict, counsel's absence shall be excused. If counsel fails to appear without adequate cause, the court may impose appropriate sanctions, including contempt.
- 10.13 **Continuance for Jailed Defendant.** A court shall not grant a motion for continuance of a trial setting for a jailed defendant unless;
- (a) a record hearing is held where the defendant is afforded an opportunity to personally comment on the request for continuance; or
 - (b) defense counsel files a written motion or response, signed by counsel and the defendant, stating that counsel explained the purpose and effect of the requested continuance to the defendant.
- 10.14 **Continuance on Court's Own Motion.** Where a court continues a trial setting on its own motion, this fact shall be recorded on the docket of the continued case together with the next trial setting. The District Clerk shall promptly provide notice of this next trial setting to the State, the defendant, and defense counsel.

Rule 11 Presiding Judge

- 11.1 **Duties of Presiding Judge.** The Presiding Judge shall be responsible for all administrative matters relating to the Courts (as distinguished from judicial matters). The Presiding Judge shall supervise the assignment of cases to various district courts pursuant to the provisions of these rules. In addition, the presiding judge shall have all the necessary powers, both express and implied, to execute, implement and perform the duties set forth in the Government Code Chapter 74, the Supreme Court Rules of Judicial Administration and the Rules promulgated by the regional Presiding Judge.

- 11.2 **Term of Presiding Judge.** The term of office for the Presiding Judge is two years. There is no limit to the number of terms that a judge may be elected to this position. The election shall take place in November of even numbered years. The election of the Presiding Judge becomes effective on January 1.
- 11.3 **Meetings of the Board of Judges.** The Presiding Judge or a majority of the Board of Judges may call meetings of the Board of Judges as needed and the Presiding Judge shall preside over such meetings.

Rules 12 **Rules of Conduct**

- 12.1 **Rules of Conduct.** When addressing the Court, lawyers shall at all times promptly rise and remain standing at their position at the counsel table, and shall not approach the bench except with permission or on request of the Court. Lawyers shall remain seated at counsel table while interrogating a witness, except as may be necessary in the handling or display of exhibits or demonstrative evidence. Any person who is physically disabled to the extent that he/she can not comply with this rule shall be excused therefrom.
- 12.2 Leaning on the bench will not be permitted.
- 12.3 All lawyers shall be professionally attired while in attendance in court, providing discretion may be exercised in extreme situations.
- 12.4 Lawyers shall advise their clients of the formalities of the court and obtain cooperation therewith, thereby avoiding embarrassment to the court as well as to other persons.
- 12.5 Judges and opposing counsel should be respectfully addressed at all times. All objections and legal arguments by counsel shall be directed to the judge and not to opposing counsel.
- 12.6 All lawyers shall be prompt in attendance at all sessions. All lawyers should make whatever arrangements are necessary to comply with this rule.

Rule 13 **Effective date**

13.1 These rules shall become effective on May 1, 1999 , or upon their approval by the Supreme Court pursuant to Texas Rule of Civil Procedure 3a, whichever comes later.

Once these rules become effective, they will supersede all prior local rules of Hidalgo County, and all said prior local rules shall no longer be effective.

APPENDIX A.

CAUSE NO. C-_____ -YR-

PLAINTIFF	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
DEFENDANT	§	___ JUDICIAL DISTRICT

JOINT PRETRIAL ORDER

Pursuant to Rule 3 of the Hidalgo County Local Rules of Court, the Parties shall prepare and file with the clerk of the Court a Joint Pretrial Order. The Joint Pretrial Order shall be signed by the parties or their attorneys of record and filed with the Clerk 14 days prior to the Final Pretrial Conference scheduled by the Court. The Joint Pretrial Order shall contain the information set forth below.

- 1) A list of the names of all Parties, whether represented or pro se, and the names, bar numbers, addressees, and telephone number of all counsel.
- 2) A list of all pending motions by parties, including motions in limine. The parties shall state which motions require a hearing by the court. If no motions are pending, the parties are to so state.
- 3) A statement as to the status of discovery or that discovery is complete.
- 4) A list of all witnesses to be called at trial by the parties and a brief statement as to the subject matter of their testimony.
- 5) A list of all exhibits expected to be offered at trial. Each party will make the exhibits available for examination by opposing counsel. If there is a disagreement

as to the authenticity or admissibility of any of the exhibits, the Parties shall notify the court at or prior to the final pretrial conference.

- 6) Each party shall attach a proposed jury charge including instructions, definitions and questions to the Joint Pretrial Order.
- 7) A statement by each party as to the probable number of days for trial and any special scheduling difficulties of counsel, parties or witnesses.
- 8) A short statement on the status of settlement negotiations and the outcome of the mediation conference.

All Exhibits are to be premarked with inadmissible matters redacted prior to trial. Page and line designation for video taped deposition excerpts shall be exchanged by the parties prior to trial. Failure to comply with this Order may result in the exclusion of exhibits, witnesses, or denial of motions. Failure to review exhibits tendered by the opposing party and lodge objections may result in a waiver of those objections.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711
TEL: (512) 463-1312
FAX: (512) 463-1365

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

April 12, 1999

Hon. Noe Gonzalez
Admin. Judge and Judge
370th District Court
100 N. Closner, 2nd Floor
Edinburg, Texas 78539

Dear Judge Gonzalez,

Please find enclosed, copies of the order of the Supreme Court that approved local rules for the district courts of Hidalgo County.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Hon. Darrell Hester
5th Admin Judicial Rgn

District Clerk

County Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict
Office of Court Admin

State Law Library