

**LOCAL RULES OF PROCEDURE AND
RULES OF DECORUM FOR
THE JUSTICE OF THE PEACE COURTS**

KERR COUNTY, TEXAS

EFFECTIVE 1/01/2012

Chapter 1

GENERAL

1.1 Objective.

These rules are promulgated to provide a uniform system for the fair, impartial, and prompt disposition of matters properly before the Justice Courts of Kerr County. They are to be interpreted consistent with this objective.

1.2 Scope.

These rules govern cases filed in the Justice Courts of Kerr County, Texas. They are promulgated pursuant to Section 27.061 of the Texas Government Code.

1.3 Jurisdiction.

The Justice Courts of Kerr County hear:

- (a) Civil cases in which the amount in controversy is \$10,000.00 or less.
- (b) Eviction cases, both residential and commercial, including writs of re-entry.
- (c) Administrative hearings involving revocation of drivers licenses, concealed handgun permits, etc.
- (d) Criminal offenses which are fine only, both traffic and Class C.
- (e) Cases involving animal cruelty and neglect.
- (f) Peace Bonds

1.4 Organization.

Each Justice Court in Kerr County has a specific geographical area of venue which is generally described as follows: Precinct One, Precinct Two, Precinct Three and Precinct Four. Precinct boundary line information may be obtained from the Kerr County Election Office, Kerr County Courthouse, 700 Main Street, Kerrville, Texas, 78028, (830) 792-2242. Each court has its own court clerks responsible for setting cases on the individual docket of the court.

1.5 Calendar.

Each Justice Court will keep a docket of scheduled hearings and trials and are available to the public. The elected judges will generally be available as indicated by these rules and the calendar. Judges will exchange benches so that there will be no interruption in the work of each court.

1.6 Jury Selection.

The Justice Courts utilize the electronic method of selecting names of persons assigned for jury service. Jury impaneling is conducted in cooperation with the District, Municipal and County Courts. Questions about the jury impaneling process and jury service may be addressed to the jury office at 830-792-2290.

Chapter 2

CIVIL CASES

2.1 Filing Cases.

All civil cases shall be filed in the Justice Court where one or more defendants may reside, except as otherwise provided by law. Eviction cases shall be filed in the Justice Court where the leased premises are located.

2.2 Mediation.

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

Any party receiving notice of a referral to mediation has 10 days from date of notice to file a motion objecting to the referral. If any party to a case files a motion objecting to the referral to mediation, and the Court finds that there is a reasonable basis for the objection, the case may be excused from the referral. If either party fails to attend mediation or if no resolution is reached, the case is to be promptly set for trial.

2.3 Setting Cases.

All civil cases are to be brought to trial or final disposition as promptly as practicable.

At any time the Court may order a pre-trial conference. The Court may enter an order or orders following each pre-trial conference, which would address any applicable matters.

Each Justice Court shall be responsible for the setting of hearings and trials in each court and for the notices thereof.

2.4 Demand for Jury.

A party requesting a civil jury trial shall file a written request with the court in which the case is filed not later than the 10th day before trial. The jury fee shall be paid upon filing the request.

2.5 Continuances.

Continuances shall be made in writing at least 24 hours prior to the scheduled court date. The justice court, for good cause shown, supported by affidavit, may continue any suit pending before it to the next regular term of court, or postpone the same to some other day of term.

2.6 Uncontested Docket.

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

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

2.7 Matters Preliminary to Trial on the Merits.

Except for motions for continuance based on new circumstances, all motions in *limine*, exceptions and all pre-trial motions and pleas in each jury case shall be presented and heard at pre-trial hearing.

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

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

2.8 Hearings Conducted by Telephone.

At the discretion of the judge, a party or attorney may appear by telephone conference call. A request by a party for such an arrangement must be made in advance. In rare cases in the interest of justice, the court may permit a witness to appear by

telephone conference call.

A judge will not initiate a conference call. All arrangements with telephone operators must be made by the requesting party.

At any time, even after the completion of a conference call, a judge may determine that a hearing by telephone will not be sufficient and may require a hearing in court upon notice to all parties.

2.9 Dismissal for Want of Prosecution by the Court

2.9.1 Case Selection.

Cases designated by the court are eligible for dismissal for want of prosecution *sua sponte*

2.9.2 Notice.

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

2.9.3 Docket Settings.

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

2.9.4 Procedures for Retaining Cases and Objecting to Motions to Retain.

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

(d) The Court shall notify all parties of the Court's ruling on a motion to retain.

2.9.5 Cases Not Requiring Oral Argument.

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

2.9.6 Cases Requiring Oral Argument

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

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

2.9.7 Retained Cases.

If the Court decides to retain the case, the Court will set the case for trial at the convenience of the Court. The Court will notify the parties of the setting. At the setting, the case will be tried or dismissed.

2.9.8 Includes all Pending Claims.

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

2.10 Drafts of Judgments and Orders.

So far as practicable, every draft of a judgment or order to be signed by a judge should be approved as to form by attorneys for all parties before it is presented to the judge. A draft of an order shall not be typed on the same page with a pleading, motion, certificate of service, or any part thereof, and each such draft shall have a heading showing the cause number, the style of the case, and the court in which it is pending. The word "entered" should not be used in the line provided immediately above the judge's signature to show the date on which a judgment or order is signed.

2.12 Motions to Withdraw as Attorney.

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

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

(b) Files a written consent to the withdrawal signed by the client, or includes in the motion a specific statement of the circumstances that justify the withdrawal and the circumstances that prevent the moving attorney from obtaining the client's written consent; and

(c) Files a certificate stating the last known mailing address of the client.

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

2.13 Holidays.

When any date mentioned in these rules falls on a court holiday then the applicable date shall be the first date following the holiday.

The court holidays shall coincide with County holidays.

2.14 Authorization to Serve Citation (Rule 103).

A person wishing to be authorized by written order of the court to serve citations and other notices may file a written affidavit in application for authorization on a form supplied by the Court or a similar suitable application. The Court may, upon approval of the application, authorize service by the applicant in all appropriate suits pending in that Justice Court. Prior to, or in conjunction with the filing of return of service in any suit, the person verifying the return shall also file an affidavit that he or she is not a party to and has no interest in said suit. The affidavit may be part of the verified return required by Rule 107, Texas Rules of Civil Procedure.

Chapter 3
Criminal Cases

3.1 Filing Cases.

Justice Court cases shall be filed in the precinct where the offense is alleged to have occurred, except for cases involving school attendance, which may be filed in any precinct in the county.

Offenses alleged to have been committed in more than one precinct may be filed in any precinct that the offense, or any portion of the offense, is alleged to have occurred.

3.2 First Appearance.

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

Subsequent appearances will be as scheduled by the Court.

3.3 Setting Cases.

Cases are set at the request of defense attorneys or defendants in the Justice Court in which the case is docketed. Attorneys or defendants may reset cases no later than the day before the current setting in accordance with court rules. Court clerks are authorized to give the following settings; all others must be approved by the Judge.

(a) Pretrial

Pretrials are normally conducted in Class C cases as scheduled by the Court. Special pretrial settings must be requested and approved by the Court. Pretrial motions must be filed and served on the County Attorney 21 days prior to any pretrial hearing.

All pretrial hearings will be held on the day set unless a written State or Defense motion for continuance is granted.

(c) Trial before the Court (TBC)

Attorneys and defendants should not set a case for TBC unless the defendant and the State intend to waive jury. All cases shall be tried when set unless a written State or Defense motion for continuance is granted.

(d) Jury Trial

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

3.4 Plea of Guilty or Nolo Contendere.

Defendants may enter a plea of guilty or no contest at any time, with or without a plea agreement. Each Justice Court shall maintain a list of “standard” fines for various offenses. Defendants may also elect to enter a plea of guilty or no contest and address the Judge regarding punishment.

3.5 Appointment of Counsel.

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

3.6 Motions to Withdraw or substitute

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

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

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

Chapter 4

Rules of Decorum

4.1 Opening Procedure.

Immediately before the scheduled time for the first court session on each day the bailiff shall direct all persons present to their seats and shall cause the courtroom to come to order.

4.2 General Rules of Courtroom Conduct.

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

In the courtrooms there shall be:

- (a) no tobacco used;
- (b) no chewing gum;
- (c) no excessively short pants or bare midriffs; (d) no reading of newspapers;
- (e) no audible cell phones or pagers;
- (f) no bottles, cups or beverage containers except court water, pitchers and cups or as otherwise permitted by the Judge;
- (g) no edibles;
- (h) no propping of feet on tables or chairs;
- (i) no noise or talking that interferes with court proceedings.

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

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

4.4 Attorneys

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

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

(c) All objections, arguments, and other comments by counsel shall be directed to the Judge or jury and not to opposing counsel.

(d) While another attorney is addressing the Judge or jury, an attorney should not stand for any purpose except to make an appropriate motion, request or objection to the Court.

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

(f) Attorneys shall remain seated at the counsel tables at all times except: (1)

when the Judge enters and leaves;

(2) when addressing the Judge or jury; and

(3) whenever it may be proper to handle documents, exhibits, or other evidence (leave of court is not required.)

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

4.5 Broadcast Media

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

Chapter 5
Transfer of Cases

5.1. Civil Cases.

- (a) At the Judge's discretion, a Justice of the Peace court in one precinct may transfer a pending civil case to another Justice of the Peace court in Kerr County, provided that the receiving Judge has no objection to the transfer.
- (b) The parties lack standing to contest or request the transfer.
- (c) Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.

5.2. Criminal Cases.

- (a) A judge may transfer a pending misdemeanor case to another Justice of the Peace court in Kerr County, provided that the receiving Judge has no objection to the transfer.
- (b) The defendant has 10 days to object in writing to the transfer.
- (c) Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.