

**LOCAL RULES OF
PROCEDURE AND DECORUM
FOR
THE JUSTICE OF THE PEACE COURTS
HENDERSON 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 Henderson County. They are to be interpreted consistent with this objective.

1.2 Scope.

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

1.3 Jurisdiction.

The Justice Courts of Henderson 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 reentry.
- (c) Administrative hearings involving revocation of driver's licenses, concealed handgun permits, etc.
- (d) Criminal offenses which are fine only, both traffic and Class C.
- (e) Cases involving animal cruelty and neglect.

1.4 Organization.

Each Justice Court in Henderson County has a specific geographical area of jurisdiction. Precinct One serves the north central portion of Henderson County; Precinct Two serves the northwestern part; Precinct Three serves the northeastern part; Precinct Four serves the southeastern part; Precinct Five serves the southwestern part. 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. A weekly docket shall be available to the public for each week's proceedings. The elected judges will generally be available as indicated by these rules and the calendar. However, when a judge is on vacation, at a judicial or educational conference, or has medical or dental needs, it is the policy of the Justice Courts to obtain a visiting judge, whenever

possible, so that there will be no interruption in the work of each court. Visiting Judges are also scheduled to help with heavy workload or crowded dockets.

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 and County Courts.

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 Henderson 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 14th day before trial. The jury fee shall be paid upon filing the request.

In all cases where a request has been made for a jury trial and a jury fee has been paid, the case may be ordered to mediation and the trial date will not be set until after the mediation process has been completed and the mediator has advised the court whether the parties and their counsel appeared as ordered and whether a settlement resulted.

2.5 Preferential Settings.

Preferential settings may be obtained at the discretion of the judge.

2.6 Continuances.

Motions for Continuance will be heard at the discretion of the judge.

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. All such exceptions, motions, and pleas not presented and heard at scheduled pre-trial hearings will be deemed waived, except upon a showing of good cause.

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

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. A judge will not initiate a conference call.

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.

The following cases are eligible for dismissal for want of prosecution *sua sponte* by the Court:

- (a) Cases on file for more than 120 days in which no answer has been filed or no service has been effected;
- (b) Cases that have been on file for more than 12 months that are not set for trial and have had no filings or settings within 180 days;
- (c) Any other case designated by the Court.

2.9.2 Notice.

The court clerk shall give notice that certain cases will be set for a Status Hearing. Such matters will be dismissed on the date indicated in the notice of Status Hearing 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 Motions to Withdraw as Attorney.

Except as provided in Rules 8 and 10, Texas Rules of Civil Procedure, a motion to with-draw 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.

2.11 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 be published.

2.12 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. 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.

2.13 Filing of Discovery Materials.

- (a) Discovery materials shall not to be filed except for where permitted by TRCP 191.4.
- (b) Most discovery is no longer to be filed. *See* Rule 191.4. This is a response to the storage problems currently being encountered by Texas court clerks. But parties may file discovery in support or opposition to a motion, for other use in court proceedings.
- (c) Sanctions. If the party files discovery without substantial justification, the court may, upon motion or its own initiative, impose on the person who filed the discovery, or the party on whose behalf the request, notice, response, or objection was made, or both, an appropriate sanction listed under TRCP 215.2(b).

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. 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.

The Justice Court may transfer a school attendance case to Juvenile Probation whenever a defendant also has pending juvenile cases at the district Court.

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.

Court clerks are authorized to give the following settings; all others must be approved by the Judge.

(a) Announcement/Pre-Trial Docket

Defendants/Attorneys may discuss their cases with a prosecutor, plead guilty or no con-test to resolve the case, or reset the case for trial.

(b) Pretrial Motions

Pretrial hearings are normally conducted in Class C cases on the day of trial. Special pre-trial settings must be requested and approved by the Court. Pretrial motions must be filed with the court 14 days prior to any pretrial hearing. The court will provide the motions to the county attorney.

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, or the judge resets for any reason within the Court's discretion.

(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. As the Judge enters the courtroom the bailiff or the court clerk shall state: "All rise."

And while everyone is still standing, the bailiff shall announce: "Justice of the Peace Court, Precinct "X" of Henderson County, Texas is now in session, Judge " _____ " presiding. Please be seated. "

4.2 Recess

When the Judge announces a recess, the bailiff shall state: "All rise."

And all shall remain standing until the Judge leaves the courtroom, whereupon the bailiff shall announce: "The Court is now in recess".

In reconvening after a recess, the bailiff shall call the courtroom to order and request everyone to rise as the Judge enters and shall state: "Please be seated."

Before a recess of a jury trial, the jury will be excused, and all other persons present shall remain seated while the bailiff conducts the jury from the courtroom into the jury room.

After a recess, the bailiff shall direct all jurors to the jury room and shall call the courtroom to order and request everyone to rise as the Judge enters, as in nonjury trials. The jury shall be returned to the jury box from the jury room, upon the instruction of the Judge.

4.3 General Rules of Courtroom Conduct.

All officers of the court, except the Judge and jurors, and all other participants, except 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

Justice Courts are not court of records, therefore a record of the proceedings shall not be made.

Chapter 5 Transfer of Cases

5.1 Civil Cases.

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 Henderson County, provided that the receiving Judge has no objection to the transfer.

The parties lack standing to contest or request the transfer.

Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.

5.2 Criminal Cases.

A judge may transfer a pending misdemeanor case to another Justice of the Peace court in Henderson County, provided that the receiving Judge has no objection to the transfer.

The defendant has 10 days to object in writing to the transfer.

Once transferred, the case proceeds as if it arose originally in the court to which it was transferred.

Chapter 6 Exchange of Benches

- (a) In accordance with Texas Government Code 27.054, upon agreement, justices of the peace may exchange benches to hold court and administer justice.
- (b) The docket of each case heard by the visiting judge will reflect the visiting judge's name.
- (c) The judge requesting the exchange shall initiate the transfer order and ensure it is signed by both judges prior to the adjudication of any cases.

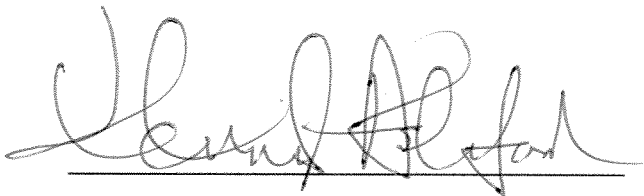
Chapter 7 RECUSAL

- (a) Pursuant to Texas Government Code 27.055(b), if a justice is temporarily unable to perform official duties because of absence, recusal, illness, injury, or other disability, the Administrative Judge may appoint a qualified person to serve as temporary justice for the duration of the disability.
- (b) The recusal order and assignment from the Administrative Judge shall be annotated in the docket.

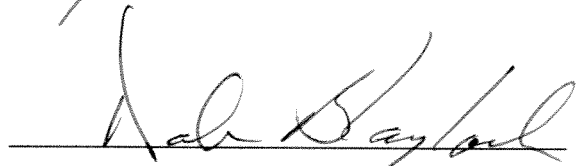
Chapter 8 Administrative Judge

- (a) The administrative judge of the justice of the peace courts in Henderson County, Texas will be elected by a majority vote of the judges and shall serve a term of one (1) year.
- (b) The term of office shall be from January 1 through December 31 of each year or until a successor is elected.
- (c) In the event the administrative judge should resign as administrative judge, is on medical leave, is temporally removed from active duty as administrative judge, or is disqualified from service as administrative judge in any manner, a successor shall be elected to complete the term of office.
- (d) The local administrative judge can be removed and replaced at any time by a majority vote of the remaining justices of the peace.

APPROVED THIS 24th DAY OF January, 2012.



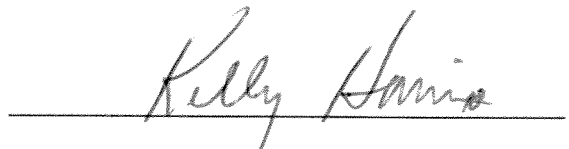
Judge Henry Ashford



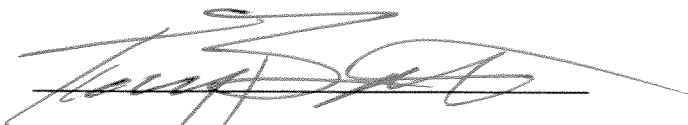
Judge Dale Blaylock



Judge Sue Starnes



Judge Kelly Harris



Judge Tommy Barnett



Judge Milton Adams