

MISC. DOCKET NO. 04- 9072

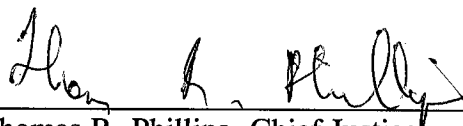
ORDER OF THE SUPREME COURT OF TEXAS

Approval of the Local Rules of Practice for the 198th and 216th District Courts in Bandera, Gillespie, Kendall, Kerr, Kimble, Mason, McCullough, and Menard Counties

ORDERED that:

Pursuant to Rule 3 of the Texas Rules of Civil Procedure, the following Local Rules of Practice for the 198th and the 216th District Courts concerning cases under Chapter 33 of the Texas Family Code are approved. This approval is temporary pending further orders of the Court.

In Chambers, this 10th day of May, 2004.



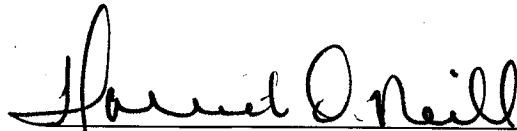
Thomas R. Phillips, Chief Justice

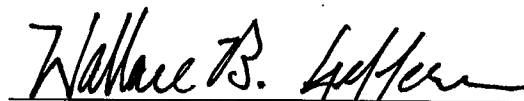



Nathan L. Hecht, Justice




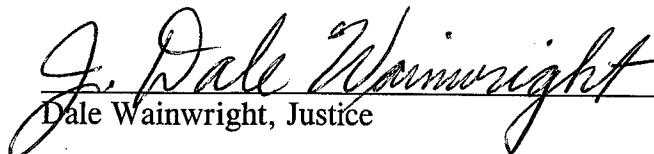
Priscilla R. Owen, Justice

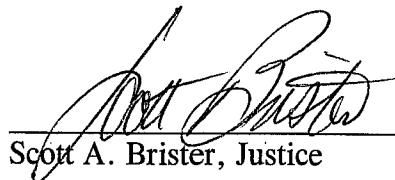

Harriet O'Neill, Justice


Wallace B. Jefferson, Justice


Michael H. Schneider, Justice


Steven Wayne Smith, Justice


Dale Wainwright, Justice


Scott A. Brister, Justice

RULES OF PRACTICE IN THE 198TH & 216TH JUDICIAL DISTRICT COURTS

*BANDERA, GILLESPIE, KENDALL, KERR
KIMBLE, MASON, McCULLOCH, MENARD*

CIVIL CASES

A. REQUEST FOR SETTING - JURY CASES:

Jury Trial

1. Request for Setting

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Coordinator **at the Kerr County Office**. The party requesting a setting should not file the Request for Setting with the Clerk.

The Request for Setting shall contain the following:

- a. The style and number of the case, and the county where the case is pending;
- b. The name, address and telephone number of the attorney making the request and the party represented by said attorney;
- c. The date on which the jury fee was paid;
- d. A statement that the pleadings of the party requesting the setting are in order;
- e. A statement that mediation has been completed or none is required.
 - (1) Pending mediation, all discovery is abated unless otherwise ordered by the Court.
- f. A statement that all discovery has been completed or none is desired.
 - (1) If discovery is pending the request shall contain the date on which discovery is expected to be completed;
- g. A statement that all pre-trial matters have been disposed of or none is pending.

- (1) If pre-trial matters are pending the request for setting shall state the nature of same, the party asserting same, the estimated time for hearing same and possible dates for a pre-trial hearing **which have been cleared with opposing counsel;**
 - h. A statement that the party requesting the setting has made a good-faith effort to negotiate a settlement of the case and further efforts appear futile;
 - i. Possible dates for the trial of the case **which have been cleared with opposing counsel.**
 - (1) If opposing counsel will not agree to a date for trial, the dates proposed and the reason for opposing counsel's refusal to agree to same;
 - j. The estimated time of trial;
 - k. A certificate that a copy of the Request for Setting has been served on all counsel in the case, the name and address of each attorney and the date of service;
 - l. The signature of the attorney making the Request.
 - m. A blank Order Setting which should be attached to the Request.
2. In response to a Request for Setting, the Court will enter an Order setting the case for trial on the merits and deliver a copy of the same to the District Clerk to certify who will then deliver a certified copy to each attorney. If item g. (1) in the Request for Setting is applicable, please send an Order Setting and the Court will set a pre-trial hearing.
 3. At the time the parties announce ready, each party shall submit to the Court proposed jury questions.

When setting a civil case for pre-trial, jury, non-jury or post trial hearing, please call the Court Coordinator prior to sending your Motion and Order Setting to obtain available hearing dates. After you have available dates, please contact opposing counsel to obtain a date that is agreeable to both parties. Once you have an agreed date, fill that date in on your Order Setting and forward both your Motion and Order, along with a statement that the date is an agreed date, to the Court Coordinator for entry with the Court.

B. REQUEST FOR SETTINGS - NON-JURY CONTESTED CASES:

Non-Jury Trial

1. Request for Setting

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Coordinator **at the Kerr County Office**. The party requesting a setting should not file the Request for Setting with the Clerk. The contents of the Request for Setting shall be the same as a Request for Setting for jury trial except for item c.

2. Order Setting

The same procedure will be followed as for Jury Trial.

a. A setting will be made only in response to a proper written Request for Setting.

3. Failure to Agree on Setting

a. If the parties fail to agree on a hearing date, the Court will set matters for trial based on the Court's schedule.

*At the bottom of **all ORDER SETTINGS**, please list all the parties who need to be notified. If the parties are represented by attorneys, please list the attorney's fax numbers. If they are pro se litigants, please give their addresses.*

*At the end of **all MOTIONS**, please include the opposing counsel's name, address, phone number and fax number under the Certificate of Service. Please do not put "...a copy has been sent to all opposing counsel." (This will let the Court know who the attorneys are since we do not have immediate access to all files in every county).*

C. DISMISSAL DOCKET; INVOLUNTARY DISMISSAL:

Dismissal for Want of Prosecution.

If no action is taken by a party seeking affirmative relief in non-family civil matters within eighteen (18) months directed toward a trial on the merits, the Court will proceed to dismiss the case for want of prosecution in accordance with Rule 165a, R.C.P. Contested family law matters will be subject to DISWOP after 180 days. Uncontested family law matters will be subject to DISWOP after 90 days if no affirmation action is taken.

D. UNCONTESTED AND DEFAULT MATTERS:

1. When requesting a setting for uncontested divorces, agreed divorces, defaults or adoptions, you do not need to send an Order Setting. These matters can be set over the phone by contacting the Court Coordinator.
2. When a case is heard out of county, but within the district, it is the attorneys responsibility to transport the case file to the Judge in the County for which the hearing will be held. The attorney shall contact the District Clerk in the county for which the case is filed to let them know they will be picking the file up to transport it to another county for hearing. It is the attorney's responsibility to return the file to the District Clerk's Office the same day, unless prior arrangements are made with the District Clerk.

E. TEMPORARY RESTRAINING ORDERS AND PROTECTIVE ORDERS:

1. An application for a Temporary Restraining Order and/or Protective Order, to be granted without notice to the adverse party, will be considered only upon the applicant's verified complaint or affidavit accompanying the application, and no testimony will be heard. No Temporary Restraining Order or Protective Order will be granted without notice to the adverse party unless the applicant's verified complaint or affidavit accompanying the application contains "specific facts," as required by Rule 680, T.R.C.P., and a "a plain and intelligible statement of the grounds for such relief," as required by Rule 682, T.R.C.P. No such Temporary Restraining Order shall be granted upon a complaint or affidavit containing mere conclusions, even if verified.

Ex Parte Orders in family law matters must meet the requirements of Section 11.11 and 71.15 of the Family Code.

CRIMINAL CASES

A. GRAND JURY:

The Court will be present in the following counties of the district on the following dates for the purpose of having grand juries in session:

Kerr County (198th) - 1st Thursday of each month, 9:00 a.m.
Kimble County - 2nd Thursday of each month, 9:00 a.m.
Mason County - As Needed
McCulloch County - 3rd Thursday of each month, 9:00 a.m.
Menard County - 4th Friday of each month, 9:00 a.m.

- Kendall County - 1st Monday of each month, 9:00 a.m.
- Gillespie County - 2nd Monday of each month, 9:00 a.m.
- Kerr County (216th) - 3rd Monday of each month, 8:30 a.m.
- Bandera County - 4th Monday of each month, 9:00 a.m.

(There may be a few months that the dates may vary).

B. CONTINUANCES/RESETTING/POSTPONEMENT:

1. Continuances

All continuances shall be in accordance with Arts. 29.01 through 29.13, C.C.P. and Art. Tx. Civil Prac. & Rem. Code 30.003.

2. Agreed Continuances

If you have a continuance that is agreed to by all parties, please contact the Court Coordinator and advise her of this and she will consult with the Judge prior to removing the matter from the docket. **Continuances are not automatic upon agreement by the parties. Mere filing of a Motion for Continuance does not mean the continuance will be granted.**

3. Resettings

1. To obtain a resetting date, please contact the Court Coordinator for available dates, then contact opposing counsel to obtain a date that is available and agreeable to all counsel.
2. Send an Order Resetting with a cover letter advising the Coordinator of the date the parties have agreed on.

C. SETTINGS/SCHEDULING:

1. Settings

Criminal cases will be set for trial at the request of the District Attorney. Should a defendant desire a trial for which the District Attorney has not requested a setting, the case will be set in response to the defendant's request. A pre-trial hearing, as provided by Art. 28.01, C.C.P., will be conducted in each case prior to trial.

2. Continuances

There will be no summary or automatic "first continuances." All continuances shall be in accordance with Arts. 29.01 through 29.13, C.C.P. and Art. 30.003, Texas Civil Prac. & Remedies Code.

D. PAYMENT OF COURT APPOINTED ATTORNEYS:

All court appointed attorneys shall provide the Court an itemized statement reflecting the number of hours spent in Court in representation of an indigent defendant and the number of hours spent out of Court representing said defendant.

1. An Order Paying Court Appointed Attorney should be attached to the itemized statement.

E. FAMILY LAW CASES:

1. The trial of family law cases involving children will be given preference over the trial of other civil cases.
2. The attorneys in all contested hearings concerning support shall prepare complete written income and expense statements as to their respective clients and present same to the Court prior to the hearing.
3. In all contested cases involving the division of property the attorneys shall prepare a complete written inventory of the assets and liabilities of the marital estate and of the separate estate of their respective client and submit same to the Court prior to trial.

F. GENERAL RULES:

The following rules apply to all cases:

1. When setting or resetting a case for trial, pre-trial, etc., please contact the Court Coordinator for available dates. Then, contact all other counsel and obtain a date that everyone is available.
 - a. Submit an Order Setting to the Court, with a Request for Setting when obtaining a trial date, or a letter when obtaining a pre-trial date, stating the date the parties have agreed to.
 - b. If you cannot obtain a date that is agreeable to all counsel, send your Order Setting with a letter stating the dates that were given to opposing counsel and their reasons for not agreeing.

ALWAYS ADVISE THE COURT IN YOUR REQUEST OR COVER LETTER THAT YOU HAVE CONTACTED THE OPPOSING COUNSEL AND THAT THEY ARE AVAILABLE FOR HEARING ON THE DATE YOU HAVE REQUESTED.

2. When setting or resetting a case for trial, pre-trial, etc., please advise the Court the estimated time you will need for the hearing.
3. The Court will set your case for hearing as quickly as possible. In an effort to do so, the Court may set your case in another county within the District, other than the county the case is filed in. It is the obligation of the attorneys to transport the Court's file to the county where the hearing will be held and then to see that it is returned to the appropriate Clerk's Office with which it is filed.
4. If for any reason, you have to cancel a hearing, please contact the Court Coordinator as soon as possible.
5. Hearings conducted by telephone conference call are acceptable and encouraged by the Court.

The foregoing rules of Practice are promulgated pursuant to rule 3A, R.C.P., and a copy of same has been furnished to the Supreme Court of Texas.

SIGNED AND ORDERED FILED in the Minutes of the Court in each County of the District this the 2 day of July, 2001.



EMIL KARL PROHL
Presiding Judge
198th Judicial District of Texas



STEPHEN B. ABLES
Presiding Judge
216th Judicial District of Texas



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

July 3, 2001

Honorable John T. Adams
Clerk, Supreme Court
P. O. Box 12248
Austin, Texas 78711

Re: Local Rules of the 198th & 216th District Courts

Dear Mr. Adams:

Enclosed please find the Rules of Practice in the 198th & 216th Judicial District Courts for approval and filing with the Supreme Court.

Very truly yours,

Stephen B. Ables
216th District Judge

SBA:bh

Enclosure