

# **Rule 6**

**Adopted at a joint meeting of the District and County Court  
at Law Judges of Webb County on December 2, 2009**

## **Committee Members**

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## **RULE 6 - CRIMINAL CASES**

### **Rule 6.01 POLICY STATEMENT**

It is the responsibility of the courts to establish procedures for the timely and effective disposition of criminal cases. The courts are charged with the responsibility of ensuring both the State of Texas and all defendants a fair and timely resolution of criminal accusations and the courts are in the best position to establish neutral rules and policies without adversely affecting either side's right to a fair trial. Effective management of the judicial system will build continuing respect by the community for government, minimize the costs and maximize the probability that cases will be timely resolved. It is the purpose of these rules to establish such procedures.

These rules are not intended to conflict with any applicable state statute or rule, and in the event of any conflict, the statute or rule shall prevail.

### **Rule 6.02 PRE-FILING DOCUMENTS**

A. The District Clerk shall accept and file all felony complaints presented and initiate a case file and identify each case with a unique file number in numerical sequence pending on or filed after June 1, 2010. The County Clerk shall accept and file all misdemeanor complaints presented and initiate a case file and identify each case with a unique file number in numerical sequence. The County or District Clerk's office is responsible for maintaining custody of the following original documents relating to an arrest or charge for a Class A or B misdemeanor or any felony offense until an information or indictment has been filed according to the accused's unique file number.

(1) Bonds. A pretrial services officer shall collect original bonds from the Sheriff daily and file them with the County or District Clerk.

(2) Magistrate's Warning. A pretrial services officer shall collect the original complaints and the Magistrate's Warnings from the magistrate daily and file them with the County or District Clerk according to the accused's unique file number.

(a) If an incarcerated defendant has not requested appointment of counsel, the completed original Magistrate's Warning will be collected from the magistrate by a pretrial services officer immediately after completion of the warning and filed with the County or District Clerk according to the accused's unique file number.

(b) If an incarcerated defendant has requested appointment of counsel, the completed original Magistrate's Warning shall be delivered to the County or District Clerk by the pretrial services officer for filing by the accused's unique file number after the magistrate has determined the indigency status of the defendant and appointed counsel for the defendant, if found to be indigent.

(c) Applications for Court Appointed Attorneys, Affidavits of Indigency and Orders Relating to Appointment of Counsel entered prior to filing case with County or District Clerk. All original applications for court appointed counsel; affidavits of indigency and any orders entered prior to the filing of a case relating to appointment of counsel or determination of indigency shall be delivered to a pretrial services officer after the magistrate has completed the determination of indigency and appointment of counsel for filing with the County or District Clerk by the accused's unique file number.

(d) Other. Miscellaneous documents relating to the accused's case (e.g., applications for probation, letters from attorneys, etc.) will be forwarded by the prosecuting attorney upon receipt to be filed with the District or County Clerk to be placed in the accused's unique file number.

B. All of the documents, with the exception of the original bond, pre-filed by tracking number with the District or County Clerk prior to the filing of an information or return of an indictment will be maintained in the accused's unique file number in the District or the County Clerk in the official clerk's file. The indictment or information will be filed in the accused's unique file number along with the pre-filed documents.

C. Magistrate's warnings and bonds made after arrests in other cases where there is already an open clerk's file according to the accused's unique file number (e.g., arrests after motion to revoke/proceed or after a *capias* is issued in connection with bond forfeiture) will be filed by the pretrial services officer with the appropriate clerk for placement in the clerk's file.

D. The district clerk's or county clerk's offices shall maintain the original bonds received directly from the magistrates or a pretrial services officer. If a bond forfeiture proceeding is filed, then the original bond will be filed in that the bond forfeiture case file. The district attorney's office shall file a copy of the bond in the criminal case file when the information is filed or indictment is returned.

### Rule 6.03 ATTORNEY APPOINTMENT

Appointment of counsel to represent indigent defendants is governed by The Standards and Procedures for The Appointment of Counsel for Indigent Defendants Plan adopted by the district and county court at law judges. The judges trying criminal cases will administer the Plan. Counsel appointed to represent indigent defendants will adhere to the rules of the Plan. The Standard and Procedures for The Appointment of Counsel for Indigent Defendants Plan is posted online

### Rule 6.04 FILINGS IN THE DISTRICT COURTS; RETURN OF INDICTMENT; ASSIGNMENT OF CASES AFTER INDICTMENT

A. The District Clerk shall accept and file all felony complaints presented and open a case file, and identifying each case with the unique file number. Such cases shall be assigned to one of the district courts trying criminal cases by utilization of the Automated Random Assignment System developed and programmed in accordance with the programs authorized by the district courts. Criminal cases shall be assigned in accordance with the orders adopted by the District Courts Administrative Board.

B. The unique file number shall be placed on the original complaint presented and the district clerk shall open the district court felony case file provided for in Rule 6.02 A.

C. After random assignment, the Clerk shall assign any new indictment or information filed at the felony level against a defendant to the Court having a lower pending cause number on that same defendant.

E. The Clerk shall assign any re-indictment of the same defendant related to the same offense to the same Court in which the prior indictment was assigned.

F. The Criminal District Attorney shall note on a non-substantive part of the indictment the following information.

- (1) Whether there are other pending indicted causes on the defendant; whether the indictment is a re-indictment;
- (2) The names of any Co-defendants;
- (3) The tracking number and/or assigned unique file number.

G. Related Matter. When a defendant has been the subject of a case relating to a criminal matter, but filed as a civil case (e.g., habeas corpus, motion for bond reduction, or petition for forfeiture of property), any criminal case(s) against that defendant and related to the same criminal transaction shall be assigned to the court to which that criminal case was assigned, provided the court has subject matter jurisdiction.

H. Post Conviction Filings. The Clerk shall file any motion to revoke probation or any post-conviction application for writ of habeas corpus in the Court having granted probation or entered the judgment in the case.

I. Appearance Before Magistrate. A person accused of a felony in custody in the Webb County Jail should be taken before the designated district judge or before the magistrate for the accused's initial appearance on or before the third business day following the accused's receipt at the jail. The purpose of the initial appearance shall be to present the accused before a District Court at the earliest practicable time for the possible disposition of the accused's case before indictment (whether by plea of guilty, dismissal, or no charges filed), for the accused's formal arraignment or magistration if required by law, for setting or reducing his bail, for appointment of counsel, and for such other preliminary matters as may aid the prompt disposition of the case.

J. Erroneous Filing. When the district clerk erroneously assigns a criminal or civil case in conflict with the above rules, the affected courts may transfer the case to conform to these rules. However, nothing herein shall affect the otherwise lawful jurisdiction of a court to which a case is assigned.

K. Transfer of Cases. Subject to the approval of the transferee judge, any criminal case may be transferred to another court having jurisdiction by written order.

L. The district judges of Webb County shall appoint a criminal law magistrate. Each appointment must be made with the approval of a majority of the district judges.

### **Rule 6.05 CRIMINAL MAGISTRATE**

Except as limited by an order of referral, a magistrate to whom a case is referred may:

- A. Conduct hearings;
- B. Hear evidence;
- C. Compel production of relevant evidence;
- D. Rule on admissibility of evidence;
- E. Issue summons for the appearance of witnesses;
- F. Examine witnesses;
- G. Swear witnesses for hearings;
- H. Make findings of fact on evidence;
- I. Formulate conclusions of law;
- J. Rule on a pre-trial motion;
- K. Recommend the rulings, orders, or judgment to be made in a case;
- L. Regulate proceedings in a hearing;
- M. Accept a plea of guilty for a misdemeanor from a defendant charged with both misdemeanor and felony offenses; and

- N. Do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

Rule 6.06 FILINGS IN THE COUNTY COURT AT LAW COURTS; ASSIGNMENT OF CASES

- A. Criminal cases shall be assigned in accordance with the orders established by the County Courts at Law Administrative Board.
- B. As provided for in the County Courts at Laws' orders, the Clerk shall randomly assign every criminal case filed by information at the county court at law level pending on or filed after June 1, 2010.
- C. Any new information against a defendant will be transferred to the court in which prior information was assigned.
- D. Any re-filed or amended information will be filed in the same court in which the prior information was assigned.
- E. Any motion to revoke probation will be filed in the court having granted probation.

Rule 6.07 ARRAIGNMENT / INITIAL APPEARANCE.

- A. Notification of Arraignment/Initial Appearance Date. The District or the County Clerk shall notify each defendant of the arraignment in the defendant's criminal case by mail, as soon as practicable after the court sets the case for a hearing. The District or the County Clerk shall also notify the defendant's attorney, and surety or bail bond person of the arraignment by facsimile transmission, email or by regular mail. The District or the County Clerk shall file a copy the correspondence or notice placed in the mail in each defendant's case.
- B. Presence Required. The presence of all defendants and attorneys is required at all hearings. If a defendant does not have an attorney, the bondsman shall notify the defendant that his/her presence is required in the courtroom. Failure of the defendant to appear will result in a bond forfeiture hearing. If a defendant is bonded out before arraignment, the bondsman and counsel of record shall be responsible for notifying the defendant that he is required to appear.
- C. Waiver of Arraignment. Where allowed by the court in which an indictment is filed, a defendant may waive arraignment only by filing a statement on a form approved by the courts no later than the day before arraignment is scheduled.

D. Announcement/Settings. At the time of the formal arraignment, each defendant must appear and announce his plea to the indictment. Defense counsel is charged with the responsibility of advising the court of a possible conflict. Following the defendant's plea, each defendant's case will be set as follows:

- (1) Guilty Plea. Immediately following arraignments or at a specific date set by the court.
- (2) Not Guilty Plea. Deadlines, and the settings for hearings and the trial on the merits may be given by the court.

#### RULE 6.08 DOCKET MANAGEMENT

A. Felony Case Management System. Attorneys are expected to be familiar with and comply with the current felony case management systems, adopted by the respective district courts trying criminal cases.

B. Pretrial Matters. Parties are directed to use all reasonable means to resolve pretrial disputes to avoid the necessity of judicial intervention.

C. Motion Setting. The state and defendant must file all non-constitutional motions seven days before the Motion Setting as required by the Texas Code of Criminal Procedure Article 28.01(2).

#### Rule 6.09 Pre-Trial Matters

A. Each Court shall determine its own settings for pre-trial and trial.

B. All pre-trial motions, including motions in limine, must be filed by the set deadline, if any, unless an extension of time is granted by the Court for good cause shown.

C. Requirements for Motion. Each pre-trial motion that is set for hearing must:

- (1) succinctly state the relief sought;
- (2) the facts pertinent to the motion;
- (3) supporting argument with authorities;
- (4) must be signed by counsel and, where required, by the defendant;
- (5) must be sworn to when required;
- (6) must contain a certificate of service;
- (7) must contain a certificate of consultation with opposing counsel and a statement that the matter raised in the motion was not resolved that conforms with 6.09 D below;
- (8) must contain a notice the motion will be presented to the Court at the pretrial hearing with or without evidence; and
- (9) must contain a proposed order granting or denying the motion in full or in part.

D. Certificates Required.

(1) Service of Copy on Opposing Counsel. Whenever any attorney files any pleading or motion, he shall at the same time either hand deliver, mail, email or fax a copy to opposing counsel. The motion must be accompanied with a certificate stating the name, address, of opposing counsel and how it was delivered. Counsel shall send copies of all communications sent to the court to opposing counsel.

(2) Certificate of Conference. Prior to the filing any motion, counsel will contact opposing counsel to hold or schedule a conference to attempt to reach a resolution of the disputed matters. Counsel for the movant/s shall make at least three separate attempts to contact opposing counsel. Those three required attempts shall be made during regular business hours during a period of at least two business days. For the purposes of this rule, counsel shall use one of the “certificate of conference” forms listed below that applies.

(a) No Agreement. “I, undersigned counsel, hereby certify to the court that a conference was held on (insert date or dates) with (insert name of attorney) on the merits of this motion. An agreement could not be reached. Therefore, it is presented to the Court for determination.”

(b) No Conference Held. “I, undersigned counsel, hereby certify to the court that a conference was not held with (name of opposing counsel/s) on the merits of this motion because I attempted to contact (name of opposing counsel) as follows (dates, times, methods of contact, and results of the attempts made all detailing why the attorneys were unable to confer on the merits of the motion/s).”

(c) Agreement Reached. “I, undersigned counsel, hereby certify to the court that I have conferred with opposing counsel in an effort to resolve issues contained in this motion without the necessity of court intervention, and opposing counsel and I have reached an agreement. Our signatures and that of the defendant have been placed on the agreed order and are respectfully submitted to the Court for approval.”

E. The Court may refuse to consider any pretrial motion that fails to comply with these rules.

Rule 6.10 9 APPEARANCE OF DEFENDANT AND COUNSEL / COURT ATTENDANCE.

A. Enter an Appearance of Record. Immediately upon employment or upon court appointment the defense attorney shall give written notice to the district attorney and the district **and/or county** clerk stating the name of the accused, the date of and the offense(s) charged, tracking number, **the unique case file** and cause number, if known. The clerk will note the attorney's name on the docket sheet of the pre-indictment file or

the post indictment file and indicate whether defense counsel is retained or court appointed.

B. Attorney Posting Bond Deemed Counsel of Record. Any attorney who executes a bail bond or an appeal bond as a surety will be deemed to be the attorney for the person for whom the bond was made. People released from jail under such a bail bond will not ordinarily be assigned court appointed attorneys. If a court appointed attorney has previously been assigned to the person for whom a bail bond is posted, the court appointed attorney will ordinarily be allowed to withdraw from the case.

#### Rule 6.11 BOND AND BOND FORFEITURES.

A. Matters concerning bond forfeitures shall be governed by Chapter 22 of the Texas Code of Criminal Procedure.

B. As a condition of pre-trial release, every felony defendant and defense attorney is responsible to keep the District or County Clerk apprised of the defendant's correct physical and mailing address at all times during the pendency of criminal proceedings.

C. Bonds may be set on each criminal case in accordance with the Bond Schedule adopted jointly by the district and county judges, unless the District Attorney furnishes information in writing to the respective court justifying an exception. The Court may also in a proper case dispense with the requirement of sureties and require only the personal recognizance of the defendant, with or without conditions.

D. Sureties requesting a release on their liability on a Bail bond must complete the Affidavit to Release Surety and present the completed affidavit to the District Judge that the Defendant's case is assigned to.

#### Rule 6.12 DISCOVERY

A. Discovery shall be conducted in accordance with Article 39.14 of the Texas Code of Criminal Procedure.

B. A standing discovery order may be entered by each court at arraignment. The discovery order shall set forth procedures for the exchange of information, evidence inspection, expert designations and deadlines to comply with the discovery order.

#### Rule 6.13 CONTINUANCE/RESETTING/POSTPONEMENTS.

- A. No trial setting shall be passed by agreement of counsel without prior approval by the trial judge.
- B. Motions for continuance, whether by the State or the Defendant, must comply: (1) with the provisions of Chapter 29 of the T.R.CR; (2) must be filed at least three working days before jury selection; and (3) presented to and considered by the Court before the scheduled trial date.
- C. Only matters arising subsequent to the time period specified in Rule 6.13 B may be considered as good grounds for filing a motion for continuance after that date.
- D. Except for good cause shown, the Court shall not consider any motion for continuance on the scheduled trial date.

#### Rule 6.14 GUILTY PLEA/NOLO CONTENDER/OPEN PLEAS.

Forms, procedures and preparation of guilty plea forms may be obtained from the web site of each court.

#### Rule 6.15 CONFLICTING SETTINGS

- A. **Duty to Inform Courts.** A conflicting setting exists when an attorney is already set for trial or hearing in another court or an attorney is assigned to more than one court at the same time. It is the duty of an attorney to call the affected judges' attention to all multiple settings as soon as they are known by the attorney.
- B. **Conflicts in Trial Settings.** Priority for trial settings are governed by sequential order as entered into the attorney scheduling system agreed upon by the judges of the criminal district courts. Adjustments to trial settings can be made by agreement of the judges.
- C. **Conflicts in Docket Settings.** The provisions of the Texas Government Code Section 23.101 and Rule 10 of the Texas 4<sup>th</sup> Administrative Judicial Region Rules shall govern absent an agreement between the affected judges.

#### Rule 6.16 MISCELLANEOUS

Attorneys should familiarize themselves with the local practices, procedures and approved forms utilized by the respective district and county courts at law. If they are not posted on that court's website, forms and procedures may be obtained from the courts.