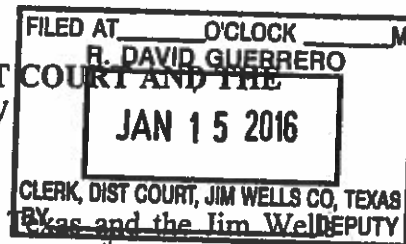


**STANDING ORDERS FOR THE 79<sup>TH</sup> JUDICIAL DISTRICT COURT AND THE  
JIMWELLS COUNTY COURT AT LAW  
CALENDAR YEAR 2016**



The Presiding Judges for the 79th Judicial District Court of Texas and the Jim Wells County Court at Law establish these procedures, rules and orders in the 79<sup>th</sup> Judicial District Court and the Jim Wells County Court at Law.

**ARTICLE I - CRIMINAL CASES**

**1.01. The State shall:**

- a. Furnish to defense counsel a list of all witnesses the State may call during its case-in-chief or the punishment phases of trial at least fifteen (15) working days prior to the scheduled trial date. Furnishing this list does not necessarily mean the State has or will subpoena any listed witnesses.
- b. Furnish to defense counsel a copy of all written or recorded statements of the defendant, including intercepted communications such as wiretaps, all confessions or statements made pursuant to CCP 38.22, recorded grand jury testimony, portions of offense reports containing a statement of the defendant, and all video and tape recordings that record the defendant. Telephone conversations initiated by the defendant from custody should be discovered independently from this Order. Defense counsel shall provide the State with the appropriate medium for copying any such item.
- c. Permit inspection and copying or photographing (CCP 39.14(a)) of:
  - (1) All items seized from the defendant.
  - (2) All items seized from any co-defendant or accomplice, related to the instant case.
  - (3) All contraband, weapons, implements of criminal activity seized or acquired by the State or its agents in the investigation of the alleged offense.
  - (4) All physical objects concerning the alleged offense, including fingerprints, hairs, fibers, fingernail scrapings, body fluids, tire tracks, paint scrapings, etc.

- (5) All documents, photographs, charts and diagrams to be introduced at trial.
  - (6) All psychiatric reports concerning the defendant.
  - (7) The result of any physical or mental examination of the defendant.
  - (8) All business and government records to be introduced by the State.
  - (9) All complaints, search warrants and related affidavits, autopsy reports and laboratory results of all examinations of contraband, fluids, hairs, fingerprints, blood samples, ballistics, soil, fibers, paints, etc.
  - (10) The results of scientific tests or experiments made in connection with this case.
  - (11) All lineups and photo spreads.
  - (12) Disclose all extraneous conduct, with date, county, state, and the name of the alleged victim which may be admissible during the State's case-in-chief (not the State's rebuttal case) or the punishment phases of trial at least fifteen (15) working days prior to the scheduled trial date. TRE 404(b) & CCP 37.07, sec. 3(g).
- d. Disclose any payment, promise of immunity, leniency or preferential treatment made to any co-defendant, accomplice, or prospective witness for the State.
  - e. Disclose the defendant's arrest and conviction records as well as any other arrest and conviction records of which the State has knowledge.
  - f. Disclose all favorable evidence under Brady v. Maryland and its progeny.
  - g. Disclose all records of conviction which may be used to impeach the defendant or any State witness. TRE 609(f).
- 1.02. The State is encouraged to furnish the defendant with offense reports and witness statements in addition to the above items. However, written statements of

witnesses and the work product of counsel and their investigators and their notes or reports are excluded from discovery under CCP 39.14(a) unless their disclosure is constitutionally required. Nevertheless, such statements, reports and grand jury testimony must be tendered to defense counsel at trial. TRE 612 (1) & (3) and 615.

- 1.03. The defendant shall exercise due diligence to contact the State to arrange a mutually convenient time to comply with this Order. The State shall exercise due diligence to comply with this Order at the earliest opportunity but in no event at least fifteen (15) working days prior to the scheduled trial date, absent a showing of good cause.
- 1.04. The State is not required to permit the removal of any item covered in this Order. Compliance with this Order shall be in the presence of a representative of the State. Defense counsel is responsible for the costs which are not incidental to compliance with this Order.
- 1.05. This Order does not cover privileged matters or work product unless such disclosure is constitutionally required. Any dispute related to compliance with this Order should be brought to the Court's attention immediately.
- 1.06. Defense counsel and the State have a continuing duty to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this Order. This Order is deemed sufficient to satisfy the discovery requests of both the defendant and the State. Should additional discovery be necessary the defendant and/or the State shall file a written motion addressing only matters not covered in this Order. Any such motion must be presented in accordance with CCP 28.01.

## **ARTICLE II. ATTORNEY AD LITEMS, GUARDIAN AD LITEMS AND AMICUS ATTORNEYS**

### **A. QUALIFICATIONS, APPOINTMENT AND DUTIES**

- 2./01. An attorney who desires to accept appointment as an attorney ad litem, guardian ad litem or an amicus attorney must be a member of and in good standing with the State Bar of Texas. The attorney must have demonstrated proficiency and commitment in providing services as an attorney ad litem, guardian ad litem and/or an amicus attorney. Additionally, attorneys who desire to accept appointments on behalf of incapacitated persons (as that term is defined under Texas Probate Code Section 601(14)) must also be certified by the State Bar of Texas under Texas Probate Code Section 647A.
- 2.02. Each attorney who desires to accept appointments as an attorney ad litem, a guardian ad litem or amicus attorney shall submit a letter of intent to accept such

appointments to the Court Manager for the county in which the attorney desires to accept appointments. The attorney must also specify the types of cases to which the attorney desires appointments under section 2.07 of these rules. An attorney who desires to accept appointments under section 2.07(a), must also accept appointment under section 2.07(d). If required by other provisions of this Order, the letter of intent must also be accompanied with any additional documentation that establish the attorney is eligible for appointments under this Order.

- 2.03. The trial court shall place the name of an individual that has qualified for appointment as an attorney ad litem, guardian ad litem or amicus attorney on a list of qualified attorneys at the time of qualification. The trial court shall appoint an individual from the appointment list using a system of rotation. The trial court shall appoint individuals from the next five names on the appointment list. An individual who is not appointed in the order in which the individual's name appears on the list shall remain next in order on the list. The trial court may appoint an individual not appearing on the list when in the interest of justice the trial court deems such appointment necessary.
- 2.04. The trial court shall promptly inform appointees of an appointment. Appointees may be informed by telephone, fax, e-mail, in person or by any other means likely to give the appointee notice of the appointment.
- 2.05. In additions to duties mandated by law, individuals appointed shall make every reasonable effort to do the following from the date of appointment:
  - (a) contact and interview the client as soon as practicable; and,
  - (b) contact all parties, or their legal counsel of record, if represented, as soon as practicable to obtain all agreed upon discovery, if applicable, and discuss resolution of all disputed issues and claims.
- 2.06. Individuals appointed shall represent the client until the case has been disposed or dismissed, appeals are exhausted, or the appointed individual is relieved of duties by the trial court or replaced by order of the Court.
- 2.07. The trial court shall establish four (4) appointment lists as follows:
  - (a) Torts;
  - (b) Suits by a Governmental Entity to Protect the Health and Safety of a Child;
  - (c) Enforcement Actions in Suits Affecting the Parent/Child Relationship Cases; and,
  - (d) All other cases.

The trial court shall prepare the appointment lists of individuals eligible and qualified to accept appointments as attorney ad litem or guardian ad litem on or before the first day of January of each year. The list shall be available to the public upon request. The trial court may also establish an appointment list for non-attorneys who desire to serve as guardian ad litem when authorized by law.

- 2.08. Due to the urgent need for attorney ad litem and guardian ad litem to meet with their clients as soon as practicable, only those attorneys whose main law office is located within or whose legal practice is conducted primarily in the 79<sup>th</sup> Judicial District will be appointed. However, nothing in this Order shall prohibit the trial court from appointing attorneys whose main law office is not located within or whose legal practice is not conducted primarily in the 79<sup>th</sup> Judicial District and who are not on the approved appointment list if:
- (a) there are no eligible or qualified attorneys for appointment from the appointment list;
  - (b) due to the complexity of the case, no attorney from the appointment list possesses special expertise and experience in a particular area relating to the pending litigation; or
  - (c) for any other reason that the trial court deems necessary in the interest of justice.
- 2.09. All appointees must have a working telephone or fax during normal business hours. If an appointee does not have a fax or telephone number, then the appointee must employ a receptionist, have an answering service or an answering machine that receives recorded messages, or provide some other appropriate means on which a message can be left with the appointee.
- 2.10. All appointees shall be punctual and thoroughly prepared for all scheduled court hearings, appearances and trials.
- 2.11. The court will not award attorney fees for motions prepared and filed that are not necessary for the proper disposition of the case.

#### **B. COMPENSATION AND EXPENSES OF APPOINTED ATTORNEYS PAID BY TRIAL COURT**

- 2.20. In cases where the trial court is required to provide for the compensation of appointed attorney ad litem, guardian ad litem or amicus attorneys, attorneys shall be compensated at an hourly rate set by the trial court. Due to the complexity and/or uniqueness of a given cause, the Court may award hourly compensation in excess of the established fee in the interest of justice.

- 2.21. Prior court approval is required for reimbursement of investigative, expert and other litigation expenses. Requests for approval of litigation expenses shall be filed in the trial court setting forth good cause for the incurrence of these expenses. The request for approval must include:
- (a) a description of the type of investigation to be conducted, the type of expert to be retained, or the type of any other litigation expense;
  - (b) specific facts that show that the investigation will result in discovery of admissible evidence, that the services of an expert are reasonably necessary to assist in the preparation of the client's case, or the incurrence of any other litigation expenses is necessary to adequately represent the client; and (3) an itemized list of anticipated expenses for each investigation, expert or other litigation related expense.
- 2.22. Appointed attorneys, both trial and appellate, shall be reimbursed for reasonable and necessary incidental expenses such as copying, telephone, mileage, etc., incurred without prior approval of the Court.
- 2.23. Not later than thirty (30) days after the case is disposed by the trial court or all appeals are exhausted, the appointed attorney shall prepare and submit to the trial court a voucher for the payment of fees and expenses on a form provided by the trial court. The voucher shall include all services provided to a single client, regardless of the number of cases disposed. The voucher shall contain a detailed, itemized statement as to time expended, date and service rendered. In cases in which final disposition may be prolonged or which require a significant amount of the ad litem's time, the Court may consider periodic requests for payment submitted in accordance with the provisions of this Order.
- 2.24. The trial court shall determine the reasonableness of the amount requested based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel. If the trial court disapproves the requested amount, the trial court shall make written explanation for such findings.
- 2.25. In the event that the trial court disallows part or all of any fees or expenses submitted, appointed counsel may file written objections to the trial court's action and request a hearing to show the trial court reasons that justify the amount requested on or before the expiration of thirty (30) days from the day that the trial court disallowed the fee or expense. **APPOINTED COUNSEL MUST TIMELY REQUEST A HEARING UNDER THIS RULE. IF APPOINTED COUNSEL FAILS TO TIMELY REQUEST A HEARING, THE APPOINTED COUNSEL SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTIONS TO THE TRIAL COURT'S AWARD OF ATTORNEY AD LITEM OR GUARDIAN AD LITEM FEES OR EXPENSES.**

**C. COMPENSATION AND EXPENSES OF AD LITEMS AND AMICUS  
ATTORNEYS NOT PAID BY TRIAL COURT**

- 2.30. Compensation of attorney ad litem, guardian ad litem and amicus attorneys that are not required to be paid by the trial court shall be in accordance with the provisions of Texas law.

**D. REMOVAL AND REINSTATEMENT FROM APPOINTMENT LIST**

- 2.40. An individual appointed as an attorney ad litem or a guardian ad litem under this order may be removed from the appointment list if the appointee:
- (a) fails to comply with the duties required of appointees imposed by the provisions of this standing order;
  - (b) submits a claim for services not performed or expenses that have not been incurred;
  - (c) fails to maintain compliance with each of the appointment list guidelines;
  - (d) has been found by a court to have provided ineffective assistance;
  - (e) has violated a rule of professional responsibility;
  - (f) has been convicted of or received a deferred adjudication for any criminal offense, other than an offense punishable by a fine only;
  - (g) is under indictment or being formally charged with a criminal offense, other than an offense punishable by a fine only; and,
  - (h) for any good cause shown to the Court.
- 2.41. Prior to removing an individual from the appointment list, the trial court shall notify the appointee in writing of the grounds that form the basis of the removal. The appointee shall file within ten (10) business days a response to grounds cited by the trial court for removal from the appointment list.
- 2.42. After the trial court complies with the provisions of 2.04(b), the trial court may take one or more of the following actions:
- (a) remove the individual from the appointment list if the trial court finds that the individual has violated one or more provisions of 2.04(a);
  - (b) require the individual to take appropriate rehabilitative measures;

- (c) place the individual on probation for a period not to exceed one year and require the individual to take appropriate rehabilitative measures.
- 2.43. An individual who has been removed from the appointment list may apply for reinstatement once the circumstances that led to the removal have been rectified.

### **ARTICLE III. FAMILY LAW**

#### **A. TEXAS FAMILY CODE TITLE 4 (PROTECTIVE ORDERS AND FAMILY VIOLENCE), SUBTITLE E (PROTECTION OF THE CHILD)**

- 3.01. The Court makes the following findings:
- (a) documents and other records filed in litigation initiated under the provisions of Texas Family Code Title 4 (Protective Orders and Family Violence), Subtitle E (Protection of the Child) contain personal and intimate matters in which the general public has no legitimate interest and the public release of these records would cause undue embarrassment and humiliation to the children, the subject of these proceedings, or would allow public access to information that would be confidential under the provisions of state or federal law, and
  - (b) restricting public access to these court records would not have an adverse impact on the public health or safety.
- 3.02. The following persons may have access to court records for cases initiated under the provisions of Texas Family Code Title 4 (Protective Orders and Family Violence), Subtitle E (Protection of the Child):
- (a) parties to the proceeding (including guardian ad litem) and their attorneys (including members of the attorney's staff);
  - (b) court appointed volunteer advocates under the provisions of Texas Family Code §107.0312; and,
  - (c) the presiding judge, and the district clerk and staff.
- 3.03. Any person seeking access to court records concerning cases initiated under the provisions of Texas Family Code Title 4 (Protective Orders and Family Violence), Subtitle E (Protection of the Child) who is not authorized to have access pursuant to these rules may file with this Court a motion for access. The



motion must be verified or supported by affidavit and must establish good cause for access to these records.

#### **B. PARENT EDUCATION AND COUNSELING FOR DIVORCING PARENTS**

- 3.10. Except for good cause shown or in cases where a party fails to appear and has defaulted, the parents, in all proceedings seeking a dissolution of a marriage joined with a suit affecting the parent-child relationship, shall attend and successfully complete an educational program for divorcing parents approved by the Court. In its discretion, the Court may also refer parents involved in modification or enforcement litigation, or a child involved in any type of custody litigation, to an education course or for counseling. Proof of completion of an approved educational program for divorcing parents must be filed with the clerk of the court prior to the granting of a final judgment.

#### **C. INFORMAL PRE-TRIAL SETTLEMENT CONFERENCE IN DIVORCE AND SAPCR PROCEEDINGS**

- 3.20. All parties involved in a suit for the dissolution of a marriage and/or in a suit affecting the parent/child relationship (excluding child protective services cases and Title IV-D cases) shall engage in an informal settlement conference at least seven (7) days prior to a scheduled final hearing. The parties shall make a diligent effort to identify and resolve all contested issues prior to the final hearing. Failure to engage in an informal settlement conference may lead to the imposition of sanctions and/or postponement of the final hearing.

#### **D. INVENTORY IN DIVORCE CASES**

- 3.30. In contested divorce cases, each party shall file with opposing counsel not later than 60 days from Respondent's appearance but in no event less than 30 days prior to a final trial setting, an inventory, signed under oath by that party, setting forth a description and value of all property (real and personal, community and separate) owned or claimed by either or both of the parties and a list of all debts and liabilities (stating the creditor and amount) owed by either or both parties. Inventories shall not be filed with the Court except upon order of the Court. When a party files an inventory with opposing counsel, the party shall file a certificate of compliance with the District Clerk certifying that the inventory has been filed with the opposing counsel. Failure of a party to timely file an inventory as required, both as to time and form, may subject that party to sanctions upon the motion of a party or the Court.

### **ARTICLE IV. RULES OF ADMINISTRATION FOR THE 79<sup>TH</sup> JUDICIAL DISTRICT COURT SITTING IN JIM WELLS COUNTY AND THE JIM WELLS COUNTY COURT AT LAW**

- 4.01. All civil cases within the concurrent civil jurisdiction of the 79<sup>th</sup> Judicial District Court sitting in Jim Wells County and the Jim Wells County Court at Law shall be filed with

the District Clerk.

- 4.02 The District Court and the County Court at Law shall be in session at least once per week and at all other intervals that will result in efficient court administration.
- 4.03 The Judges of the District Court and County Court at Law shall coordinate any plans for judicial vacation, sick leave, attendance at educational programs, and similar matters to ensure availability of the Courts to the public at all times.
- 4.04 All cases within the concurrent jurisdiction of the 79<sup>th</sup> Judicial District Court sitting in Jim Wells County and the Jim Wells County Court at Law shall be assigned to the Jim Wells County Court at Law by the Jim Wells County District Clerk. The following cases shall be assigned to the Jim Wells County Court at Law:
- a. All cases under Titles I, II, IV and V of the Texas Family Code.
  - b. All civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000. (If a party (1) fails to plead an amount in controversy that would be within the jurisdiction of the Jim Wells County Court at Law or (2) fails to state in the pleading that the amount in controversy is within the jurisdictional limits of the Jim Wells County Court at Law, then the District Clerk shall assign the case to the 79<sup>th</sup> Judicial District Court.)
  - c. All appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

This rule applies to all cases filed in Jim Wells County, those transferred to Jim Wells County on a change of venue, and those cases in Jim Wells County ordered reassigned by a recusing or transferring Judge. Nothing herein will prevent Judges from exchanging benches, sitting for another Judge, or transferring cases between themselves, when allowed by law or these local rules.

- 4.05 In the event of the assignment of a case to a Court that does not have subject matter jurisdiction, the Judge shall transfer, either *sua sponte* or on the motion of any party, said case to Court with subject matter jurisdiction as long as venue is proper in Jim Wells County.
- 4.06 A civil case may be transferred from one Court to another having jurisdiction:
- (1) upon motion of a party, for good cause shown;
  - (2) in the event the Judge is disqualified to hear or recuses himself or herself from hearing the case;

- (3) when the case should be transferred in the interest of justice;
- (4) to facilitate docket control as provided by law or by Court rules; or
- (5) when at least one common party and substantially similar questions of fact or law appear in each case.

If a case is transferred under (5) above, the case having the higher cause number shall be transferred to the Court having jurisdiction over the case with the lowest cause number.

- 4.07 Cases assigned to a specific Court shall remain pending in that Court until final disposition, provided that any case may be transferred to another Court by Order of the Judge of the Court in which the case is pending with the consent of the Judge of the Court to which the case is transferred.
- 4.08 The Judge of the District Court and the Judge of the County Court at Law may act for the other in any case in which the Courts have concurrent jurisdiction regardless of which Court a case was assigned.

#### **ARTICLE V. MISCELLANEOUS PROVISIONS**

- 5.01. Pre-trial Hearings and Bench Trial Settings. Pre-trial and trial settings for non-jury civil and criminal cases may be set by the Court *sua sponte* or upon request to the Court Manager at the Court's office in Alice, Texas. Such request shall be made by the requesting party utilizing the Setting Request Form provided by the Court. A party seeking a setting for a temporary injunction hearing in conjunction with a temporary restraining order must contact the Court Manager for a hearing date.
- 5.02. Civil Jury Trial Settings. Civil jury trial settings may be requested by submitting a Setting Request Form requesting a Docket Control Conference. All Docket Control Conferences shall be set by the Court and shall be conducted telephonically by the Court Manager with all parties or their legal counsel participating.
- 5.03. Approvals for Court Orders and Judgments. All proposed orders or judgments concerning rulings of the Court shall be submitted to opposing counsel for approval as to form only. All signatures must be original. An attorney may sign on behalf of another attorney with a notation that the order was signed "with permission" of said attorney. If approval cannot be obtained within seven (7) business days, the parties may submit proposed orders directly to the Court for consideration. The transmittal correspondence to the Court shall include:
  - (a) the date on which the proposed order was submitted to opposing counsel and the manner of transmittal,

- (b) a statement as to whether or not opposing counsel has communicated with counsel concerning the proposed order, and
- (c) if communication was had, a brief summary of the contents of said communication.

5.04. Hearings on Motions for Summary Judgment. Hearings on Motions for Summary Judgment shall be by submission only. The Court may allow oral argument upon good cause shown with leave of court or upon the Court's own motion. All legal briefs shall be filed no later than the submission date.

5.05. Courtroom Decorum. All persons in the Courtroom shall be attentive to the proceedings and cause no distraction. The following is hereby prohibited in the Courtroom unless authorized by the Court:

- (a) Conferences or conversations to which the Court is not privy while court is in session.
- (b) Sitting on railings, tables, desks, chair arms, propping feet on furniture, or fixtures, or leaning on the Court's bench.
- (c) Sleeping, reclining, or slouching in Courtroom seats.
- (d) Possession or consumption of beverages, food, chewing gum, and candy.
- (e) Use of tobacco products.
- (f) Use of communication devices, computers, recording devices, etc. All such devices must be turned off unless authorized by the Court.
- (g) Wearing attire or accouterments that contain any commercial or campaign advertising that may create a bias or prejudice for or against a party or participant in a proceeding before the Court, or that may disrupt the orderly proceedings of the Courtroom.
- (h) Gestures, facial expressions, sounds, signs, or other action indicating approval or disapproval of any proceedings should be avoided.
- (i) Reading newspaper, magazines, books, etc.

All persons in the courtroom shall be attired in a manner reflecting the dignity of the Court. All attorneys shall be dressed in appropriate business attire (blue jeans, running shoes, etc. are not business attire). All male attorneys must wear either a suit or a blazer and slacks with a tie. All female attorneys must wear either a dress, full length pants or


skirt with blouse or other appropriate professional attire. All parties, witnesses and spectators shall be dressed appropriately. Shorts, beachwear, flip flops, and other similar recreational clothing is strictly prohibited.

Attorneys shall address each other formally and without familiarity. The use of first names shall be avoided.


This Order is executed in triplicate originals. One original each shall be filed with the Jim Wells County District Clerk, Brooks County District Clerk and the Jim Wells County Clerk.

Signed on the date indicated below to be effective for the calendar year 2016 and to expire on December 31, 2016.

Date: 1/14/2016

  
Richard C. Ferrell  
Judge Presiding  
79<sup>th</sup> Judicial District Judge

Date: JANUARY 14, 2016

  
Michael V. Garcia  
Judge Presiding  
Jim Wells County Court at Law