

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 92-0018

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## APPROVAL OF LOCAL RULES OF SMITH COUNTY COURTS AT LAW

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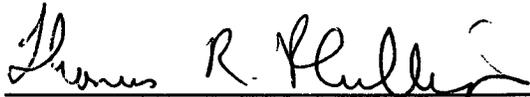
### **ORDERED:**

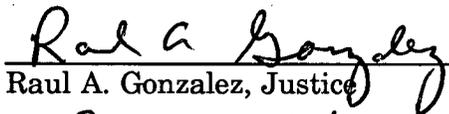
Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court approves the following local rules, which have been previously approved by the presiding judge of the appropriate administrative judicial region and submitted to this Court:

Rules of Civil Trial, County Court at Law, Smith County, Texas, dated October 1, 1991

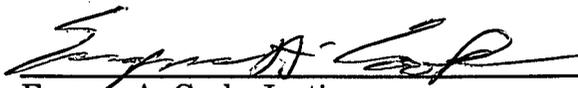
The approval of these rules is temporary, pending further orders of the Court.

SIGNED AND ENTERED this 21<sup>st</sup> day of November, 1991.

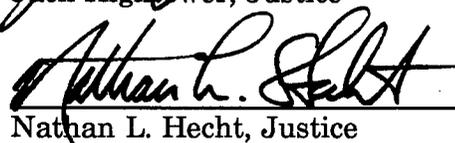
  
Thomas R. Phillips, Chief Justice

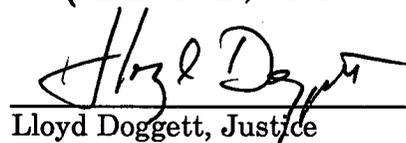
  
Raul A. Gonzalez, Justice

  
Oscar H. Mauzy, Justice

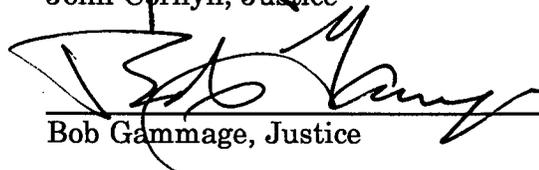
  
Eugene A. Cook, Justice

  
Jack Hightower, Justice

  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

  
John Cornyn, Justice

  
Bob Gammage, Justice

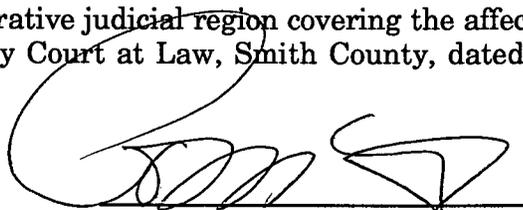
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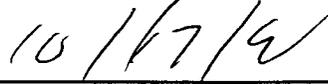
OFFICE OF COURT  
ADMINISTRATION

**CERTIFICATE OF APPROVAL**

As presiding judge of the administrative judicial region covering the affected county,  
I approve the Rules of Civil Trial, County Court at Law, Smith County, dated October 1,  
1991.

A handwritten signature in black ink, appearing to be "Tommy", written over a horizontal line.

(Signature)

A handwritten date "10/17/91" written in black ink over a horizontal line.

(Date)

**COUNTY COURT AT LAW**  
**SMITH COUNTY**  
**TYLER, TEXAS 75702**

JOE D. CLAYTON  
JUDGE

ROOM 209  
COURTHOUSE  
(903) 535-0606

September 18, 1991

Mr. John T. Adams, Clerk  
Supreme Court of Texas  
Post Office Box 12248, Capitol Station  
Austin, Texas 78711

Re: Proposed Rules of Civil Trial, County Court at Law  
Smith County, Texas

Dear Mr. Adams:

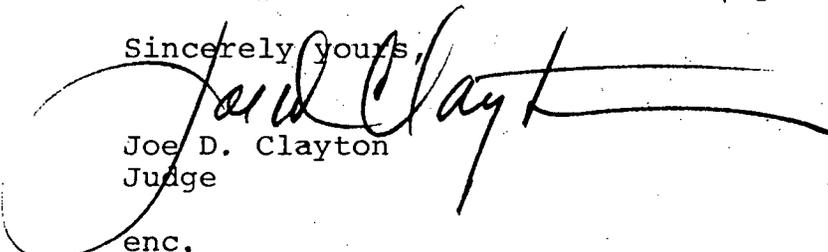
Effective October 1st, 1991, the County Courts at Law of Smith County, Texas, have concurrent jurisdiction with the District Courts in basically all civil cases. At that time my court is going to become basically a general civil trial court, and towards those ends I wish to adopt the enclosed Rules of Civil Trial.

I am forwarding these to you pursuant to Rules 3a and 166 of the Texas Rules of Civil Procedure and ask that you present them for approval by the Court. If there is a problem with any of the specific Rules, please advise.

Effective October 1st, 1991, the 7th Judicial District Court is transferring its entire civil docket to my court, so we would appreciate your prompt attention to this matter, if possible. I would have gotten the Rules to you earlier but these have been developed by working with the local Bar Association and we have made numerous changes from the original proposed draft to come to a consensus on the enclosed Rules.

I am thanking you very much in advance for your help and cooperation in this matter, and if you have any questions or need any additional information, please feel free to contact me.

Sincerely yours,

  
Joe D. Clayton  
Judge

enc.

**RULES OF CIVIL TRIAL  
COUNTY COURT AT LAW  
SMITH COUNTY, TEXAS**

**RULE 1.**

The objective of the rules of the civil trial is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law and established rules of procedural law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, the rules shall be applied to ensure that, so far as reasonably possible, all matters are brought to trial or final disposition in conformity with the following standards:

- (1) Civil non-jury or simple jury cases within nine (9) months from appearance date. (Sworn accounts, suit on note, collection, etc.)
- (2) Civil jury cases within twelve (12) months from appearance date.
- (3) Multi-party or complex litigation eighteen (18) months from appearance date.

**RULE 2.**

**MOTIONS.**

**2.1**

Certification of Conference. Before filing a motion, counsel for a moving party must confer or certify that a reasonable effort has been made to confer with the counsel of all parties, if known, affected by the requested relief to determine whether or not the contemplated motion will be opposed. Such a conference is required for all motions except motions to dismiss the entire action, motions to quash, motions for protection, temporary restraining orders, motions for judgment on the pleadings, motions for summary judgment, and motions for new trial.

The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought.

If a motion to compel or for sanctions is sought, the court will not consider the motion unless the movant certifies that the movant has conferred with

or made a reasonable effort to confer with opposing counsel in an effort to resolve the dispute without the necessity of court intervention and that the attempt has failed.

2.2 Form. Motions shall be in writing and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument, unless the entire motion, order, signature lines and certificate of service are all on one page. All pleadings, motions, orders and other papers filed with the Court shall be consecutively numbered at the bottom of the page.

2.3 Submission. Motions shall state a date of submission which shall be no sooner than the Monday following fifteen (15) days from date of filing, except on leave of court. The motion will be submitted to the court for ruling on that date or later.

2.4 Opposed Motions. All opposed motions must include either (i) a certificate which states that conference was held and indicates the date of the conference, the attorneys who conferred, and the reasons why agreements could not be reached; or (ii) a certificate explaining why it was not possible to hold the conference. Each contested motion must be accompanied by a proposed order and by a brief setting forth the movant's contentions of fact and law, unless a brief or proposed order is not required.

The clerk of the court is directed not to submit opposed motions to the judge unless this rule is complied with.

2.5 Unopposed Motions. All unopposed motions must be accompanied by agreed proposed orders, signed by the parties or their attorneys. Motions without opposition and their orders must be captioned "unopposed."

2.6 Responses and Replies. Failure to respond to a motion is deemed to be a representation of no opposition unless objections are already on file. Responses to motions must be filed at least two working days before the date of submission, be in writing and supported by authority, and be accompanied by a separate form order denying the relief sought, unless the Texas Rules of Civil Procedure provide otherwise.

2.7 Oral Argument. The motion or response shall include a request for oral argument if a party views it as necessary. The court may grant that request or order oral argument on its own motion. A request for an oral argument is not a response under Rule 2.4.

2.8 Requests For Postponement.

- a. All requests for postponement must be filed with the Court at least seven (7) days prior to the hearing in the cause, except for good cause shown.
- b. No request to pass, postpone or reset any trial, pre-trial or other hearing shall be granted unless counsel for all parties involved consent, or unless all parties not joining in such request or their counsel have been notified and have had opportunity to object.
- c. All second or subsequent requests for postponement must be personally approved and signed by the client for whom a postponement is requested, or if the client is unavailable or out of state, counsel may certify that his client has been mailed a copy of the motion by certified mail, return-receipt requested with a cover letter stating in a separate paragraph in bold face type, "The postponement is being sought by (attorney's name) for the (party's name)."

RULE 3. PRE-TRIALS.

3.1 Scheduling Order. The Court will enter a scheduling order which will control the course of litigation and may not be amended without leave of the Court. The scheduling order will be entered within ten (10) days after the defendant's answer has been filed. The plaintiff or defendant may certify to the Court in writing at the time of the filing of plaintiff's pleading or the defendant's answer that the litigation is complex. If the Court concurs, the Court will enter a scheduling order to accommodate complex litigation.

3.2 Joint Pre-Trial Order.

- a. Filing. A joint pre-trial order shall be filed by the Plaintiff's attorney at least 15 days before the scheduled date of trial. If an attorney for

either party does not participate in the preparation of the joint pre-trial order, the opposing attorney shall file a separate pre-trial order with an explanation of why the joint order was not submitted.

b. Contents. The pre-trial order must contain; (1) a summary of the claims and defenses of each party; (2) a statement of the stipulated facts; (3) a list of the contested issues of fact; (4) a list of contested issues of law; (5) a list of those legal propositions not in dispute; (6) a list of all exhibits to be offered at trial except rebuttal exhibits, which cannot be anticipated; (7) names and addresses of witnesses and a brief statement of the subject matter and substance of their testimony. Each party shall designate whether the witness will testify by deposition or in person; (8) a statement that settlement efforts have been exhausted including the date all settlement conferences were held; (9) an estimate of the length of trial; (10) a list of additional matters that aid in the disposition of the case, if any; (11) the signature of each attorney; and (12) a place for the date and signature of the Court.

c. Exhibits. All exhibits must be pre-marked and pre-numbered and a list of exhibits to be offered at trial must be furnished to the Court Reporter before jury selection.

d. Video Presentations. Attorneys proposing to use video presentations must present the page and line numbers to opposing counsel at the time assigned for the entry of the joint pre-trial order. Objections by opposing counsel must be presented to the Court and the offering attorney prior to the joint pre-trial conference. The objections will be ruled upon by the Court at the joint pre-trial conference. Any edited video depositions shall be presented for exhibition to opposing counsel to examine any piecemeal editing, relocation of testimony, exhibition out of context, etc. Opposing counsel shall be entitled to assert the rule of Optional Completeness and have portions of the depositions proposed by him inserted in its proper context in the initial presentation. Any objections to the proposed video depositions shall be made prior to the pre-trial conference and rulings will be made by the Court at the pre-trial conference.

e. Objections. Objections to any matters set forth in the pre-trial order shall be filed with the court prior to the pre-trial conference. All such objections will be ruled upon by the Court at the pre-trial conference.

3.3 Exclusion. The parties may file under Section 2.5, an agreed motion and order to exclude certain cases, i.e. collection suits, worker's compensation, simple car wrecks, slip and fall, etc., from the requirements of a joint pre-trial order and pre-trial conference.

3.4. Pre-Trial Conference. A pre-trial conference will be held according to the scheduling order entered by the Court which will be ten (10) days prior to the case's trial setting.

**RULE 4. TRIALS.**

4.1 Manner of Setting. Cases shall be set for trial by order of the court

4.2 Date of Setting. Cases shall be set for trial for a date certain. If a case is not tried by the second Friday after the date it was set, whether because of a continuance or because it was not reached, the court shall reset the case to a date certain. Unless all parties agree otherwise, the new setting must comply with all requisites of T.R.C.P. 245.

4.3 Witness Attendance. Each party is responsible for the attendance at trial of its proposed witnesses, and may not rely on another parties' list for attendance of a witness, except parties with the same alignment may rely on each other's list. Witnesses under subpoena are not affected by this rule.

4.4 Witness Numbers. Each party will be allowed up to two witnesses on any disputed issue -- such as expert witnesses, character witnesses, "grunt and groaners", etc., except on good cause shown.

4.5 Jury Trials. At least three days before trial each counsel is required to file and deliver to the Court your requested Charge, including instructions and special issues. Copies are to be furnished opposing counsel when the trial begins.

**RULE 5.**

**SUBMISSION OF ORDERS, DECREES AND JUDGMENTS.**

Within ten (10) days after rendition or an announced settlement by counsel, counsel for the moving party shall cause, unless ordered otherwise, all judgments, decisions, and orders of any kind to be reduced to writing and delivered with copies required to the Court Coordinator for signature by the trial Judge. A copy of such order or decree shall be concurrently delivered to opposing counsel with proof of such delivery to be filed with the Court. If no written objections to the form or content of the order or decree are received by the Court within ten (10) days from the date of submission, the Court shall enter the proposed order. If written objections are timely received, the Court shall set a hearing to enter the judgment according to the Court's schedule.

If counsel for the moving party, or alternate counsel ordered by the Court to prepare the order or decree, fails to comply with the provisions of this rule, the Court shall award attorney's fees against the failing party in favor of the other party for fees incurred by the other party's counsel in preparing the order or decree.

The Court may consider any requests for extensions of time under this rule for good cause shown only.

**RULE 6.**

**DEAD WEEKS.** Except with the consent of all parties, no cases will be tried on the merits during:

- (1) The week of the First Administrative Judicial Region Conference (April);
- (2) The week of the State Bar Convention;
- (3) The week of the Conference of the Judicial Section (September); and
- (4) The last week of December.

**RULE 7.**

**DISMISSAL DOCKETS.**

The following cases are eligible for dismissal for want of prosecution pursuant to T.R.C.P. 165a:

- (1) Cases on file for more than 180 days in which no answer has been filed or is required by law;
- (2) Cases which have been on file for more than twelve months and are not set for trial;
- (3) Cases in which a party or his attorney has failed to take any action specified by the court.
- (4) Cases in which any party seeking affirmative relief fails to appear for any hearing or trial of which the party has notice.

**RULE 8.           SETTLEMENT.**

Counsel is to notify the Court immediately of settlements that obviate court settings. Unnecessarily summoned jury panels are disruptive to the court's schedule.

**RULE 9.           VACATIONS OF COUNSEL.**

An attorney may designate not more than four weeks during the year as vacation, during which time he will not be assigned to trial or required to engage in any pre-trial proceedings. The written designation must be filed with the Court Coordinator at least 45 days in advance of the vacation period. This rule operates only where lead counsel, as defined by T.R.C.P. 8 is affected, unless the court expands coverage to other counsel.

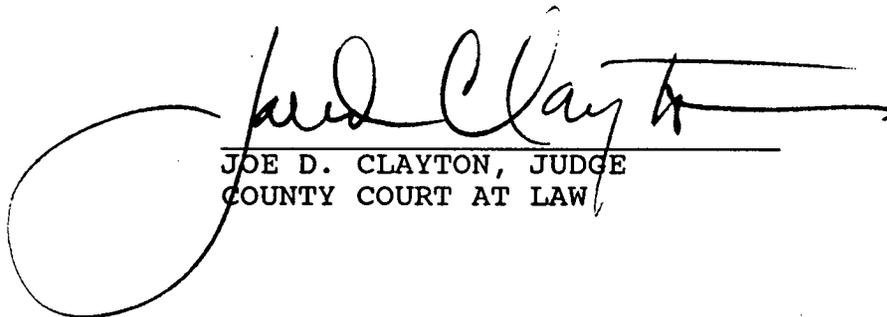
**RULE 10.       APPEARANCES.** Unless a contested hearing is required in any court appearances required by these rules may be made by telephone to the Court Coordinator of this court. Any appearance by telephone shall be made at least two business days prior to the court appearance. Any matter which has been agreed to by all parties, and subject to a court setting, will not require a court appearance. Any such agreement, however, must be communicated to the Court by telephone, fax or letter.

**RULE 11.       FAMILY LAW.** Family law cases are exempt from these rules.

**RULE 12.**

**EFFECTIVE DATE.**

These rules shall become effective on October 1, 1991, or upon their approval by the Supreme Court pursuant to T.R.C.P. 3a, whichever comes later.



Handwritten signature of Joe D. Clayton in cursive script, written over a horizontal line.

JOE D. CLAYTON, JUDGE  
COUNTY COURT AT LAW