

# **RULES OF PRACTICE IN THE 328<sup>TH</sup> JUDICIAL DISTRICT COURT**

**WALTER G. ARMATYS, PRESIDING JUDGE**  
**JOHN R. MILLARD, ASSOCIATE JUDGE**

The 328<sup>th</sup> Judicial District Court adheres to the Texas Code of Professional Responsibility, Lawyer's Creed and Code of Judicial Conduct. Violations may result in appropriate sanctions. Applicable state law and Fort Bend County District Court Rules should be consulted. These Rules of Practice shall apply equally to attorneys and pro se litigants.

**EFFECTIVE IMMEDIATELY: the 328<sup>th</sup> District Court has resumed the scheduling of IN-PERSON HEARINGS for all hearings and trials, except as set forth below.**

## **1. ZOOM VIDEOCONFERENCE POLICIES**

**As stated above, all hearings and trials are now scheduled to be conducted in-person.** However, the 328<sup>th</sup> District Court will continue to conduct a “**Friday Zoom Docket**” on Friday's of each week beginning at 8:30 a.m. for the following matters only:

- Agreed Divorce prove-ups (may also be submitted via prove-up affidavit/declaration)
- SAPCR prove-ups (may also be submitted via prove-up affidavit/declaration)
- Uncontested prove-up of other agreements
- Name Changes
- Entry of Orders
- Motions for Continuance
- Motions for Referral to Mediation

The Court **WILL NOT** conduct “hybrid” Zoom / In-Person hearings.

Contested hearings/trials **may** be set via Zoom if all parties agree or if ordered by the Court, subject to advance confirmation with the Court Coordinator. If not agreed, all hearings/trials shall remain on the in-person docket unless a party files a Motion for Zoom Hearing, setting forth with specificity “good cause” why the hearing/trial should be conducted via Zoom.

Motions for Zoom Hearings shall be served on all parties in accordance with the TRCP and shall be accompanied by a Notice of Submission. Any party may file a response to the motion prior to the submission date. The Court will rule on the motion by submission only and shall inform the parties of its ruling accordingly.

Procedures for Zoom Hearings are set forth in more detail below under the heading “**328<sup>th</sup> ZOOM HEARING ORDERS AND PROCEDURES**”.

2. **GENERAL**

- a. Each party shall consult applicable state law and the Fort Bend County Local Rules for additional specifics and time limits.
- b. Court staff does **NOT** provide legal advice or participate in ex parte communications (except as allowed by law).
- c. **FILES** – the 328<sup>th</sup> District Court is paperless. Pleadings are routed electronically through the District Clerk's office. Any questions regarding a file, filing, service, etc. should be directed to the District Clerk's office at 281-341-4509 or [www.fortbendcountytexas.gov](http://www.fortbendcountytexas.gov) for online services. Most civil cases may be accessed online unless a case is sealed, such as an adoption, termination or CPS case.
- d. **DOCUMENTS** – ALL pleadings and/or documents shall be filed with the District Clerk. Pleadings and documents will be routed by the District Clerk to the Court in the ordinary course of business as appropriate. All faxes and e-filing shall be directed to the District Clerk's office and not sent directly to the Court or Court Coordinator. The District Clerk's fax-file number is 281-341-4519. Courtesy copies are not accepted outside the courtroom.
- e. All communication with the Court Coordinator shall be via email at [328th@fortbendcountytexas.gov](mailto:328th@fortbendcountytexas.gov).
- f. The 328<sup>th</sup> is a District Court wherein the rules of the ELEVENTH ADMINISTRATIVE DISTRICT apply and establish priorities. Please review these rules when determining the priority of appearances. Lower court hearings, agreed mediations, depositions, Harris County Civil appearances (unless the rules provide otherwise) do not take precedence over hearings/trials in Fort Bend County.
- g. **APPROPRIATE ATTIRE REQUIRED** – appropriate professional attire is required for any appearance in court whether in-person or via Zoom hearing. Suit jackets and ties are required for male attorneys. No hats, sunglasses (unless prescription), inappropriate jeans, shorts, or other inappropriate clothing are permitted.

**IMPORTANT:** Completion of a “Parenting Education Course” is required for all cases involving children as set forth below. For more information, please refer to the 328<sup>th</sup> DISTRICT COURT PARENTING CLASS AND MEDIATION policy (updated April 1, 2022).

- h. **PARENTING CLASS** – parents in all cases involving children (including Divorce and Original Suits Affecting the Parent-Child Relationship) are required to complete a “Parent Education Course” with an approved provider **within 30 days of filing for Petitioner and 30 days after service for Respondent.**

**Certificates of Completion shall be filed with the District Clerk’s office timely.**

**APPROVED IN-PERSON COURSES:**

- Escape Family Resource Center – (713) 942-9500; [www.learntoparent.org](http://www.learntoparent.org)
- Depelchin Children’s Center – Stafford and Houston (713) 730-2335; [www.depelchin.org](http://www.depelchin.org)
- Divorce As Friends, Stop the Conflict – (713) 520-5370; [www.divorceasfriends.com](http://www.divorceasfriends.com)

**APPROVED ONLINE COURSES** - the Court has approved the following online courses:

- [www.puttingkidsfirst.org](http://www.puttingkidsfirst.org)
- [www.kidsfirsttoday.com](http://www.kidsfirsttoday.com)
- [www.family-affairs.org](http://www.family-affairs.org)
- [www.parentingchoice.com](http://www.parentingchoice.com)
- [www.txparent.com](http://www.txparent.com)
- [www.parentclassonline.com](http://www.parentclassonline.com)
- [www.coparentingintothefuture.com](http://www.coparentingintothefuture.com)
- [www.courtapprovedparenting.com](http://www.courtapprovedparenting.com)

- i. **TRANSFER OF CASES – Multiple Suits** - when a suit filed in the 328<sup>th</sup>, 387<sup>th</sup> or 505<sup>th</sup> District Courts of Fort Bend County is in any way terminated (by non-suit or otherwise), a subsequent suit or cause of action involving substantially the same parties or subject matter shall be filed in, or transferred to, the court that first had jurisdiction over the parties or subject matter. This rule applies to all controversies, including divorce, support, conservatorship and all matters incident thereto, whether sought by original proceeding or by modification, clarification or enforcement of a former order, judgment or settlement agreement. If such a situation is disclosed for the first time after a hearing begins, the Court shall immediately order the suit transferred to the court in which a prior suit was filed.



3. **DOCKET CALL**

**NOTE: the 328<sup>th</sup> District Court no longer utilizes a “Sign-up Docket”. All cases requiring a hearing shall be set through the Court Coordinator, whether by in-person or via Zoom.**

- a. Docket call is at 8:30 a.m. Attorneys and parties are expected to timely answer the docket, unless excused by the Court. Conflicts or announcements of “pass” or late appearance shall be communicated to the Court Coordinator and all opposing counsel/parties via email prior to 8:30 a.m. with the specific cause number, estimated arrival time and specific information regarding the conflict or late appearance. Hearings may only be passed by the party setting the hearing. Passing a hearing does not pass any other hearing set by another party.
- b. If appearing in another court in Fort Bend County, you must notify the Bailiff or Court Coordinator and all opposing counsel/parties prior to 8:30 a.m.
- c. If a “party” is a peace officer who has any interest or personal connection to a case and is in possession of a weapon, the weapon shall be held by the Bailiff until directed by the Court to be returned to the party at the conclusion of the court appearance.
- d. Prior to the day of the hearing, it is recommended you check the website at [www.fortbendcountytexas.gov](http://www.fortbendcountytexas.gov) to make sure your case is scheduled on the docket. If your case is not on the scheduled docket, notify the Court Coordinator at [328<sup>th</sup>@fortbendcountytexas.gov](mailto:328th@fortbendcountytexas.gov).

4. **MEDIATION REQUIRED:** mediation shall be completed by the parties **PRIOR TO** any:

- a. Temporary Orders hearing if conservatorship, possession and access or geographical restriction is contested.
- b. Final Trial, except for Applications for Protective Orders and Motions for Enforcement/Contempt actions.

Mediation may be waived after filing a motion and showing of good cause to the Court. The Fort Bend County Dispute Resolution Center (281-342-5000) will mediate cases at a reduced or nominal fee with sufficient proof of limited income.

5. **TEMPORARY ORDER / CONTESTED HEARINGS**

- a. **Hearing Dates** – please request hearing dates from the Coordinator via email ([328th@fortbendcountytexas.gov](mailto:328th@fortbendcountytexas.gov)) **PRIOR** to filing a motion. Provide the estimated time needed for the hearing. If you do not request a date for the hearing in advance, the Coordinator will select a date for you without further notice.
- b. Notice of Hearing and proof of notice provided to opposing counsel/parties shall be pursuant to the Texas Rules of Civil Procedure.
- c. Terminations and Adoptions are heard on the 1<sup>st</sup> Friday of each month. (See the rules re: scheduling Termination/Adoption cases below).

6. **DISCLOSURE OF FINANCIAL INFORMATION, WITNESSES & EXHIBITS.**

- a. **Temporary Orders** – in any hearing for temporary orders in which child or spousal support is in dispute, the parties **SHALL** file and exchange **PRIOR** to commencement of the hearing a Financial Information Statement, Income Tax Returns for the previous two years, and each party's three most recent Payroll Stubs. This rule shall constitute a discovery request and failure to comply may be grounds for sanctions.
- b. **Final Information** – each party's final Sworn Inventory, Financial Information Statement, Proposed Child Support Calculation, Proposed Division of Property, and Proposed Requested Relief **SHALL** be exchanged and filed with the Court no later than ten (10) days before commencement of final trial. If children are involved, the Financial Information Statement shall contain sufficient information so the Court may render a medical child support order regarding health insurance for the children. This rule shall constitute a discovery request and failure to comply may be grounds for sanctions.
- c. **Sworn Inventories** – shall list each item of property and its fair market value, each liability and amount, number of periodic payments in arrears, if any, property securing payment, and name of each creditor. Any property or liability shall likewise be characterized as separate or community. All beneficial interests in insurance and benefits arising from a party's employment (such as pensions, profit sharing plans, savings or thrift plans, whether vested or non-vested) shall be identified. Each party shall incorporate as an exhibit to the Inventory the last information furnished to the employee concerning the employee's rights and monetary interest in each retirement

and savings plan. Each party shall also furnish sufficient information to enable the Court to render a Qualified Domestic Relations Order (QDRO), if applicable. Sworn Inventories shall list and total, in column format, all property values and liabilities. Each inventory shall show the net worth of the community estate.

**NOTE:** Proposed Divisions of Property may be submitted to the Court via the Court Coordinator in Excel format at least three (3) days prior to trial, with notice to all parties.

- d. **Exhibits** – shall be pre-marked, exchanged and copies provided to all parties/counsel at least three (3) days **PRIOR** to any hearing or trial.
- e. **Exhibit & Witness Lists** – shall be exchanged and filed with the clerk at least three (3) days **PRIOR** to any hearing or trial.
- f. **Forms for Stipulations or Interim Agreements** – are available in the courtroom.

## 7. **TRIAL SETTINGS**

**IMPORTANT:** A “Trial Setting Request Form” **SHALL** be completed for **ALL** trial settings.

- a. A completed Trial Setting Request form **MUST** be included with your email when requesting a trial setting from the Court Coordinator.

**NOTE:** a written “Notice of Trial” shall be filed with the District Clerk and served on all counsel, parties and amicus attorneys pursuant to the TRCP. Completion of a Trial Setting Request form is **NOT** a substitute for a proper written “Notice of Trial”.

- b. Pretrial conferences for bench trials are set by motion only, scheduled through the Court Coordinator.
- c. Pretrial Conferences are **mandatory** for all jury trials and shall be completed no less than seven (7) days prior to the trial start date. All information set forth in our **Jury Trial Preparation Order** shall be furnished to the Court and exchanged with all counsel and self-represented parties at least three (3) days before the Pretrial Conference.
- d. For trials before the Associate Judge, a Stipulated Waiver of Appeal from Associate Judge’s Ruling / Recommendation form must be filed with the District Clerk prior to your trial date.

8. **PROVE-UP OF AGREED DIVORCES AND OTHER AGREED ORDERS**

- a. Prove-up of agreed divorces and other agreed orders may be done by submission by affidavit or declaration or via Zoom on the Court's Friday Zoom Docket. Agreed Orders include temporary/ancillary issues as well as final orders for divorces, modifications, suits affecting the parent-child relationship, name changes and enforcements as long as the enforcement order does not hold the Respondent in contempt.
- b. Prove-up Affidavits must contain actual signatures of all parties/attorneys to be eligible to be proven up by Sworn Affidavit;
- c. The Appearances section of an order must indicate that the parties **did NOT appear in person** if submitted by affidavit/declaration and that **the making of a record was waived** (if applicable); and
- d. The affidavit or declaration should be e-filed as a separate document at the same time as the proposed order and must include the same information that would be elicited during a prove-up with a witness in the courtroom.

9. **UNCONTESTED MATTERS**

- a. Agreed Orders require approval as to form by all counsel and self-represented parties. Do not submit any motion or order as "Agreed" unless approved by all counsel/parties.
- b. NAME CHANGES – EXCEPT IN DIVORCE MATTERS – require a fingerprint card on a format acceptable to the Texas Department of Public Safety.
- c. DEFAULTS – All Default hearings shall have the following documents on file with the District Clerk **BEFORE** the hearing:
  - i. Certificate of Last Known Address per Rule 239a;
  - ii. Non-Military Affidavit;
  - iii. Return of Service (on file at least 10 days);
  - iv. A Sworn Inventory and Appraisement (divorce only);
  - v. Movant's Parenting Course Completion Certificate (child cases);
  - vi. A proposed Default Order

10. **TERMINATION/ADOPTION CASES**

- a. Termination/Adoption cases shall be scheduled on the 1<sup>st</sup> Friday of each month only.
- b. All documentation and orders needed for a Termination/Adoption **SHALL** be filed by 4:00 p.m. on the **Monday preceding the hearing date**.

11. **VACATION LETTERS**

Vacation letters shall be filed with the District Clerk per the Local District Court Rules. Proof of filing in another county is not sufficient. A courtesy copy of your vacation letter shall be provided to all opposing counsel/self-represented parties in your case.

12. **ASSOCIATE JUDGE**

All cases ending in ODD numbers are assigned and referred to the Associate Judge. If the cause number in your case ends in an ODD number, appear for docket call in the Courtroom 3-A (Associate Judge Courtroom). If the cause number ends in an EVEN number, it will be heard in the Courtroom 3-C (Presiding Judge Courtroom).

13. **REFERRAL TO ASSOCIATE JUDGE**

**Referral.** All pending cases and cases filed after the original date of the adoption of these rules are hereby referred to the Associate Judge of the Court, pursuant to TFC 201.006, subject to any limitations imposed by Chapter 201.

**Order of Referral.** This rule constitutes an Order of Referral as required by TFC Section 201.006(a)(2), as to any pending or future cases under Title I, II (as related to name changes), III or V.

14. **HOLIDAYS / COURT NOT IN SESSION**

The 328<sup>th</sup> Judicial District Court will not be in session on any official Fort Bend County holidays. Please consult the District Clerk's website to determine those dates.



## **328<sup>th</sup> ZOOM HEARING PROCEDURES**

Please refer to the Court's ZOOM VIDEOCONFERENCE POLICIES set forth in No. 1, above. For any hearing or trial conducted via Zoom, the following procedures shall apply (PLEASE READ CAREFULLY):

1. **Logging in For Your Hearing** – on the day of the Zoom Hearing, login using the appropriate link provided to you by the Court Coordinator. NOTE: You will be prompted to download the Zoom App, which you must in advance do to participate in the hearing.
2. **Zoom Hearing Link and Meeting ID** – in order to participate in the Zoom Hearing, you will need the meeting LINK and MEETING ID. The LINK and MEETING ID can be obtained from the Court Coordinator via email. **IMPORTANT:** keep the LINK and MEETING ID confidential, providing them only to necessary participants for the hearing, including counsel, self-represented parties, clients, witnesses, etc.
3. **Exhibits** – hearing/trial Exhibits, except for rebuttal or those that cannot be anticipated, SHALL be pre-marked, exchanged with counsel/self-represented parties, and EMAILED to the Court Reporter at [sylvia.thompson@fortbendcountytexas.gov](mailto:sylvia.thompson@fortbendcountytexas.gov) as separate PDF files **at least three (3) days prior to the Zoom Hearing**. Exhibits shall be saved as separate files, in PDF, MP4 or JPEG format, named and marked using the following FORMAT:

Cause Number – Party Designation – Exhibit Number – Hearing Date

**EXAMPLE:**     20-DCV-123456 – Petitioner – Exhibit 12 – 03-25-2020

- a. Counsel should attempt to reach stipulations regarding Exhibit admissibility before the hearing.
  - b. **FAILURE TO FOLLOW THIS PROCEDURE MAY RESULT IN EXHIBIT EXCLUSION.**
4. Zoom proceedings are actual court proceedings conducted in a Virtual Courtroom. Participants must treat Zoom proceedings with the same respect as in-person court proceedings. All of the usual in person courtroom decorum, demeanor and dress code rules shall apply.
  5. Participants in Zoom proceedings should minimize outside noise and distractions.
  6. Attorneys and participants shall enter the hearing Waiting Room at least 5 minutes prior to the hearing start time. Attorneys and participants will remain in the Waiting Room until the Judge takes the bench and commences docket call.

7. Audio will be muted in the Waiting Room until the Judge calls the docket or commences your hearing. Video will be active upon entry in the hearing Waiting Room. Attorneys may privately chat with each other. **Chatting with (and text messaging) witnesses while they are testifying is strictly prohibited.**
8. If requested, counsel and parties may be moved by the Court into a Breakout Room for private conferences, settlement discussions, etc. Breakout Room discussions are not recorded or live streamed, and only persons in the Breakout Room are able to hear the discussion. The Court is also unable to hear what is being said.
9. During Zoom Hearings, the Court will use a DropBox folder for each case's pre-filed hearing Exhibits. If admitted, those Exhibits will become part of the record. The Court will not review Exhibits prior to prove-up and admission into evidence. Attorneys should maintain their own copies of hearing Exhibits for use during the hearing. **Counsel are encouraged to try and reach agreements regarding admissibility of Exhibits in advance.**
10. SUBPOENAS – all witness subpoenas should direct the witness to appear in the Virtual Courtroom and must include the Zoom Hearing Link and Meeting ID.
11. RECORD – the Court will make a record of the Zoom proceeding. The Court will not provide copies of the hearing video or audio. As with any hearing or trial, transcript requests must be directed to the Official Court Reporter for the 328<sup>th</sup> District Court.
12. **IT IS ORDERED THAT RECORDING ZOOM PROCEEDINGS IS STRICTLY FORBIDDEN.** Attorneys, self-represented parties, witnesses and attendees participating in remote hearings, or members of the public viewing a live stream, are prohibited from recording, capturing, saving, broadcasting, televising, or photographing the proceeding in any manner. **FAILURE TO ABIDE BY THIS ORDER MAY RESULT IN CONTEMPT OF COURT PROCEEDINGS.**

The 328<sup>th</sup> District Court suggests you incorporate the following language into Notices of Hearing for proceedings conducted via Zoom. While not required, this language is suggested to ensure that all counsel, parties and self-represented litigants receive sufficient notice and are able to participate in the hearing.

### **NOTICE OF HEARING**

This matter is set for hearing on the \_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_: \_\_\_\_ am/pm.

The hearing will be conducted via Zoom Video Conference.

To appear and participate in this hearing via Zoom, you must have an electronic device with an internet connection. You may use a smart phone, iPad/tablet, or desktop/laptop computer with a built-in webcam/microphone. It shall be the responsibility of counsel and self-represented parties to download the Zoom App prior to a proceeding and to ensure that all hearing participants have the ability to participate. Zoom is a FREE DOWNLOAD available at: <https://zoom.us/download>

**Meeting ID:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

#### **To join the hearing via Zoom:**

Please go to: <https://txcourts.zoom.us/join>

Then type in the above referenced Meeting ID.

#### **To join the hearing by Audio/Phone:**

Dial by your location or find your local number at <https://txcourts.zoom.us/j/abnprcyMQz>

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

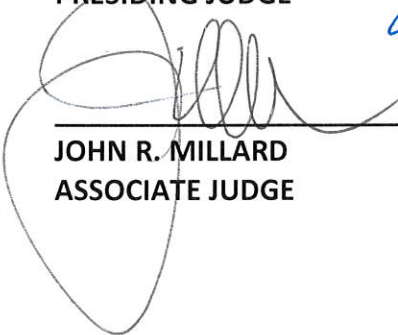
Then type in the above referenced Meeting ID.

SO ORDERED ON April 1, 2022



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WALTER G. ARMATYS  
PRESIDING JUDGE



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JOHN R. MILLARD  
ASSOCIATE JUDGE