



**DENISE M. FORTENBERRY**  
130<sup>th</sup> Judicial District Judge

**PROTOCOLS AND PROCEDURES FOR HYBRID HEARING SCHEDULES**

The following policies and procedures apply to the 130<sup>th</sup> Judicial District Court and will continue in effect until further notice. Please read these procedures in conjunction with other court procedures that may not be included in this document.

***General Procedures and Protocols***

***Hearings.*** In compliance with The Supreme Court of Texas Thirty-Sixth COVID-19 Emergency Order and the Office of Court Administration's *Best Practices for All Court Proceedings During COVID-19 (effective March 2021)*, the 130<sup>th</sup> Judicial District Court will hold hearings either in-person, via Zoom, or by submission, as determined by the judge. All hearings will be scheduled in-person unless an exception applies.

***Jury Trials.*** This court has an approved *Jury Proceeding Addendum to the COVID-19 Operating Procedures* in place. Please refer to the 130<sup>th</sup> Judicial District Court's website for further information. Further cancellation of jury trials will be decided based on recommendations from OCA and the local health authority. All jury trials shall have a pre-trial conference scheduled no sooner than 14 days prior to trial.

***COVID-19 Screening.*** The Court requires all persons be screened for COVID-19 prior to entry into the courtroom by asking of COVID-19 questions prescribed by the CDC. All persons who have reason to believe they may have COVID-19 or have been exposed shall not come to the court in person for any reason. It is the party or attorney's responsibility to notify the other party and the Court before a non-appearance under these circumstances. In criminal matters, an FTA will be issued but held for ten (10) business days so that the Defendant can have the opportunity to sign a reset through their attorney. The non-appearing party is required to provide a doctor's excuse for the missed court date. All persons entering the court should wear a facial covering. The Court may take other safety precautions as deemed necessary and appropriate to prevent the spread of the virus.

***Pre-Setting Conference.*** Prior to all settings, attorneys and pro-se litigants must file a *Certificate of Pre-Setting Conference* stating that they have met with the opposing party before setting the hearing. This applies to family, CPS and civil cases. If the meeting did not occur, the confirmation of pre-hearing conference must provide the attempted meeting information (i.e. date, time, and method) and the reason it did not occur. Exceptions may be made under certain circumstances. If a party is being denied possession of the party's child, the Court may waive the mediation requirement on Temporary Orders.

**Mediation Requirement.** All cases shall participate in mediation before a final trial. Parties seeking an exception to mediation on final trial should file a written request seeking a *Final Trial without Mediation*. Failure to mediate prior to trial, without good cause, may result in a reset or dismissal of the case.

**Standing TRO.** The 130<sup>th</sup> Judicial District Court has adopted a Standing Temporary Restraining Order because parties and child(ren) should be protected and property preserved while the lawsuit is pending before the Court. ***This Order, along with pre-setting conferences, remains in effect.***

**Status Questions.** Any inquires regarding whether or not an order has been signed must be handled through the District Clerk's Office. Please contact the District Clerk at (979) 244-7621 or [dclerk@co.matagorda.tx.us](mailto:dclerk@co.matagorda.tx.us).

### ***Hearings by Submission.***

The party setting the hearing by submission shall give notice to all parties for a date not less than ten (10) days from the filing and notice (or longer if statute requires). Any responses to the motion shall be filed at least three days before the submission ruling date. Any amendments, exhibits, or responses filed within 24 hours of the submission date are not deemed timely filed. Movant shall include a pre-setting conference statement, notice of hearing and a proposed order with the motion. A submission setting will not receive a Zoom link and no one should appear in person. *If the Court desires a hearing, the parties will receive notice from the Court Coordinator.*

The following should be set via submission. This list is not an exhaustive one, please contact the Court Coordinator if you are unsure whether your hearing should be handled by submission.

1. Non-evidentiary hearings.
2. Entry of Orders. Make sure that all documents required for final entry are e-filed before the submission date set. If the entry is contested, attorneys or parties may file a motion to enter and will receive a submission docket date. The moving party is required to provide notice of the submission date to the other party. It is the responsibility of parties or their attorneys to verify with the District Clerk, within seven business days after filing the proposed order, that the order has been signed by the Court.
3. Dismissal docket. There will be not be an oral hearing so appearances are not allowed. Motions to retain will be considered so long as they are filed no later than three business days prior to the dismissal date. The Court reserves the right to set show cause dismissal dockets.
4. Motions for Adoption Evaluation and Appointment of an Amicus.
5. Motions for Alternative or Substituted Service (if properly accompanied by an affidavit that includes at least three or four attempts).

6. Motions for Appointment of AAL, Amicus Attorney, or Custody Evaluation.
7. Motions to Confer with a Child.
8. Motions for Continuance.
9. Motions for Drug Screening.
10. Motions for Genetic Testing.
11. Motions for Nunc Pro Tunc.
12. Motions for Referral to Mediation.
13. Agreed QDRO (if after plenary power has expired, parties shall submit an agreed motion to enter).
14. Motions to Reinstate (verified).
15. Motions for Summary Judgment (requires 21 day notice).
16. Motions to Transfer (*sua sponte of the Court after proper service and no answer and no controverting affidavit on file*).
17. Motions for Withdrawal/Substitution of Counsel.
18. Motions to Waive Appointment of Attorney Ad Litem (*sua sponte of the Court with supporting affidavit or statute*).
19. No Answer Default. An attorney or party may submit sworn testimony and all evidence necessary to obtain a default judgment by submission.
20. Agreed Prove-Up via Affidavit. Parties can submit affidavit of sworn testimony for agreed orders by submission. These settings will not receive a Zoom link nor an appearance date. Parties must submit the following documents:
  - A. *Waiver/Agreed Divorce - No Children.*
    - i. Waiver of Citation/Answer/MSA on file;
    - ii. Prove-up/Testimony Affidavit;
    - iii. Divorce Decree (with all parties' signatures);
    - iv. BVS 165 (Information on SAPCR). This form must be hand delivered, emailed or mailed to the District Clerk. Do no e-file.

- B. *Waiver/Agreed Divorce - With Children/SAPCRs.*
- i. Waiver of Citation/Answer/MSA on file;
  - ii. Prove-up/Testimony Affidavit;
  - iii. Divorce Decree/Agreed Order (with all parties' signatures);
  - iv. BVS 165 (Information on SAPCR). This form must be hand delivered, emailed or mailed to the District Clerk. Do no e-file;
  - v. Employer's Order to Withhold Wages/Income Withholding for Support (if applicable);
  - vi. Medical Child Support Order (if applicable).
- C. *Default Divorces, SAPCRs, Paternity, Custody, Modifications.*
- i. Check file for proof of service return (citation) - must be imaged and be on file ten days;
  - ii. Decree/Judgment;
  - iii. Employer's Order to Withhold Wages/Income Withholding for Support (if applicable);
  - iv. Medical Child Support Order (if applicable);
  - v. Non-Military Affidavit (required);
  - vi. Certificate of Last Known Address (required);
  - vii. BVS 165 (Information on SAPCR- required). This form must not be e-filed and shall be hand delivered, emailed or mailed to the District Clerk.;
  - viii. Inventory & Appraisement (Divorces only).
- D. *Change of Name for Adults.*
- i. Criminal Record run through the Crime Records Division (DPS) in Austin or FBI (must include fingerprints);
  - ii. Color copy of valid state picture identification (front and back);
  - iii. Prove-up/Testimony Affidavit;
  - iv. Fingerprint card on file with Petition;
  - v. Order Granting Change of Name (signed by Petitioner and Attorney, if applicable).
- E. *Change of Name for Children.*
- i. Both parents must file a Prove-Up/Testimony Affidavit (if both are Petitioners);
  - ii. Color copy of valid state picture identification (front and back) for both;
  - iii. Color Copy of Original Birth Certificate (if not in English it must be professionally translated);
  - iv. Child's Consent to Name Change (only if child is over 10 years old);
  - v. Waiver of Citation/Service (if applicable);
  - vi. Order Granting Change of Name (signed by both parents and attorney);
  - vii. BVS 165 (SAPCR sections 1 and 3). This form must not be e-filed and shall be hand delivered, emailed or mailed to the District Clerk.;

F. *Adult Adoptions.*

- i. Final Order Granting Adult Adoption (signed by all parties);
- ii. Prove-Up/Testimony Affidavit;
- iii. Color Copy of Valid State Picture Identification (front & back);
- iv. Criminal Background needed if name change is requested.

21. Discovery Dispute Hearings.

**PLEASE NOTE: It is imperative that counsel make every effort possible to resolve any and all discovery issues without Court intervention. If there has not been a conference between the parties, the Court will closely examine the efforts made by both counsel to effectuate one.**

Disputes regarding discovery will obtain a setting **ONLY AFTER** the following procedures have been followed:

- A. The party seeking Court intervention must file a letter not to exceed three pages (12 point font) explaining the nature of the dispute and include the date, time, and place of prior out-of-court discovery or scheduling discussion(s) and the name of all counsel/parties participating in the discussion(s).
- B. The Movant must email the letter and the “130<sup>th</sup> District Court Discovery Template.xls” (in xls form and non-protected format) to [dclerk@co.matagorda.tx.us](mailto:dclerk@co.matagorda.tx.us) and non-movants, which will show information about each discovery item in dispute. (This form can be found on the 130<sup>th</sup> District Court’s website).
- C. After receiving the letter and template, the Court Coordinator will schedule a ten minute Zoom or telephone conference with all parties.
- D. The responding/non-movant party will have an opportunity to file a three page (12 point font) response, along with their updates to the Movant’s “130<sup>th</sup> District Court Discovery Template.xls,” detailing whether the objections will be removed or if the requested item is within the care, custody, and control of the non-movant. This information should be added into the spreadsheet under “Non-Movant.”
- E. The Non-Movant responses must be e-mailed to [dclerk@co.matagorda.tx.us](mailto:dclerk@co.matagorda.tx.us) no later than 48 hours before the Zoom or telephone conference.

***In-Person Hearings***

***Standard Protocol.*** All hearings will be in-person ***unless*** the judge sets it for Zoom or a party files a *Motion for the Court to Determine the Need for Zoom Hearing* and the judge approves the setting. If a party identifies as a vulnerable individual (as defined by the Center for Disease Control, “CDC”), please request the court for an off docket date and additional precautions will be put in place.

## ***Zoom Hearings***

***Zoom Schedule.*** All Zoom hearings granted by the Court will be heard on Tuesdays at 1:30 p.m. during the Court's Ancillary weeks.

***Qualified Hearings.*** Hearings that are non-evidentiary can be set by Zoom. These hearings are for motions that do not meet the submission docket requirements and do not have witness testimony. Any other settings must have the Court's approval.

***Zoom Hearing Exceptions.*** If a litigant or other court participant identifies as a vulnerable individual and unable to participate in an in-person hearing, a *Motion for the Court to Determine the Need for Zoom Hearing* may be reviewed by the Judge. This motion is non-evidentiary and will be heard by submission.

***Confidentiality of Zoom Information.*** No party, attorney or witness shall give the Zoom meeting identification to any other person. Only an attorney of record, a party to the case, or properly identified witness is allowed to participate in the Zoom court proceeding or be allowed to view the proceedings via Zoom. Any other person wishing to view the proceedings may come in person to the 130<sup>th</sup> Court in compliance with the Open Courts Act. *Failure to adhere to this requirement may result in contempt of court which could include incarceration in the county jail and/or a fine.*

***Live Streaming.*** This Court does not live stream the court proceedings. This is in compliance with 18 U.S. 2265. Anyone wishing to view the court proceedings in compliance with the Open Courts Act may come to the 130<sup>th</sup> Court located at 1700 7<sup>th</sup> Street, Third Floor, Bay City, Texas 77414 and view the Zoom proceedings in the courtroom. Appropriate personal protection equipment is recommended and screening for COVID-19 will be conducted prior to entry into the courtroom.

***Policies Apply to Agents.*** No party, attorney, or witness may circumvent the terms of these policies by having another person perform a task prohibited for that party, attorney, or witness. For example, if the policy prohibits an attorney from communicating with a witness during a proceeding, the attorney's legal assistant or other agent of the attorney may not communicate with that witness during the proceeding.

***Additional Instructions.*** All hearings conducted via the Zoom app are subject to additional instructions as the Court deems appropriate.

***No Recordings Permitted.*** The official court reporter will take the record of Zoom hearings that require a court record. **NO OTHER RECORDINGS ARE ALLOWED. NO LIVE STREAMING ALLOWED.** *Failure to abide by this rule and any other may be subject to contempt of court which may include incarceration in the county jail and/or a fine.*

***Attendance and Equipment.*** Parties and attorneys are responsible for the logistics of their remote appearance. Technical difficulties that are not timely resolved may result in a hearing being passed; or if the inability to participate is due to lack of familiarity with Zoom, considered a failure to appear.

***Obtaining a Zoom Setting and Zoom Meeting Identification.*** If a Zoom Hearing is granted, the Court Coordinator will provide the Zoom Meeting Identification number to the party requesting the hearing. ***The Court Coordinator providing the Zoom information does not substitute for the Rule 21 notice requirement.***

1. ***Requests.*** All setting requests must be in writing and contain the following information:
  - A. The cause number and style of case;
  - B. A certificate of pre-hearing conference attached;
  - C. An accurate time announcement (all hearings will be held strictly in accordance with time announcements);
  - D. Email addresses for all attorneys, self-represented litigants, and witnesses that have been properly designated; (for docket call purposes)
  - E. Whether an interpreter will be attending;
  - F. Number of witnesses to be called; and
  - G. Total number of participants in the hearing.
2. ***Notice of Appearance Required.*** Attorneys who have not filed a Notice of Appearance or answer will not receive Zoom information until they have done so. Emails stating that documents will be filed are not motions or properly filed notices with the Court. Attorneys shall follow the proper procedural rules for noticing the Court of their appearance.
3. ***Deadline.*** The docket cut-off is the end of the third business day before the hearing. For example, for a hearing on Wednesday, the cut-off for being added to the docket will be at the end of the day on the Friday before.
4. ***Time Announcements.*** Hearings will be held strictly within time announcements unless the Judge adjusts the allotted time
5. ***Cancellation.*** If a party has to cancel a hearing, this must be done as soon as practicable by emailing and/or calling all parties and the Court.

***Notice of Remote (Zoom) Hearing.*** The scheduling party shall notice all necessary parties, per Texas Rules of Civil Procedure, and file a certificate of service for each remote hearing with the District Clerk. Including the opposing party on the email requesting a setting does not serve as notice. All fiats, orders setting hearings, notice of hearings and orders to appear *must* include the following information:

1. Date, time and the Zoom Meeting Identification for the hearing;
2. A certificate of conference;
3. The time announcement;
4. Telephone numbers for *all* attorneys and self-represented litigants;
5. Email addresses for *all* attorneys and self-represented litigants;
6. Whether an interpreter will be necessary and language (litigants are required to provide their interpreters except in criminal matters). Please include name, email and phone number;
7. The number of witnesses to be called; and
8. The total number of participants in the meeting.

*(See Sample Notice of Remote Hearing on the 130<sup>th</sup> District Court's website).*

***Zoom Preparation.*** To be fully prepared for the Zoom hearing, please adhere to the following:

1. At least **48 hours** before the proceeding, each party, attorney and witness attending the proceeding shall create a Zoom account via <https://zoom.us/home>.
2. **Each party and/or attorney shall email the Court Coordinator at least 24 hours before the hearing to obtain the Zoom Meeting Identification, if they do not already have it.**
3. Each party, attorney, or witness **SHALL** use their real name and correct email address. **No nicknames, phone numbers, or fake email accounts allowed.**
4. For each attorney, the email address used for the Zoom account shall be the same as the one described in Rule 21(f)(2) of the Texas Rules of Civil Procedure.
5. The device utilized for the hearing must have functional speakers, video camera, microphone and have a stable internet connection.

***Non-Evidentiary Hearings.***

1. All attorneys and self-represented litigants ***shall*** confer before hearings, including with respect to their time announcements, and shall be on standby and readily available for their hearing.
2. Please utilize submission procedures as much as possible for non-evidentiary hearings.
3. All attorneys and self-represented litigants will log into Zoom at least five minutes before the scheduled docket time. Upon announcements from the docket, the Court may provide the litigants a time to return for their hearing. No later than 24 business hours before the hearing, the attorneys and self-represented litigants are required to email to [dclerk@co.matagorda.tx.us](mailto:dclerk@co.matagorda.tx.us) all previously filed documents and cases that they will rely on during their arguments. The subject line of the email must contain the cause number, style of case, Plaintiff/Petitioner or Defendant/Respondent designation and date of hearing. If the cumulative pages exceed 50 pages, attorneys/litigants are expected to provide a paper copy of their documents to the District Clerk at least 24 business hours before the hearing.

***Evidentiary Hearings Rules for Exhibits (Must have Judge permission to set an evidentiary hearing via Zoom).*** Exhibits and witness lists (including any potential rebuttal or potential impeachment) must be submitted to the District Clerk at least 24 business hours prior to the hearing via email to [dclerk@co.matagorda.tx.us](mailto:dclerk@co.matagorda.tx.us) **(No later than 2:00 p.m. regardless of the time of the hearing)**. Unless good cause is shown, these time frames are strictly adhered to.

1. The subject line of the email shall state the full cause number, the party identification and the date and time of the court proceeding. (For example: “*Cause No. 2020-12345; Petitioner’s Exhibits; May 8, 2020, 9:00a.m.*”).
2. A dropbox link is preferable for sending exhibits. The only formats accepted are PDF for documents, JPG and PNG for images, and MP4 for audio and videos. DOC formats will not be accepted.
3. Please ensure the date and time of hearing and the caption and style of your case appear in the email subject line when submitting your exhibits.
4. A paper copy of exhibits over 50 pages must be provided to the District Clerk *in addition to the dropbox link*. Exhibits must be in a notebook and tabbed accordingly with an exhibit list and delivered 24 business hours before the scheduled hearing.
5. Do not e-file exhibit lists, exhibits, or witness lists.

6. Failure to properly provide the exhibit list, exhibits and witness lists to the District Clerk, the Court, and the opposing side may result in the exclusion of those exhibits and witnesses. *These rules will be strictly adhered to unless there is good cause shown.*
7. If you plan to play video or audio during your case, please make sure you have practiced this skill. Zoom does present some challenges for those who are not familiar with screen sharing and other features. The same is true for all other exhibits. Please practice, practice, practice.
8. All exhibits should be named in number format only with a brief description of the document, i.e., A-1-Police Report, for Applicant's Exhibit 1, and R-1-Video Clip (1/1/2020) for Respondent's Exhibit 1. You must also include on the exhibit the cause number, Zoom ID and pages number/total number of pages (i.e. Page 1/5). All exhibits are expected to be labeled individually. Do not group exhibits together (such as photos) and label them as one group.
9. *Rebuttal or Unanticipated Evidence.* During a remote proceeding, with the permission of the Court, a party may offer an exhibit for rebuttal or an exhibit with evidence that the party could not have reasonably anticipated or submitted prior to the proceeding by emailing the Court and all parties (through their counsel if represented).
10. All stipulations to exhibits shall be noted on the exhibit list.
11. At the conclusion of each hearing and absent court permission to withdraw the exhibits, attorneys, as officers of the Court, shall retain all original exhibits and shall deliver to the District Court all exhibits that were admitted marked "ADMITTED" and all exhibits that were offered, but not admitted, are to be marked "OFFERED."

***Submission of Case Law, Statutes, and Similar Documents.*** If a party wants the Court to consider any case law, statute, regulation, or similar document, the party shall email the document to the court coordinator and the other parties no later than 2:00 p.m. on the business day before the remote proceeding.

### **Criminal Matters**

***In-Person Hearings.*** The criminal docket will be held *in-person* unless an exception is granted by the Court. The docket will be set up and handled in a manner that will meet social distancing and courtroom occupancy requirements.

***Pleas.*** Once an agreement is reached and a mutually agreeable date between counsel is determined, the following protocol will be followed:

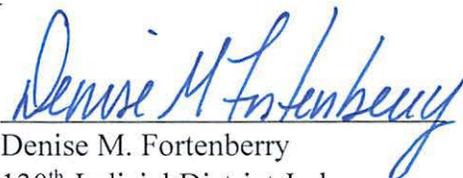
1. ***Plea Paperwork.*** The State prepares the necessary plea paperwork dated for the mutually-agreed upon date. The State must be given a minimum of one business day to prepare the paperwork.

2. *Receipt of Paperwork.* The State will, upon written request by defense counsel, email paperwork to defense counsel. If a written request for email delivery is not received by the State, the paperwork will be maintained by the State until physically picked up by defense counsel.
3. *Review.* Defense counsel is expected to review the paperwork to ensure its accuracy and responsible for having it properly executed by defendant and defense counsel.
4. *Return Deadline.* Defense counsel shall return the ORIGINAL correct and fully-executed paperwork to the State no later than **3:00 p.m.**, two business days prior to the mutually-agreed upon date of plea. ***Final paperwork shall include the appointed attorney's completed pay sheet.***
5. *State Execution.* The State will execute the paperwork and present it to the District Clerk.
6. *Court Coordinator Notification.* The State will place only those cases with completed packets on the docket. Attorneys with packets not completed within the proper time frames must obtain permission from the Court to add the plea to the docket.
7. *Fingerprinting.* The District Clerk may fingerprint the Defendant in court or go to the jail beforehand.
11. *Failure to Comply.* Failure to comply with these protocols, including missing the requisite time cut-offs, may result in the case not being placed on the docket and the plea being postponed.
12. *Exceptions.* Any exceptions to the protocol must be obtained from the Judge through the Court Coordinator.

***The Court reserves the right to add, amend, or change any of these protocols and procedures as necessary for the administration of justice.***

There will be no tolerance for attorneys taking unfair advantage of the situation created by the COVID-19 pandemic. Any such conduct shall be reported to the State Bar of Texas Disciplinary Counsel on the first offense. All judges and lawyers, as officers of the Court, are called upon to conduct ourselves in accordance with the Texas Lawyer's Creed.

Signed on: April 16, 2021

  
Denise M. Fortenberry  
130<sup>th</sup> Judicial District Judge