

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 90-0031

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## APPROVAL OF LOCAL RULES OF THE 97TH DISTRICT COURT

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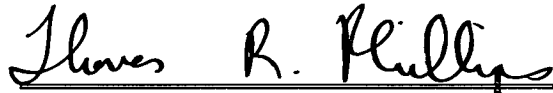
### **ORDERED:**


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:

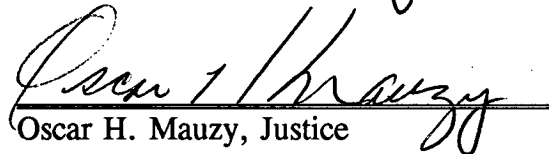
Local Rules of the 97th District Court (Archer, Clay, and Montague Counties), dated October 15, 1990

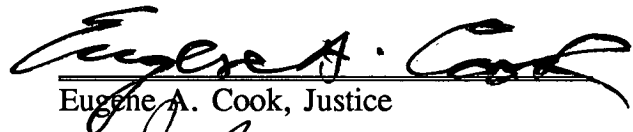
The approval of these rules is temporary, pending further orders of the Court.

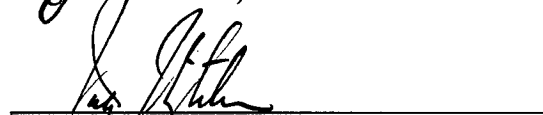
SIGNED AND ENTERED this 4<sup>th</sup> day of ~~January~~ <sup>February</sup>, 1991.

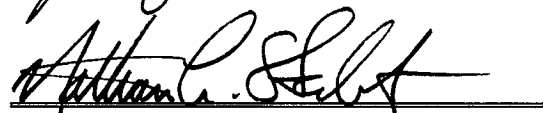
  
Thomas R. Phillips, Chief Justice


  
Raul A. Gonzalez, Justice


  
Oscar H. Mauzy, Justice


  
Eugene A. Cook, Justice

  
Jack Hightower, Justice

  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

  
John Comyn, Justice

  
Bob Gammage, Justice



RAY SHIELDS  
COURT REPORTER

LINDA BURLESON  
COURT COORDINATOR

ROGER E. TOWERY

JUDGE  
97TH JUDICIAL DISTRICT  
ARCHER, CLAY AND  
MONTAGUE COUNTIES

P. O. BOX 530  
HENRIETTA, TX 76365-0530

AREA CODE 817  
538-4314

RECEIVED  
DEC 21 1990  
OFFICE OF COURT  
ADMINISTRATION

December 19, 1990

Office of Court Administration  
ATTN: Rules Implementation  
P.O. Box 12066, Capitol Station  
Austin, Texas 78711

Gentlemen:

Pursuant to Rule 3a of the Rules of Civil Procedure, please find enclosed an original and one copy of an Order Amending the Rules of the Ninety-Seventh Judicial District Court of Texas.

Would you please sign both the original and copy and return the copy to me in the enclosed, self-addressed and stamped envelope?

Very truly yours,


A handwritten signature in cursive script that reads "Roger E. Towery".

Roger E. Towery

RET:lb  
Enclosures

LETTER.SUP

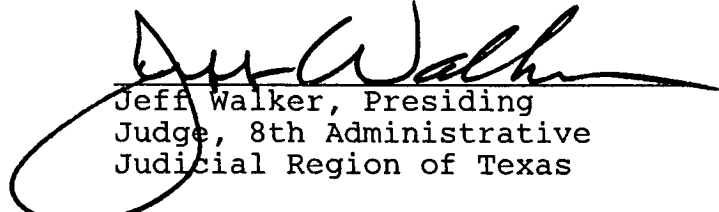
Signed October 15, 1990.

  
Roger E. Towery,  
Judge Presiding

ORDER OF JUDGE OF EIGHTH ADMINISTRATIVE JUDICIAL REGION  
APPROVING RULES OF PRACTICE AND PROCEDURE

The Rules of Practice and Procedure promulgated by the foregoing order for the 97th Judicial District Court of Texas have been reviewed by the undersigned Judge of the 8th Administrative Judicial Region and are found not to be inconsistent with the Rules of the Administrative Judicial Region, and are hereby approved.

Signed December 18, 1990.

  
Jeff Walker, Presiding  
Judge, 8th Administrative  
Judicial Region of Texas

ORDER REPEALING EXISTING RULES AND ADOPTING NEW

RULES OF THE NINETY-SEVENTH

JUDICIAL DISTRICT COURT OF TEXAS

IT IS ORDERED by the 97th Judicial District Court of Texas, pursuant to Rule 3a, Texas Rules of Civil Procedure and Articles 28.01 and 33.08 of the Texas Code of Criminal Procedure, that:

1. The Rules of Practice and Procedure heretofore adopted by this Court on January 1, 1981, and amended on August 21, 1981, June 23, 1982, February 24, 1984, and January 31, 1989, and all Minute Orders relative to practice and procedure heretofore adopted, are repealed;

2. The following Rules of Practice and Procedure are adopted and shall become effective forty-five (45) days after the date of this order, and upon approval of the Presiding Judge of the Eighth Administrative Judicial Region and the Supreme Court of Texas;

3. The Clerks of this Court in Archer, Clay and Montague Counties, Texas, shall post a copy of these Rules of Practice and Procedure and this Order on the bulletin board utilized by the District Court in each county, and shall, upon approval of these Rules, by the Supreme Court of Texas, record the same together with a copy this Order and the Order of the Supreme Court of Texas, approving the same in the minutes of this Court;

4. Each Clerk shall immediately deliver to each lawyer residing or maintaining an office within the county where such clerk serves, a copy of these Rules, together with a copy of this Order, and shall furnish each lawyer and pro-se party appearing in any action in this Court, hereafter, a copy of these Rules, and such Clerk shall keep a current record of each lawyer to whom a copy of these Rules was delivered, and the date of such delivery;

5. These Rules shall be construed and interpreted in addition to and in conformity with and not as superceding the Constitution and laws of the State of Texas any rules of the Texas Supreme Court or the Court of Criminal Appeals. These Rules shall not be construed to prohibit the Court from making orders, settings or procedures, which, in the Court's discretion, may further the orderly administration of justice.

6. Should any of these Rules, or any part thereof, be held invalid, for any reason, such invalidity shall not affect the validity of the other Rules or parts of Rules, all of which have been separately considered and adopted;

**NINETY-SEVENTH DISTRICT COURT  
LOCAL RULES**

**RULE 1. GENERAL**

**1.1 DECORUM.** Everyone with business before the Court, shall be prompt and conduct themselves with dignity at all times.

**1.1.1** No one shall sit on railings, tables, desks, chair arms nor place feet on furniture or fixtures, prop chairs back nor lean or rest on the bench;

**1.1.2** No one shall make gestures, facial expressions nor sounds indicating approval or disapproval of any ruling, person or conduct;

**1.1.3** No one shall eat, drink, use tobacco nor chew gum in the courtroom.

**1.1.4** A client has no right to insist that a lawyer conduct himself or herself in any pending matter in a manner disrespectful to other counsel, opposing parties or the Court. Counsel shall not permit such practice.

**1.1.5** Counsel shall instruct parties and witnesses that they shall not contact the Judge concerning pending matters, and shall advise clients, witnesses and others of these rules and proper court conduct so as to avoid embarrassment and delay.

**1.2 FILING AND MAIL PROCEDURES.** A current directory of court personnel is provided as a preface to these rules. Mail shall always be properly addressed and have adequate postage affixed.

**1.2.1** All mail, including original orders for settings, requiring the Judge's attention or signature shall be delivered to the Court Coordinator at the address listed for the Court Coordinator in the directory.

**1.2.2** Original documents to be filed shall be mailed to the respective clerk.

**1.2.3** If items are to be forwarded by the Judge or Court Coordinator to a clerk, other counsel or returned to sender, the mail wrapper shall contain envelopes of appropriate size, properly addressed with sufficient postage affixed for forwarding. If time is of the essence in meeting filing deadlines, the original motion or other document should be sent directly to the clerk at the clerk's address as listed in the directory and a separate order or fiat sent to the Court Coordinator at the address listed for the Court Coordinator in the directory.

**1.2.4** Counsel are responsible to see that office personnel are aware of and carry out mail procedures.

**1.3 SETTING PREFERENCE.** The Court will attempt to accommodate conflicting settings of counsel. Priorities, as they relate to such conflicts shall be:

**1.3.1** Election contests or other matters requiring assignment of a visiting judge;

- 1.3.2 Cases set for any purpose following appearance on a dismissal docket;
- 1.3.3 Criminal cases;
- 1.3.4 Special or preferential settings;
- 1.3.5 Whether this or another Court will be without an available case for trial or shall have to disband a jury panel;
- 1.3.6 Earlier case filed;
- 1.3.7 Regular setting;
- 1.3.8 Pretrial setting.

**1.4 CONFERENCE REQUIRED.** Before filing any motion, counsel for a moving party shall confer with the counsel of all parties 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 or indictment, motions for summary judgment, and motions for new trial.

**1.4.1** All motions shall contain a certificate by the party filing same that efforts to resolve the dispute without Court intervention have been attempted and failed and shall set forth specifically the efforts taken by date, action and method.

**1.4.2** Any motion omitting such certificate shall not be set for hearing until such certification has been filed.

## **RULE 2. CALENDAR**

**2.1 SETTING REQUESTS.** Requests for a setting shall be written and timely delivered to the Court Coordinator and opposing counsel or pro se parties. The request shall:

**2.1.1** Advise that the case is either a non-jury or jury trial and the estimated time for trial for the entire case;

**2.1.2** Advise which, if any, discovery and other pretrial matters remain unresolved;

**2.1.3** Certify that a copy of the request has been duly delivered to all counsel and pro se parties.

Estimates of time felt by opposing counsel to be erroneous shall be called to the attention of opposing counsel and the Court Coordinator, in writing. Estimates for too much time cause as many problems as those for too little time. Be prepared to dispose of the entire case within the estimate.

**2.2 SUMMARY DOCKET.** Regular non-jury (summary docket) days in each calendar month in each county shall be as follows:

Archer County - First Monday of month  
Clay County - Third Monday of month  
Montague County - Second Monday of month  
(civil preference)  
Fourth Monday of month  
(criminal preference)

When Monday is a legal holiday recognized by this Court, the next regular business day will be the summary docket day. Counsel shall see that the clerk has the file and docket sheet on the bench before the time for hearing.

**2.2.1** All settings, except as otherwise set by court order are at 9:30 A.M. when all cases will be called and order of trial scheduled. Except for hearings on temporary orders, announcements stating a need to "talk to the opposing side" are insufficient. Such "talks" shall be prior to trial day. Such announcements will cause the case to be passed or dismissed.

**2.2.2** In Archer and Clay Counties, preference shall be given to criminal matters to permit the District Attorney to be available for the Grand Jury;

**2.2.3** In Montague County, civil matters shall have preference on the second Monday and criminal matters shall have preference on the fourth Monday;

**2.2.4** Preferences shall not permit late arrival for other matters;

**2.2.5** The Grand Jury shall meet in Archer County on the first Monday, Montague County on the second Monday, Clay County on the third Monday and when otherwise directed by the Court.

**2.3 JURY TERMS.** Jury terms in each county will be scheduled by the Court from time to time and an annual calendar published. When a case is scheduled for a particular jury term, but is not reached, it shall automatically be carried



forward on the docket of future jury terms in that county.

**2.4 JURY DOCKET.** A jury docket will be sent to all counsel and pro se parties having a case on the docket for a particular jury term approximately thirty (30) days prior to the first day of that jury term. Written announcements of "ready" or "not ready" must be made by each attorney in charge and received by the Judge at least ten (10) full days prior to the first day of the jury term. All announcements of "not ready" shall be accompanied by a detailed and proper motion for continuance. "Subject to" announcements, are not permitted. A failure to announce, or an announcement not strictly in compliance herewith will be considered by the Court as an announcement of "ready".

All written announcements shall contain the following information:

**2.4.1** That the announcing party has made a bona fide offer of settlement that has been rejected and all reasonable efforts to settle have been attempted;

**2.4.2** An estimate of the time required for trial;

**2.4.3** If the announcement is "ready", that all pretrial matters have been disposed of and all pretrial orders and the local rules have been complied with. If the announcement is "not ready", the specific reasons therefore shall be set out.

**2.4.4** A certificate that the person signing is the attorney in charge and that the information set out is true.

**2.5 NON-JURY DOCKET.** Non-jury cases requiring more time than is available on the summary docket (Rule 2.2) shall be set by a request to the Court Coordinator pursuant to Rule 2.1. These settings are considered "special settings" and strict adherence to all rules, time estimates and orders is required.

**2.6 ATTORNEY VACATION.** Counsel wishing to avoid assignment to trial during a vacation period not exceeding four (4) consecutive weeks may advise the Clerk, Court Coordinator and Judge at least forty-five (45) days prior to the beginning of the vacation. This shall not be grounds for resetting cases already set or those carried forward pursuant to Rule 2.3.

**RULE 3. SETTLEMENT AUTHORITY**

**3.1 SETTLEMENT AUTHORITY - PRESENCE OF PARTIES OR REPRESENTATIVE.** Unless counsel has full settlement authority (within the pleadings and applicable law), parties with such authority shall be present at court for all proceedings. If a party is not in full control of settlement, such as when counsel is employed by an insurer or surety, a representative of the entity in control, with full settlement authority, shall be present at all proceedings.

**RULE 4. WITHDRAWAL OF COUNSEL**

**4.1 WITHDRAWAL OF COUNSEL.** Withdrawal of counsel in both civil and criminal cases shall be pursuant to Rule 10, T.R.C.P.

**RULE 5. CASE DISPOSITION**

**5.1 TIMELY DISPOSITION.** Disposition of civil cases shall be pursuant to Rules of Judicial Administration. Disposition of criminal cases shall be as provided by law with priority to defendants in local custody.

**5.2 DISMISSAL NOTICE.** Procedure for dismissal of cases not timely disposed of will be pursuant to Rule 165a, T.R.C.P. Once a case is set for any hearing after a dismissal notice, no delay from ordered scheduling will be permitted.

**5.3 CONTINUANCES AND PASSES.** There are no "agreed", "first" or "automatic" continuances or passes. All motions must be specific and presented at least ten (10) days before the scheduled hearing or trial. If the basis of a continuance is a conflicting setting, the specific style, docket number, court, date case was filed, date case was set, Judge scheduled to hear it and name, address and phone number of person with the court to contact for information shall be provided in the motion.

**RULE 6. CRIMINAL CASES**

**6.1 SERVICE OF INDICTMENTS.** Immediately following the return of an indictment, the District Clerk, District Attorney and Sheriff shall cause a certified copy thereof to be served on the accused.

**6.2 COORDINATOR'S DOCKET.** After indictments are returned, the District Attorney shall within three (3) days furnish the Court Coordinator with a list of all pending criminal cases in each county that have been indicted and whether the accused is a fugitive, in custody or on bail. Each such list shall contain the names and addresses of the accused, his attorney and bondsman. Any changes in status, personnel or addresses shall be timely furnished to the Court Coordinator.

**6.3 ARRAIGNMENTS.** Arraignments shall be at 9:30 A.M. on the regular non-jury summary docket days in Archer and Clay Counties and on the fourth Monday of each month in Montague County.

**6.3.1** Each defendant and counsel, if any, shall appear in person for arraignment unless prior thereto counsel has appeared of record, a written waiver of arraignment has been filed and there is no question of competency to stand trial.

**6.3.2** Each surety on a defendant's bail bond shall deliver such defendant for arraignment.

**6.4 INDIGENCY - APPOINTMENT OF COUNSEL.** A letter explaining indigency, an accompanying affidavit of indigency and a questionnaire has been provided to each Sheriff's office in the district and proper compliance therewith is an absolute requirement before court appointed counsel will be considered. An accused desiring court appointed counsel must provide satisfactory proof of indigency.

**6.5 PRETRIAL PROCEDURE.** Article 28.01, Texas Code of Criminal Procedure and these local rules shall control all pretrial hearings and filings related thereto. Matters not timely filed, raised and presented at the scheduled pretrial hearing are waived and will not later be allowed. No pretrial hearing will be continued except upon written motion. There will be no "first setting" nor "agreed" continuances.

**6.6 PRE-SENTENCE REPORT.** If a defendant desires to make an application for probation and/or requests that punishment be assessed by the Court, the defendant and his/her counsel are encouraged to execute a consent to the Court's inspection of presentence report at least five days before any pretrial hearing. If the defendant does not desire a presentence report, the same shall be waived in writing, unless the Court directs otherwise.

**6.7 PLEAS - CASES ON JURY DOCKET.** Guilty pleas arising from plea-bargain agreements must be made and finalized, including sentencing, at least five (5) days before the date the case is first set for trial in a jury term except as provided in 6.7.2.

**6.7.1** Counsel are responsible to complete any plea-bargain in time to complete a plea in accordance with these rules and the Court's schedule. All scheduling shall be with the Court Coordinator.

**6.7.2** The Court may consider a continuance of a case on a jury docket to a subsequent date - certain setting for a plea, but only if:

**6.7.2.1** It is a joint motion of the State and the defense;

**6.7.2.2** It provides for a specific date on a summary docket day (Rule 2.2) for the setting;

**6.7.2.3** It certifies that all counsel and the defendant will be present on the specific date;

**6.7.2.4** It contains a detailed, written, plea bargain agreement; and

**6.7.2.5** It is signed by all counsel and the defendant.

**6.7.3** Guilty pleas will not be heard during a jury term.

**6.7.4** Guilty pleas upon plea-bargain agreements not timely in compliance herewith will be rejected by the Court.

**6.8 JURY CASES.** The District Attorney shall notify the Court Coordinator, in writing of all criminal cases in which the State is ready for jury trial. Such notices shall include the names and addresses of the defendant, defendant's counsel and bondsman. There will be no "first setting" continuances.

**6.9 DISCOVERY.** Within seven (7) days after arraignment, the District Attorney shall make available to defense counsel the items of discovery hereinafter set forth whether or not any motion for discovery has been filed on behalf of the defendant. When any item of discovery called for is not within possession of the District Attorney he shall state, in writing, the reason for such unavailability. Notice of the State's disclosure shall be placed in the official file of the case for the Court's reference at the pretrial hearing and a copy of the transmittal letter shall be delivered to the Court Coordinator. Defense counsel are "on notice" of the State's disclosure when the notice is placed in the official file and shall examine the State's disclosure and any evidence disclosed as in possession of the State prior to pretrial. Defense motions shall not request items already available in the State's disclosure, but shall be confined to requests for items not otherwise disclosed by the State. Defense motions shall not request items specifically disclosed to the defense by these rules.

The State shall disclose to the Defendant, or make available to the Defendant for copying or inspection, the following:

**6.9.1** All statements, confessions or admissions made by the Defendant or any Co-Defendant whether written or otherwise recorded during the time the Defendant or Co-Defendant was in custody of agents of the State of Texas or the United States Government;

**6.9.2** All items of a tangible nature seized from the Defendant or any Co-Defendant, which seizure was made by the officers of the State of Texas or the United States Government acting with or without warrant on or about the alleged date of the offense in the respective county of this district. Such items shall include but are not limited to items of contraband or weapons seized, clothing of the Defendant, a Co-Defendant or a victim, books, papers, photographs, documents,

and tangible objects related to the case which are in the actual possession of the State of Texas or any of its agents at the time of disclosure;

**6.9.3** Photographs, including video, made of the crime scene or of the Defendant, Co-Defendant, victim or any other person or scene related to the case;

**6.9.4** The name and address of each identification witness, the time and place of any photographic or corporal identification, and any and all written notes of any statements made by the witnesses who viewed the Defendant in the line-up or show-up as well as the police line-up sheet and/or photographs with pertinent information concerning the procedure followed during the identification process and the participants in the line-up, including their race, age, sex, height, weight, hair color, eye color, clothes, and distinguishing marks in order that defense counsel who was not afforded the opportunity to be present may make some determination concerning any undue suggestion or other impropriety which would render the line-up process as violative of Defendant's right to due process of law;

**6.9.5** Photographs or photographic spreads used by the State or local officers and displayed to any witness for the purpose of obtaining identification of the Defendant, as well as the name and address of any and all identification witnesses and the time and place of any such identification and the name and address of any persons who displayed the photograph to the witnesses;

**6.9.6** Reports of psychological or psychiatric examinations of the Defendant done under the direction of the Court which are in possession of the District Attorney of any agency of the State;

**6.9.7** The results and reports of any physical examination, scientific tests and experiments made in connection with the case, including but not limited to reports of comparisons of known and latent fingerprints of the Defendant, reports of analysis of hair samples removed from the body of any victim or the Defendant or secured from any other person or place in connection with the case, all scientific analysis of purported controlled substances seized from the Defendant or the property of the Defendant on the date of the alleged offense in the respective county of this district, analysis of the person, clothing or possessions of the Defendant and report of firearms examinations and/or ballistics tests conducted with any weapon which is a part of the State's investigation of the case;

**6.9.8** Evidence in the form of tape or wire recordings or transcriptions of conversations to which the Defendant was a party and which recordings were obtained as a result of bugging, electronic eavesdropping or wire tapping, including conversations overheard or evidence secured as a result of such conversations;

**6.9.9** A list of the name and address of each prospective prosecution witness who has knowledge of the facts of the present case and who in reasonable likelihood will be used at the guilt or innocence phase of the trial as a witness in the prosecution's case in chief and the name and address of all witnesses interviewed by any agents of the State concerning this case who have not been called to testify but who have knowledge of facts material to the guilt or innocence of the Defendant or the reputation or criminal record of the Defendant, if any;

**6.9.10** The TCIC and NCIC arrest and conviction record of the Defendant and all Co-Defendants and any accomplice witness the State reasonably

anticipates will appear at the trial herein;

**6.9.11** The TCIC and NCIC criminal records of criminal arrests and convictions of any witness to be called by the State;

**6.9.12** Written or recorded statements made concerning this case by all persons who are prospective prosecution witnesses, such statements to be supplied to the Defendant after the testimony of such witnesses at trial;

**6.9.13** A list of witnesses who have appeared before the Grand Jury or whose statements or affidavits were presented for consideration by the Grand Jury which returned the indictment in the subject case;

**6.9.14** A copy, if any, of the Grand Jury testimony heard in connection with the indictment of the Defendant in this cause;

**6.9.15** Any evidence or information in the possession of the State or subject to the control of the State or known to its agents which is inconsistent with the alleged guilt of the Defendant or which is relevant to the punishment which could be assessed against the Defendant;

**6.10 DISCOVERY MOTIONS.** Defense counsel shall not file "blanket" discovery motions seeking things covered by these local rules. Anything the defense counsel requests or desires in addition to that ordered by these local rules shall be requested by specific, separate motion as to each item or thing, and all requirements of motion practice shall be strictly adhered to by defense counsel, showing good cause for discovery, that the matters or items sought are material and that they are in possession of the State or its agencies and are presently being withheld. **DISCOVERY MOTIONS MUST BE VERY SPECIFIC.** Counsel are referred to Sec. 62.01[2][b], Texas Criminal Practice Guide published by Matthew-Bender. Motions not complying with these local rules shall be treated as if no motion has been filed.

**6.11 ATTORNEY - CLIENT CONFERENCE.** In all cases, including where counsel is court appointed, counsel shall confer with his/her client-by-appointment prior to every court appearance (including arraignment if appointment is prior thereto) so that the Court will experience no delay awaiting attorney-client conference at court appearance.

**6.12 COMPLETION OF PLEA PAPERS.** All plea papers, except those actually required to be signed before the Judge in open court, shall be fully completed and sworn to prior to the parties and counsel appearing before the bench or within the bar.

**6.12.1** In compliance with Article 26.13, C.C.P., the Court will admonish all Defendants in writing. Counsel are instructed to carefully go over such admonishments with each client. Should counsel feel that a client does not understand the admonishments made in writing, the Court shall be so advised.



## **RULE 7. CIVIL CASES**

**7.1 GENERAL.** Pretrial jury procedures normally require two (2) pretrial conferences in all civil cases except default judgments and non-contested matters, tax collection and ordinary commercial collections.

**7.2 DUTY OF COUNSEL.** It shall be the duty of all counsel and pro se parties to file and present to the Court all preliminary matters at the scheduling and pretrial conferences. No preliminary matters shall be presented on the day of or during trial.

**7.3 PRETRIAL SCHEDULING CONFERENCE PROCEDURE.** At the pretrial scheduling conference, the Court may by written order:

**7.3.1** Set a schedule for completion of all discovery, including the time for exchange of complete, final witness lists (and expert reports) and exhibits as follows:

**7.3.1.1** A list of all expert witnesses in accordance with T.R.C.P. 166(i);

**7.3.1.2** A list of all fact witnesses in accordance with T.R.C.P. 166(h);

**7.3.1.3** Exchange of all exhibits and the filing of written objections thereto;

**7.3.2** Set a deadline for the filing of all pleadings by all parties;

**7.3.3** Set a date for hearing any summary judgment motion;

**7.3.4** Set a final pretrial conference;

**7.3.5** Set a trial date; and

**7.3.6** Make such other orders as may be necessary or expedient for the scheduling of the case or authorized by T.R.C.P. 166.

The scheduling order shall control the scheduling of all matters in the case until further orders. Any exception to the scheduling order must be in writing, approved by the Court and filed in the case. Failure to notice for depositions and other discovery matters will not permit an exception to the time requirements.

**7.4 WAIVER OF PRETRIAL SCHEDULING CONFERENCE.** The pretrial scheduling conference may be waived by written agreement of all counsel and pro se parties, with written approval of the Court, only by an agreed scheduling order containing all items set forth in Rule 7.3 above, with blanks left for the dates for the summary judgment hearing, if any, final pretrial conference and the trial, and for the Judge's approval. Such agreed order must contain a statement that all counsel are familiar with the Court's local rules, must conform to the time standards of the Rules of Judicial Administration, and must be filed with the court before the date of the pretrial scheduling conference.

**7.5 DISCOVERY.** The discovery rules are and should be liberally construed. Motions for Protection, except in the case of bona fide immunity or

privilege, are generally a waste of judicial economy and are discouraged. Admissibility of evidence is generally immaterial to discovery. Untimely objections are automatically overruled.

**7.5.1** Motions for Protection shall not be used for delay or to postpone scheduled discovery. Filing and presentment shall be timely to prevent delay.

**7.5.2** Documents sought to be excluded shall be segregated and furnished to the Court in a sealed wrapper along with a specific pleading of the claimed privilege or immunity as to each, with citation of authority.

**7.6 SUMMARY JUDGMENT PROCEDURE.** Anticipated motions for summary judgment shall be scheduled at the pretrial scheduling conference. Otherwise, any motions for summary judgment shall be timely presented so as to permit timely notice for a hearing on a regularly scheduled summary docket at least thirty (30) days prior to the final pretrial conference.

**7.7 FINAL PRETRIAL CONFERENCE.** A final pretrial conference shall be held in all jury cases (and non-jury cases where determined by the Court) pursuant to the Texas Rules of Civil Procedure and these rules. No pretrial conference will be continued for a failure to comply with the scheduling order. Do not leave any surprises for trial day.

**7.7.1** All matters preliminary to the actual trial of the case shall be heard at the pretrial conference. All matters, including final pleadings and required evidentiary documents, shall be filed at least seven (7) days prior to the date the final pretrial conference is scheduled, or earlier if otherwise provided by law or order of the Court and shall be served on all opposing counsel and pro se parties with a copy provided to the Court;

**7.7.2** Matters which shall be disposed of at the pretrial conference and which if not properly presented shall be deemed waived, are as follows:

**7.7.2.1** Motions in limine;

**7.7.2.2** Motions to suppress;

**7.7.2.3** All pending dilatory pleas, all other motions and exceptions;

**7.7.2.4** Appointment of guardian ad litem or attorney ad litem;

**7.7.2.5** Objections (which shall be in writing) to any discovery or proposed exhibits;

**7.7.2.6** Approval of stipulations, including in workers' compensation cases, wage rate, hardship or lump sum and reasonable and necessary medical expenses. In the event such specific matters relating to workers' compensation cases are not stipulated, counsel shall be prepared to satisfy the Court of the reasonableness in not agreeing to the stipulation. With respect to wage rate, it is incumbent upon the insurer to secure from the employer all wage rate records which may be necessary.

**7.7.3** Each party shall appear at the pretrial conference by the attorney in charge, unless permission of the Court has been first obtained to permit appearance by co-counsel who has full knowledge of the case and authority to bind the client in all things before the Court.

**7.7.4** All discovery procedures must have been completed prior to the pretrial conference;

**7.7.5** All exhibits, including filings required by the Rules of Evidence, shall be exchanged with all parties as ordered by the scheduling order in the case, or if no order was issued then such exhibits shall be exchanged not later than three (3) days prior to the pretrial conference and any objections to such exhibits shall be presented, in writing, at the pretrial conference;

**7.7.6** All items described in T.R.C.P. 166(k) shall be presented to the Court at the pretrial conference. Failure to submit timely may be a grounds for the refusal of any requested pretrial question, definition or instruction or the denial of objections to the charge.

**7.8 FAILURE TO APPEAR OR COMPLY.** The failure to appear at a pretrial scheduling conference, or a pretrial conference, or the failure to comply with the Texas Rules of Civil Procedure, the local rules, or the Court's orders with respect to a case, may result, after hearing, in appropriate sanctions. The failure to fully comply herewith, including those rules relative to settlement authority, shall be considered as a failure to appear.

**7.9 PRESENCE OF WITNESSES.** All witnesses must be present in Court and ready to testify at the time set by the Court to start the evidence in the trial.

**7.10 VOIR DIRE.** Voir dire shall be conducted from the bench side of counsel table or the lectern, if any, and counsel shall require prospective jurors to rise when answering individual questions.

**7.10.1** Prospective jurors shall not be asked questions which have been previously answered in response to a question by the Court, other counsel or by the jury information cards.

**7.10.2** "Jury argument" or "opening statement" voir dire will not be permitted and counsel may be reprimanded in the presence of the panel for violation.

## **RULE 8. FAMILY LAW CASES**

**8.1 EX PARTE ORDERS.** In all family law cases in which an ex parte order involving temporary orders for support or alimony is requested, the party seeking such temporary orders hearing shall include the following language in such ex parte order.

**"All parties to this action shall file with the Clerk, and deliver a copy to the Judge and all counsel or pro se parties, at least by the day preceding the hearing herein ordered, a written statement showing the accurate gross income of each party hereto for the last preceding three (3) calendar months and last preceding three (3) calendar years."**

**8.2 TEMPORARY ORDERS.** A temporary order short form is available in the Clerk's office. This form shall be used in every temporary order matter and shall be completed by counsel as far as possible before the hearing and the original (only one) handed to the Court. If all matters are agreed, there will be no formal hearing. Only those matters not agreed shall be heard. Whether agreed or not, all counsel and parties shall sign one completed form before leaving court and the original shall be filed with the Clerk after court approval. All counsel shall keep a copy of the completed form and send a copy of it to the Judge with the formalized temporary orders. This form is not a substitute for formal temporary orders which must be forwarded to the Court within four (4) days after the hearing.

**8.3 SETTING REQUESTS.** Requests for settings in family law cases shall be in compliance with Rule 2.1. Attention of counsel is directed to the requirements concerning inventories and responses. (See Rules 2.1.2 and 8.4).

**8.4 INVENTORIES.** Subject to Rule 8.4.2, in all suits for dissolution of marriage, petitioner shall, not later than fifteen (15) days prior to trial, file a complete, sworn itemized inventory and appraisal of all property belonging to the parties to the marriage, including separate property and community property as well as any property belonging to the children. The inventories shall be filed setting forth the list of property, with the values assigned to each such item of property shown to the right of the description of such property. Not less than eight (8) days prior to trial, respondent shall file an inventory so a comparison of properties and values can be made. Items of property on respondent's inventory but not on petitioner's shall be at the end of the appropriate category. The inventory should be generally in the form of "Exhibit A", attached hereto.

**8.4.1** Inventories required in a marriage dissolution proceeding are considered discovery and the requirements therefor and the documents so filed are subject to sanctions provided by law, including Rule 215, T.R.C.P.;

**8.4.2** In the event an agreement completely settling the property of the parties and all custody and support matters is entered into, the filing of inventories and appraisements shall not be required.

**8.5 VISITATION AND ACCESS TO CHILDREN.** An agreement with respect to visitation and liberal access to the children of the marriage is encouraged. Normally the possessory conservator shall pick up and return the children. Absent agreement, the order normally shall provide the possessory conservator possession of the children in accordance with Sections 14.032 et seq, Texas Family Code.

**8.6 CHILD SUPPORT.** Child support, unless agreed, shall be set by the

Court pursuant to the Texas Family Code Sections 14.05 et seq. This Court will consider the Texas Family Code Sections 14.05 et seq. for modification of prior orders.

**8.6.1** All parties to an action involving child support shall file with the Court a written statement setting forth the accurate gross income of all adult parties to such proceeding for the preceding three (3) calendar years, and the preceding three (3) calendar months. Copies of the Internal Revenue Service income tax reporting forms for the three (3) previous calendar years shall be provided to the Court and other counsel when net resources are disputed. Counsel shall prepare a written statement showing any items for which a deduction from gross income (except social security tax and income tax withheld) is sought, including a written statement of the reasons that the deduction should be allowed;

**8.6.2** Automatic reduction in a child support order due to emancipation is not a prorata reduction. Reduction, if no change of circumstances has occurred, is calculated by applying the proper percentage level for the number of children remaining pursuant to Texas Family Code Child Support Guidelines.

Example: \$2000 net resources, 3 children

3 children originally	-	\$2000 X 30%	=	\$600
2 children remain	-	\$2000 X 25%	=	\$500
1 child remains	-	\$2000 X 20%	=	\$400

**8.7 SUPPORT PAYMENTS.** All support payments (except for an employer pursuant to a withholding order) and monthly service fees shall be paid to the proper District Clerk by cash or certified funds and shall be in compliance with the Clerk's instructions. All decrees, judgments and orders for support shall include orders stating specified manner and place of payment in compliance with this rule and shall include the Clerk's proper address.

## EXHIBIT A

### COMMUNITY PROPERTY

1. Real Estate:
  - 1.1 Street address:  
Legal description:  
Fair market value: \$  
Outstanding mortgage balance  
Current net equity in property (fair market value minus outstanding liens): \$
  - 1.2 [CONTINUE WITH EACH SUCH ITEM OF PROPERTY.]
2. Motor Vehicles, Boats, Airplanes, Cycles, etc.
  - 2.1 Year:  
Model:  
Who drives:  
Vehicle identification number:  
Existing (lien/security interest):  
Lien balance: \$  
Monthly payment: \$  
Fair market value: \$  
Net equity:
  - 2.2 [CONTINUE WITH EACH SUCH ITEM OF PROPERTY.]
3. Accounts with Financial Institutions
  - 3.1 Name of account:  
Account number:  
Name and address of financial institution:  
Current account balance: \$  
Persons named on withdrawal cards:  
Type of account:
  - 3.2 [CONTINUE WITH EACH SUCH ITEM OF PROPERTY.]
4. Stocks and Bonds
  - 4.1 Name of (stock/bond):  
Number of (shares/bonds):  
Market value: \$
  - 4.2 [CONTINUE WITH EACH SUCH ITEM OF PROPERTY.]
5. Life Insurance
  - 5.1 Insurance company:  
Name of insured and of owner:  
Face amount: \$  
Policy number:  
Type of policy:  
Cash surrender value:
  - 5.2 [CONTINUE WITH EACH POLICY.]

6. Individual Retirement Accounts and Keogh Accounts

- 6.1 Name and address of financial institution:  
Account name:  
Account number:  
Payee of survivor benefits:  
Present balance: \$

6.2 [CONTINUE WITH EACH SUCH ACCOUNT.]

7. Company Retirement Benefits (including pension, profit-sharing, thrift, and ESOP plans)

- 7.1 Name of plan:  
Name of employee:  
Name of employer:  
Payee of survivor benefits:  
Description of benefits and/or amount in plan and method of computation: \$

7.2 [CONTINUE WITH EACH SUCH ACCOUNT.]

8. Safe-Deposit Box

- 8.1 Name of financial institution or other depository:  
Box number:  
Names of persons with access to contents:  
Items in safe-deposit box:

8.2 [CONTINUE WITH EACH SAFE-DEPOSIT BOX.]

9. Family-Owned and/or Closely Held Business Interests (including professional practices, partnerships, and other non-publicly traded business entities)

- 9.1 Exact name of business:  
Type of business organization:  
Nature of business:  
Business address:  
Date business started:  
Percentage of ownership:  
Estimated value: \$

9.2 [CONTINUE WITH EACH SUCH BUSINESS INTEREST.]

10. Jewelry and Personal Effects of Husband

ITEMIZE MAJOR ITEMS AND STATE FAIR MARKET VALUE

11. Jewelry and Personal Effects of Wife

ITEMIZE MAJOR ITEMS AND STATE FAIR MARKET VALUE

12. Household Furnishings and Fixtures in Possession of Husband

Fair Market Value: \$

OR LIST EACH ITEM ROOM BY ROOM

13. Household Furnishings and Fixtures in Possession of Wife

Fair Market Value: \$

OR LIST EACH ITEM ROOM BY ROOM

14. Accounts Receivable (including any expected income tax refund)

14.1 Name of debtor:

Amount of debt:

Debt (is/is not) evidenced in writing

Debt (is/is not) reasonably expected to be paid

14.2 [CONTINUE WITH EACH ACCOUNT RECEIVABLE.]

15. Livestock

ITEMIZE AND ACCURATELY DESCRIBE, GIVING  
ESTIMATED VALUE AND LOCATION

16. Artworks and Collections

DESCRIBE ANY WORKS OF ART, SUCH AS PAINTINGS,  
TAPESTRY, RUGS, AND NUMISMATIC OR  
PHILATELIC COLLECTIONS, GIVING LOCATION  
AND ESTIMATED FAIR MARKET VALUE

17. Community Debts/Liabilities

17.1 (NAME), attorney at law, for legal representation of Husband: \$

17.2 (NAME), attorney at law, for legal representation of Wife: \$

17.3 19\_\_\_ federal income tax liability: \$

GIVE THE FOLLOWING INFORMATION FOR EACH  
TRADE ACCOUNT, INCLUDING BANK CARDS, OIL  
COMPANIES, AND HEALTH CARE PROVIDERS.  
EXCLUDE CREDITORS PREVIOUSLY LISTED FOR  
WHICH THERE IS A SECURITY INTEREST  
AGAINST A PARTICULAR ASSET.

17.4 Name of creditor:

Account number:

Amount owed: \$



NET COMMUNITY ASSETS: \$

NET COMMUNITY LIABILITIES: \$

NET COMMUNITY WORTH: \$

Contingent Assets and Claims: \$

Contingent Liabilities: \$

Trust, Estate, and Custodial Assets: \$

SEPARATE PROPERTY OF (NAME OF HUSBAND)

FOR EACH ASSET ASSERTED TO BE SEPARATE PROPERTY,  
USE THE DESCRIPTIONS CONTAINED IN THE PRECEDING  
INSTRUCTIONS AND MAKE THE FOLLOWING  
ADDITIONS FOR EACH ASSET

Date property acquired:

How acquired: [e.g., by gift, by devise, by descent, or owned before marriage]

SEPARATE PROPERTY OF (NAME OF WIFE)

FOR EACH ASSET ASSERTED TO BE SEPARATE PROPERTY,  
USE THE DESCRIPTIONS CONTAINED IN THE PRECEDING  
INSTRUCTIONS AND MAKE THE FOLLOWING  
ADDITIONS FOR EACH ASSET

Date property acquired:

How acquired: [e.g., by gift, by devise, by descent, or owned before marriage]



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

P.O. BOX 12248      AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK  
JOHN T. ADAMS

JUSTICES

RAUL A. GONZALEZ  
OSCAR H. MAUZY  
EUGENE A. COOK  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
ROBERT A. "BOB" GAMMAGE

EXECUTIVE ASS'T.  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.  
MARY ANN DEFIBAUGH

February 4, 1991

Hon. Roger E. Towery, Judge  
97th District Court  
Post Office Box 530  
Henrietta, Texas 76365-0530

Dear Judge Towery,

Please find enclosed, a copy of the order of the Supreme Court of Texas of February 4, 1991 that approves the local rules that you submitted in December, 1990.

Sincerely,

SIGNED

John T. Adams  
Clerk

Encl.

cc: Hon. Jeff Walker, Presiding Judge  
Eighth Administrative Judicial Rgn.

Office of Court Administration