

## RULES OF THE CITY OF MESQUITE MUNICIPAL COURT OF RECORD

### RULE ONE: AUTHORITY, APPLICATION, AND PURPOSE

- 1.1. *Authority for Rules.* Pursuant to Section 21.002, Texas Government Code, the following rules shall apply and govern all proceedings before the Mesquite Municipal Court of Record in the County of Dallas, State of Texas. The court reserves the right to amend these rules.
- 1.2. *Application and Purpose.* These rules apply to all parties before the court, attorneys, court staff, witnesses, and observers of proceedings in the Mesquite Municipal Court of Record to provide efficiency, uniformity, and fairness while conducting the business of the court.
- 1.3. *Enforcement.* The court may enforce these rules by appropriate action or sanctions including a reprimand from the judge, expulsion from the courtroom, or a finding of contempt punishable by three days in jail and/or a \$100.00 fine.

### RULE TWO: COURTROOM CONDUCT, SAFETY, AND DECORUM

- 2.1. *Order.* All persons entering the courtroom must behave in a dignified and respectful manner. Order shall be maintained at all times and no one shall disrupt the court proceedings, obstruct justice, or offend the dignity of the court.
- 2.2. *Consent To Search.* To ensure public safety, all persons entering the court building consent to search of their persons and all property in their possession.
- 2.3. *Conduct Required of All Persons.* All persons shall comply with the following:
  - a. No disruptive or offensive conduct, including the following:
    - (1) Refusing to rise on the entrance and exit of the judge;
    - (2) Refusing to follow any instruction of the Marshal;
    - (3) Refusing to answer questions in court;
    - (4) Arguing combatively;
    - (5) Speaking loudly, talking over the court, opposing counsel, witnesses, or court personnel;
    - (6) Engaging in any similar behavior that interferes with court proceedings;
    - (7) Making childish reactions such as facial expressions, excessively gasping, sighing, and waving arms or aggressively nodding one's head to show disfavor and adverse reaction to testimony or in

response to a Judge's ruling or to someone's actions in the courtroom

- (8) Taking an undue long time of silence after a court's ruling or admonishment.
  - (9) A Defendant, witness or other persons appearing before the Court shall not be identified, addressed or referred to by any other name other than the name as stated on a Texas (or other state) identification card or driver's license, or official state or United States document.
- b. No weapons shall be brought into the courtroom with the exception of those intended to be offered as evidence or carried by commissioned peace officers. Any person desiring to bring a weapon into the courtroom for the purpose of offering the weapon into evidence shall notify and obtain approval from the Marshal before entering the courtroom. The judge shall have the discretion to require the removal of a weapon or any other object from the courtroom.
  - c. No inappropriate attire, including tank tops; clothing that exposes underwear, lingerie, or midriffs; shorts; pants that are ripped or have holes; tattered or soiled clothing; hats, caps, bandanas, or do-rags; and sunglasses.
  - d. No small children in the court unless carefully monitored by an adult to ensure that they remain quiet at all times. Parents may be asked to leave the courtroom if their child becomes noisy or unruly.
  - e. All radios, tape recorders, computers, cameras, cellular telephones, pagers, or other electronic devices must be powered off before entering the courtroom. No one may record any court proceeding without the Court's permission.
  - f. No tobacco use in any form is permitted.
  - g. No bottles, beverage containers, paper cups, or food are allowed in the courtroom except as permitted by the court.
  - h. No chewing gum is permitted.
  - i. No reading of newspapers, books, or magazines is permitted.
  - j. No propping of feet on tables, benches, or chairs is permitted.
  - k. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags, or containers into the courtroom without prior approval of the Marshal.

- l. No person shall be permitted any verbal or physical contact with any other person who is taken into custody without prior approval by the Marshal or the court.
- m. No person shall recline anywhere in the courtroom unless specifically permitted to do so by the judge.
- n. No disturbance or distraction of the court, counsels, witnesses, or court personnel, including by excessive entry into and departure from the courtroom.

2.4. *Conduct Required Of Counsel and Pro Se Defendants.*

- a. Individuals representing themselves (“pro se parties”) should be prepared to present their cases in a proper manner. It is not the court’s duty to instruct or educate pro se parties on court procedures, rules of evidence, or presentation and proof of a case. Pro se parties who are unprepared and unknowledgeable may lose their case.
- b. Attorneys shall observe the letter and spirit of all canons of ethics, including those concerning improper ex parte communications with the judge and with those dealing with discussion of cases with representatives of the media.
- c. Attorneys shall advise their clients and witnesses of these rules of decorum and conduct.
- d. Pro se parties shall conform their behavior to all provisions applicable to attorneys.
- e. Counsel shall wear appropriate professional attire while in court. For purposes of this rule, appropriate attire means a coat and tie with dress slacks, socks, and dress shoes for men; and a dress, blouse and skirt or business dress slacks, and dress shoes for women. No blue jeans nor pants that are ripped or have holes will be worn by counsel.
- f. All parties shall be prompt in arriving for court and in attending to court business. Parties are late for a court setting if not present when the docket is called. Any party who arrives late shall be entered as a “no show” and risks all applicable legal consequences, including the issuance of a warrant.
- g. An attorney is late for attorney docket if he or she arrives after the docket begins. Attorneys are not excused for arriving late even if in another court unless previous arrangements and approval of the judge has been given.
- h. Notice of court settings may be given by the judge in open court or by the court clerk at the judge’s direction via fax, first class mail, telephone, or

telephone voicemail message. Such notice is effective and binding on all parties.

- i. No party shall leave court in session without permission from the judge.
- j. More than one counsel may conduct the prosecution or defense. If there are more than one counsel for the prosecution or the defense, before the taking of testimony, the counsel shall advise the Court which specific counsel will conduct the Voir Dire, direct and cross-examination of the witnesses and the making of objections, and the closing argument.
- k. The State shall be seated at the counsel table nearest the jury box. Counsel for the defendant and the defendant shall be seated at the counsel table closest to the court clerk's desk.
- l. Requests for a court proceeding to be electronically recorded must be made to the judge in writing prior to trial on a request form available at the clerk's office. Failure to do so waives a defendant's right to have the proceedings recorded.
- m. The court and opposing parties shall address each other and members of the jury as follows:
  - (1) Address the court as "Judge" or "Your Honor."
  - (2) Address opposing parties, counsel, witnesses, and court officers as "Mr.," "Mrs.," "Miss," "Officer," etc.
  - (3) Do not use first names except with children 17 years of age or younger.
- n. There shall be no sidebar comments nor arguing with the witness. During testimony the attorney's and/or pro se defendant's role is to ask questions, they are not sworn and they may not testify. Except by proper objection, Counsel and pro se defendant are not allowed to comment on witness's answers, opposing counsel's questions, or the court's rulings in a verbal or non-verbal fashion.
- o. All examinations should be done in a question and answer format. Failure to follow this format causes opposing counsel to be unable to object to particular matters.
- p. Objections shall be in proper legal form and shall comply with the Texas Rules of Evidence and other laws of this State. Argument will not be entertained upon an objection except with the Court's permission. Do not thank the Judge for his/her ruling on an objection.

- q. All objections, arguments, and other comments shall be directed to the judge and not to opposing counsel. When a party has made an objection, the other party and testifying witness shall stop and wait for the judge to make a ruling on the objection before proceeding further. No party shall persistently offer testimony deemed inadmissible.
- r. When addressing the court or jury, counsel and pro-se parties shall rise and remain standing at their positions at the counsel table or, with permission from the judge, at the podium.
- s. Rule for marking of evidence: When counsel or a pro se Defendant wants to introduce an exhibit, first request an exhibit sticker from the Court Clerk, handwrite the exhibit number on the exhibit sticker, and ask the predicate questions and hand the exhibit to the other side for inspection and move for admission. The other party may make objections, specify how the predicate is deficient, and take the offering witness on Voir Dire to further establish the objection. If the Judge admits the exhibit, the Prosecutor, Defense Counsel, Pro Se Defendant or Marshal shall publish or present the admitted exhibit to the jury with the Court's permission. After publishing, all exhibits shall be placed before the judge's bench. At the end of the trial, all exhibits are to be given directly to the Court Clerk. A party may request a copy of the exhibits and the Clerk will advise the party when to pick up the copies.
- t. Counsel and pro se parties shall remain seated at the counsel table at all times except when:
  - (1) The judge enters or leaves the courtroom;
  - (2) Addressing the judge or jury;
  - (3) It is necessary to handle documents or exhibits;
  - (4) Permission is granted from the court to approach the bench, a witness exhibit, or the clerk's desk; or
  - (5) Raising an objection.
- u. Parties shall not rest arms, hands, files, purses, briefcases, umbrellas, or other items on the bench or clerk's desk.
- v. When at the judge's bench, counsel shall not appear to engage the court in a confidential manner unless so requested by the court.
- w. Racist, sexist, obscene, and profane language or gestures are prohibited unless pertinent to a case and elicited and quoted from facts in the case.

- x. Purses, bags, briefcases, etc., must be left at the defense table when called to the judge's bench.
- y. All paperwork, driver's license, proof of auto liability insurance, evidence, etc., must be ready when called to approach the bench or the podium.

### RULE THREE: INFORMATION MANAGEMENT

3.1. *Files.* Judicial Records are records made or maintained by or for a Court in its regular course of business. The Mesquite Court of Record has an open file policy. Copies of available files may be obtained upon request from the Defendants and their Attorneys. If the requested record requires five copies or more a charge of ten cents per copy will be assessed and collected before access is granted. The Clerk shall produce copies of requested materials within fourteen working days from the actual receipt of the request unless additional time is allowed by the Judge. All files are available with the exception of the following confidential or protected information, which shall be redacted prior to copying:

- a. Judicial work product;
- b. The State's work product;
- c. Documents and evidence privileged or exempted from disclosure pursuant to common law, judicial decisions, the Texas Code of Criminal Procedure, the Texas Rules of Evidence, Federal and State statutes, rules and regulations;
- d. Confidential information exempted from disclosure pursuant to State or federal statutes, common law, or Rule 12 of the Rules of Judicial Administration;
- e. Driving record histories; and
- f. Criminal history inquiries.

3.2. *Address, E-Mail Address, and Telephone Numbers of Defendants and Attorneys.*

- a. Attorneys, parents of juvenile defendants (under 17 years old), and adult defendants (pro se or represented by counsel) are ordered to:
  - (1) Deliver, in writing, notice of a correct current mailing address, working telephone number, and email address at the time of their first court appearance; and

- (2) Advise the court of any changes to this information within three days of a change.
- b. Noncompliance with the requirements of this rule may result in the failure to receive notice of a court setting. Failure to appear under these circumstances will not raise the defense of lack of notice and may result in one or more of the following:
- (1) The entry of an adverse judgment;
  - (2) Issuance of a warrant for the defendant's arrest;
  - (3) The filing and prosecution of contempt charges against the defendant or parents of a juvenile defendant; and
  - (4) Prosecution for failure to comply with the continuing duty to inform the court of a juvenile's address resulting in additional charges against the juvenile after becoming an adult.

#### RULE FOUR: ENTRY OF A PLEA

- 4.1. *Generally.* The Mesquite Municipal Court of Record was created by House Bill 1889 executed by the 82<sup>nd</sup> Legislature in 2011 entitled "Subchapter YY Mesquite", Sections 30.01891 to 30.01895 of the Texas Government Code. Municipal courts have exclusive subject matter jurisdiction over city ordinance violations in their city limits. Municipal and Justice Courts may have concurrent subject matter jurisdiction over Class C offenses punishable by fines up to \$500 and jurisdiction also exists for fines up to \$2,000 for certain violations related to fire safety, zoning, public health, sanitation. Other jurisdiction includes code abatement cases and appeals of red light camera offenses.
- 4.2. *Types of Pleas.* The options available for resolving a municipal citation vary depending on many factors, including, but not limited to: the type of violation, the severity of the violation, the history of violations, and the age of the defendant. The signing of a citation in front of an officer is not a plea of guilty but rather a promise to appear in court. Upon receiving a citation, a person must first enter a plea in writing on or before the appearance date. There are three possible pleas: (a) "Guilty," (b) "Nolo Contendere," and (c) "Not Guilty."
  - a. *Plea of Guilty.*
    - (1) A plea of guilty is an admission that the act was committed as charged, that the act is prohibited by law, and that no defense exists for the violation.

- (2) Before entering a plea of guilty, the person committing the act (“the defendant”) should understand that the State has the burden of proving each element of the violation beyond a reasonable doubt. The law does not require the defendant to prove anything. The defendant has the right to hear the State's evidence and to require it to prove its case.
    - (3) If a traffic accident occurred at the time of the alleged offense, a plea of guilty could be used later in a civil suit for damages as an admission of fault or responsibility for the accident.
  - b. *Plea of Nolo Contendere (No Contest).*
    - (1) A plea of “nolo contendere” is not an admission of guilt but rather an acknowledgement that the defendant does not contest the State's charge.
    - (2) If a traffic accident occurred at the time of the alleged offense, a plea of “nolo contendere” or “no contest” cannot be used later in a civil suit for damages as an admission of fault or responsibility for the accident.
  - c. *Plea of Not Guilty.*
    - (1) A plea of not guilty is a denial of guilt.
    - (2) A defendant who pleads not guilty has a right to a trial by judge or jury, and may retain an attorney or may represent himself or herself at trial.
- 4.3. *Disposition Without Court Appearance.* For juveniles, refer to Section 4.12. In the following circumstances, defendants over 16 years of age who enter a plea have the option of disposing of the case without appearing in court by:
  - a. Paying the fine (see Section 4.5);
  - b. Requesting a driving safety course (“DSC”) or a deferred disposition, if eligible (see Sections 4.6 and 4.7.); or
  - c. Dismissal, if eligible, with proof of compliance in cases involving expired registration or insurance matters. (See Section 4.8.)
- 4.4. *Minor Defendants (age 17-21)* with Alcohol or Tobacco offenses must appear before the Judge to enter a plea.

4.5. *Payment of Fine.*

- a. Please note that paying the fine results in a non-appealable final judgment. A fine can be paid:
  - (1) In person at 211 Municipal Way, Mesquite, Texas, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday;
  - (2) By phone by calling 972-216-6206;
  - (3) By mail by checking the appropriate plea on the reverse side of the citation, signing one's name, and mailing a copy of the citation along with full payment to Mesquite Municipal Court at P. O. Box 850137, Mesquite, Texas 75185-0137; or
  - (4) Online: Mesquite Municipal Court Official Website at <https://www.cityofmesquite.com/240/Municipal-Court>
- b. Mesquite Municipal Court accepts the following forms of payment:
  - (1) Personal checks made out to the City of Mesquite;
  - (2) Credit cards (Visa, Master Card, and Discover);
  - (3) Money orders; or
  - (4) Cash (if paying in person).

4.6. *Request Driving Safety Course (DSC) or Motorcycle Operator Training Course (MOTC).*

- a. A request for DSC or MOTC is only available on alleged offenses set out in Art. 45.0511 and the Defendant enters a plea on or before the answer date on the notice to appear (the citation).
- b. A defendant is not eligible for DSC or MOTC if he or she:
  - (1) Does not have current insurance; or
  - (2) Does not have a valid Texas driver's license or the driver's license is suspended; or
  - (3) Has taken the class within the last 12 months; or
  - (4) Received the ticket in a construction zone with workers present; or

- (5) Was speeding 25 miles per hour or more over the speed limit; or driving more than 95 miles per hour; or
- (6) Has a commercial driver's license.

4.7. *Request Deferred Disposition.*

- a. A request for deferred disposition will not be available for defendant(s) who:
  - (1) Received the ticket in a construction zone with workers present; or
  - (2) Was speeding 30 miles per hour or more over the speed limit; or
  - (3) Was speeding 16 miles per hour or more over the speed limit in a school zone; or
  - (4) Received a ticket for not having current liability insurance and was involved in an accident; or
  - (5) Received a ticket for not having current liability insurance and cannot provide a copy of current vehicle liability insurance; or
  - (6) Has a commercial driver's license.

4.8. *Dismissal with Compliance.*

- a. A citation may be dismissed with a \$20.00 fee for the following offenses:
  - (1) Driving with expired registration.
  - (2) Driving with expired driver's license.
  - (3) Fail to report change of address or name.
  - (4) Expired Disabled Placard
- b. A citation may be dismissed with a \$10.00 fee for the following offenses:
  - (1) Operate motor vehicle without license plates or with one plate.
  - (2) Display altered, unclean, or obscured license plates.
  - (3) Violate driver's license restriction or endorsement.
  - (4) Driver's license valid but fails to display.
  - (5) Operate vehicle with defective required equipment (or in unsafe condition).

- c. A request for dismissal must be made within 20 working days of receiving the citation, but not within the first five calendar days of issuance. This amount of time is required for the citation to be processed and filed with the court. The request may be made in the manner described for payment of fines in Section 4.5.
- d. Upon request for dismissal, the appropriate fee must be paid and proof must be provided that the offense charged has been corrected. The fee may be paid in the manner described for payment of fines in Section 4.5.
- e. The offense of “no valid proof of vehicle liability insurance” qualifies for dismissal at no charge if proof is submitted of coverage by a valid policy of vehicle liability insurance on the date and time of the offense. The information provided will be verified by the court.

4.9. *Contact Notification Notice Card.* The Texas State Office of Court Administration Compliance Rules [Ref: 1 TAC Chapter 175 (01-17-08)] require municipal courts to obtain complete, verifiable contact information for defendants who do not pay their entire fine the day the final judgment is rendered. Defendants who do not pay their entire fines and court costs requesting a payment plan or an extension to pay shall complete a contact notification notice card. The form is available on the Mesquite Municipal Court website.

4.10. *Consequences of Ignoring a Citation.*

- a. Failure to complete one of the three options shown above on or before the response date on the front of the citation will result in:
  - (1) The issuance of a warrant for the defendant’s arrest at which time the fine amount will be the maximum allowed by law plus court costs and fees, including but not limited to warrant and collection fees, and
  - (2) A request from the court to the Texas Department of Public Safety to deny the renewal of the defendant’s driver license.
- b. If a warrant for arrest is issued, the defendant will be subject to arrest at home, place of business, or wherever he or she may be found.
- c. A telephone call does not constitute a response. Inability to pay this fine is not an excuse for failure to enter a plea on or before the appearance date.

4.11. *Show Cause Hearing for Non-Compliance of a Court Order.*

- a. After the entry of a plea on a driving safety course dismissal request, deferred disposition, or extension to pay or payment plan and the required payment or action has not been made, the case shall be set for a non-compliance show cause hearing.

- b. If the defendant fails to appear at non-compliance hearing or fails to comply with a Court Order given at the non-compliance hearing a *Capias Pro Fine* shall be issued in accordance with law.

4.12. *Special Instructions for Juveniles.*

- a. Juveniles (ages 10-16) must appear in person with a parent or legal guardian for a court hearing. A court appearance is also required for DSC, deferred disposition, and all cases involving a minor in possession of alcohol or tobacco. Do not pay any fine before appearing in court and entering a plea.
- b. The residential address of the juvenile, each parent, and legal guardian must be provided to the court in writing. On or before the seventh day after the date of a change to any address, the court must be notified of the change by submission of a "Juvenile Change of Address" form. A violation of this requirement is a Class C misdemeanor punishable by a fine up to \$500.00 and may result in a warrant for arrest. The obligation does not terminate when the juvenile reaches the age of 17, but rather terminates only upon full discharge and satisfaction of the judgment. A "Juvenile Change of Address" form is available at the court clerk's window and is posted on the City of Mesquite's website.

RULE FIVE: ABILITY TO PAY

- 5.1. *Alternatives to full payment.* The Court shall consider the Defendants' ability to pay before a plea in open court and after entry of a judgment. The Court may consider the alternatives to full payment such as payment plan with a lower monthly payment or longer term, review an Affidavit of Financial Hardship and order community service to discharge the fine and cost, and waiver and suspension of fine and costs.
- 5.2. *Financial Hardship Application.* A Defendant may file an Application for Financial Hardship with supporting documentation at the clerk's window or before the Court to support a finding of indigency, present documentation showing physical or mental inability to perform community service (unable to lift more than 15 pounds or stand for an extended period of time), or evidence showing that the Defendant would suffer undue hardship attempting to perform community service.

RULE SIX: NOTICE

- 6.1. *Notice.* Notice of the date, time, and nature of each setting shall be given to each party in writing, in person, or by mail to the last known address of a party or counsel. A copy of each notice shall be retained in the case file.

6.2. *Responsibility.*

- a. It is the responsibility of all persons with business before the court to appear promptly on the date and time given in the notice and to update or notify the court of any change of address. No dispositions, extensions, scheduling of court appearances, or resets are permitted by telephone. A telephone call does NOT constitute an appearance.
- b. A pro se party must appear at all court settings on his or her case.
- c. A defendant who is represented by an attorney must appear at all settings except the attorney appearance docket.

6.3. *Verbal Representations.* Verbal representations by court personnel about such matters as continuances, setting aside of a warrant, or other relief are not binding on the court. A police officer's verbal statements regarding disposition of an offense is not binding upon the court.

6.4. *Complaint.* The sworn complaint need not be filed until the day before the pretrial. A copy of the complaint will be made available to the defendant or counsel upon request to the clerk of the court. A reset may be provided if, upon request, the complaint is not provided 24 hours before the date of trial.

RULE SEVEN: APPEARANCE AND DOCKET PROCEDURES

7.1. *Appearance.* A pro se defendant shall appear at a plea docket; or if a not guilty plea entered, at a pretrial hearing at which time the case will be disposed of by pretrial plea or set for a trial.

7.2. *Attorney of Record.* An attorney seeking to represent a Defendant must file a written notice of representation with the Court. The notice shall contain the client's name, the citation number, the violation, the date of violation and the Defendant's plea. The attorney who files a notice of representation shall be considered the attorney of record and must appear with the Defendant at all pre-trial hearings and trial settings.

7.3. *Resets.* The Court has a 30 day limit on all resets unless good cause found by the Judge. The objective is that all cases will be plead or a trial date set within 90 days of the first appearance. Cases with an attorney of record will have one attorney docket and one pre-trial hearing with a final plea or a trial setting. Pro Se cases will have one plea docket and one pre-trial hearing with a final plea or trial setting.

7.4. *Pre-Trial Docket.* The pretrial docket will be the final opportunity for the acceptance of a plea bargain. No plea may be accepted by the Municipal Judge after the pretrial docket except a straight plea of no contest or guilty for conviction with payment of the "window" fine together with all assessed fees and costs to be paid in ten days or payment plan (unless affidavit of financial hardship filed).

- 7.5. *Attorney of record.* The attorney of record shall timely appear, sign in with the Clerk or Marshal; confer with the prosecutor and wait for the prosecutor to enter comment on the case; then proceed to the window clerk to sign all status documents and remain at the clerk's window until all dispositions are processed. The attorney must report to the clerk's window immediately after the docket to have paperwork processed and no later than 4:00 P.M. No dispositions shall be entered without counsel present nor shall dispositions be mailed to counsel.
- 7.6. *Consequences.* Failure of counsel to follow these procedures may result in a notice for show cause to determine whether:
- (1) The court should implement remedial measures;
  - (2) The attorney should be allowed to post attorney bonds on cases in the Mesquite Municipal Court.

#### RULE EIGHT: MOTIONS FOR CONTINUANCES

8.1. *Motions for Continuance.* These rules supplement Chapter 29 of the Texas Code of Criminal Procedure and a continuance will only be granted upon showing of good cause.

8.2. *Procedures Governing Continuances.*

a. *Pro Se Continuances*

A motion for continuance must be filed with a Personal Recognizance Bond by a pro se defendant and explain the reason for the request, include the defendant's signature and be filed five days before the setting (or up to five days after the setting upon showing of good cause).

b. *Attorney Continuances*

A motion for continuance must be filed with an attorney bond with the defendant's original signature and explain the reason for the request and if there is a conflict with a setting in a higher court, the motion shall include the name of the other court, the identity of the other client of the Defense counsel, the cause number and caption of the conflicting case, the date and time of the conflicting setting, and the direct phone number of the scheduling clerk or coordinator of the other court and be filed five days before the setting (or up to five days after the setting upon showing of good cause)

- 8.3. *Failure to appear.* If a party fails to appear after posting a Personal Recognizance Bond or Attorney Bond the court will require a cash bond for amount of the fine and court costs for a further continuance.
- 8.4. *Letter of representation filed on case set trial.* Where a Defense Attorney files a letter of representation for a Defendant less than five days before a bench or jury trial, it is expected that counsel will proceed to participate in the scheduled trial. No Continuance shall be granted unless the Court expressly finds good cause.
- 8.5. *Denial for Failure to Comply.* Motions that are not timely or do not comply with the requirements of these rules shall be denied.
- 8.6. *State's Continuances for a Judge or Jury Trial.* The State's request for a continuance on grounds that the peace officer or fact witness is not available because said witness is on medical leave, actively responding to an emergency call, appearing at a higher court, or attending required training shall be approved if filed as soon as practical upon the prosecutor's learning of the circumstances (and requests for continuances based upon vacations and other non-emergency grounds may be granted upon a showing of good cause).
- 8.7. *Substitutions of Counsel.* If the original attorney of record filed a motion for continuance and then files a motion to substitute, the substituting attorney shall be set for the next available pre-trial hearing.

#### RULE NINE: MOTIONS TO WITHDRAW AND SUBSTITUTE COUNSEL

- 9.1. *Appearance by Attorney.* If a defendant has retained counsel, that attorney is the attorney of record on the case until the judge approves a motion for withdrawal or substitution of counsel or until the case is disposed of by a final disposition. If the case is taken to trial, the attorney remains the attorney of record until the time for appeal has been exhausted.
- 9.2. *Motions to Withdraw and Substitute Counsel (defendant's written consent required).* A motion to withdraw as attorney of record and substitute another attorney as the attorney of record shall contain the defendant's signature approving said substitution properly and the case shall be set for pre-trial or trial setting.
- 9.3. *Counsel substitution.* If the Court finds that a Defense Attorney is posting an Attorney Bond and then immediately requesting to substitute another counsel, the case shall be set for a pre-trial or trial setting.

Any motions to withdraw and substitute counsel without the defendant's written consent shall be denied. The motion to withdraw and substitute counsel approved by the defendant must include the following:

- a. The defendant's last known home address and phone number;

- b. Signatures of the moving attorney, the substituting attorney, and the written consent of the defendant to both the withdrawal and the substitution of counsel;
  - c. A written acknowledgement from the substituting attorney of his or her duty to update the court of any change in the defendant's or attorney's address, home, cell and business phone numbers.
- 9.4. *Motions to Withdraw with No Substitution of Counsel.* A motion to withdraw as attorney of record with no substitution of another attorney as the attorney of record will be granted only if:
- a. The motion contains the defendant's signature approving said withdrawal; or
  - b. The motion does not contain the defendant's signature approving said withdrawal but includes all of the following:
    - (1) In addition to all available information listed in Section 9.3 (a)-(c), a motion to withdraw as attorney of record without the defendant's written consent must be sent by certified mail with registered return receipt requested to the defendant.
- 9.5. *Effect of Withdrawal or Substitution on Bond.*
- a. Section 1704.163 (c) of the Texas Occupations Code states that a person executing a bail bond or acting as a surety under that section is not relieved of liability on the bond solely because the person is later replaced as attorney of record in the criminal case. Accordingly, attorneys who file an attorney bond in the Mesquite Court of Record and later file a motion to withdraw or to substitute counsel shall not be released from the bond, except if the substituting counsel files an attorney bond.
- 9.6. *Restrictions or Limitations on Attorney's Right to Post Bond (the Dirty Board).*
- a. The Court may conduct a show cause hearing to restrict or suspend an attorney's right to post an attorney bond on any Mesquite Class C misdemeanor cases if an attorney fails to conduct his or her business with due diligence.
  - b. On an alias capias case where an attorney posted an attorney bond, sent a letter of representation, set the case for an attorney docket, then failed to appear, and a motion for continuance was denied, the clerk shall send a letter to the attorney advising counsel to make plea disposition or set the case for trial. Further inaction will lead to the issuance of a warrant and a letter giving notice that the attorney has been placed on the Dirty Board and the right to post an attorney bond on any Mesquite Class C misdemeanor cases is

suspended. An attorney on the Dirty Board may submit a motion to withdraw as attorney of record as provided in these rules.

- c. The court reserves the right to determine if there is a history of an attorney's failure to conduct his or her business with due diligence and may make a finding and order prohibiting said attorney from posting attorney bonds on cases in the Mesquite Municipal Court for a defined period of time. The Court may take remedial actions including special settings to insure business is completed.

#### RULE TEN: PRE-TRIAL MOTIONS

- a. *The following Pretrial Motions must be Heard at the Motion Docket:*
  - (1) Motions to dismiss for jurisdiction.
  - (2) Constitutional bars.
  - (3) Motions to quash (including any objection to a defect, error, or irregularity of form or substance in a complaint pursuant to Art. 45.019(f) of the Texas Code of Criminal Procedure).
  - (4) Motions in limine.
  - (5) Motions to suppress.
  - (6) Motions for a speedy trial.
  - (7) Other challenges based on statutory and/or constitutional grounds.
  - (8) Any motion filed in the interest of justice to compel discovery.
- b. Pre-trial motions must be accompanied by an order for the judge's ruling.
- c. The court may request briefs and argument in support of a motion.
- d. Defendant and the defendant's attorney, if any, must be present at all pre-trial hearings.
- e. The pretrial motion shall be heard and ruling made at the Motion Docket.
- f. Failure to timely file pretrial motions shall constitute a waiver of having those issues heard before trial.

- g. If the court grants a motion to quash, the State will have a minimum of 3 working days to re-file the complaint.

10.1. *Requests for Assistance.*

- a. Requests for a language or impaired hearing interpreter should be made in writing upon first appearance.
- b. Requests for assistance from persons with disabilities should be made at the time the plea is entered.
- c. Requests for visual or audio aids should be made at least one week prior to trial.

RULE ELEVEN: MOTION FOR DISCOVERY

If a Defendant or an attorney of record wants any reports, documents, papers, photographs, video, or any other information pertaining to their case, the Defendant or attorney of record may file a the Mesquite Municipal Court's Discovery Procedure and Order Form or a motion for discovery. The motion shall comply with Art. 39.14, Texas Code of Criminal Procedure. The motion must be filed no later than 14 days prior to the scheduled trial setting. Payment for duplication of videos and certified mail should be made at the time of the request. The parties agree that no discovery hearings shall be held in this cause, unless: (i) a party fails to comply with the provisions of this order; or (ii) the Court determines, upon motion by a party, that a hearing is required in the interest of justice to compel compliance with the provisions of this order.

RULE TWELVE: TRIALS

12.1. *Trial Settings.*

- a. Except as provided in Subsection (b), a request for a trial may be made at the time of or any time before the entry of a plea or at the pretrial. A request for a trial by court must include a jury trial waiver.
- b. If a defendant has requested a trial by court, the latest time to change that request to a jury trial is on the day before the date of the trial by court.
- c. A pro se defendant requesting a jury trial shall be set for a pretrial hearing as soon as practical. At the conclusion of the pretrial hearing there shall be no option of DSC, a deferred disposition, a plea for a reduced fine, or any other plea bargain. The case will either proceed to bench or jury trial for disposition, or alternatively a straight plea may be entered but only with

payment of the maximum “window” fine together with all assessed fees and costs.

- 12.2. *Docket Order.* Subject to the discretion of the judge, the order of cases proceeding to trial shall be as follows: (1) preferential settings; then (2) cases according to filing date, oldest first. All cases not reached will be noted as the court’s reset.
- 12.3. *Preferential Settings.* To receive a preferential setting, a party must meet one of the following criteria:
  - a. Reside more than 50 miles outside the city;
  - b. Have a condition, illness, or injury that would necessitate expedited disposition of the case;
  - c. Have a non-defendant witness who has appeared on at least one prior trial setting without the case having been reached; or
  - d. Other special circumstances meriting a preferential setting.
- 12.4. *Required Appearance.* All parties must be present in the courtroom at the time the docket is called. The State shall be required to announce ready for trial only after the court has confirmed that the defendant and defense counsel are present in the courtroom and have announced ready to proceed.
- 12.5. *Failure to Appear and Announce Ready When a Case is Called for Trial.*
  - a. If the defendant fails to appear without showing good cause, the Court shall immediately issue a warrant for the defendant’s arrest.
  - b. If the State fails to appear without showing good cause, the court may proceed to trial or dismiss the case in the interest of justice.
- 12.6. *Record of Proceedings.* Upon written request prior to the hearing, a record of all trial proceedings, including hearings on pre-trial motions, will be made by electronic recording. If no written request is made prior to the hearing, the clerk shall note in the clerk’s record that no written request for a record of the proceedings was timely made. Under these circumstances, even if the court has electronically recorded a proceeding, the recording may not be used for the preparation of a record. No person is allowed to record any proceeding unless a request was made and approved by the Judge.
- 12.7. *Media Access.* As a general rule, broadcast media will not be allowed to record any court proceeding. Exceptions may be made by the presiding judge.

12.8. *Trial Procedure.* Under Texas law, a defendant can be brought to trial only after a formal complaint is filed. The complaint is the document that alleges what unlawful act the defendant is alleged to have committed. A defendant can be tried only for what is alleged in the complaint. Trials are conducted under Chapter 45 of the Code of Criminal Procedure as adopted by the Texas Legislature which provides the following rights:

- a. To inspect the complaint before trial and have it read at the trial.
- b. To hear all testimony introduced against a defendant.
- c. To cross-examine any witness who testifies against a defendant.
- d. To testify in one's own behalf as well as the right to choose not to testify. A defendant's refusal to testify cannot be considered in determining innocence or guilt of the charge.
- e. To request the court to issue subpoenas to require witnesses to appear at the trial and testify. Whether or not subpoenaed, a defendant has the right to call witnesses to testify in his or her behalf at trial.

12.9. *Presenting the Case.*

- a. *Trial by Jury.* The trial is held before a panel of six Mesquite residents. A jury trial takes approximately two or three hours but could be longer.
- b. *Trial by Judge.* The trial is held before the municipal judge. A trial by judge takes approximately 30 minutes to two hours but could be longer.
- c. *Determination of Punishment for Jury Trials.* A defendant may elect whether the determination of punishment is made by the jury or the judge. Such an election must be made in writing before the commencement of the Voir Dire examination of the jury.
- d. *Procedure for Trials.*
  - (1) The State will be represented by a city attorney who must prove the charges as stated on the complaint beyond a reasonable doubt.
  - (2) The State presents its case first by calling witnesses to testify.
  - (3) The defendant is allowed to hear all witness testimony and is given an opportunity to ask questions of, or cross examine, those witnesses.
  - (4) Cross-examination must be in the form of questions.

- (5) Pro se parties should not attempt to tell their version of the incident during cross examination.
  - (6) If the court has granted a motion in limine, parties are ordered to approach the judge before mentioning or questioning on any issue granted in the motion in limine.
- e. After the State has presented its case, the defendant may present its case.
    - (1) The defendant may call other witnesses to testify who have personal knowledge about the charge. If the defendant chooses to testify, he or she may do so during this stage of the trial.
    - (2) The State may cross-examine all witnesses called by the defendant. If the defendant testifies on his or her behalf, the State may cross-examine the defendant.
  - f. The court shall control the trial proceedings, the pace of the trial, maintain decorum, direct the conduct of the parties, limit side bar comments, prevent the badgering of witnesses, and control movement of the parties.
  - g. Except for the victim in a criminal case, the court shall, upon request, order witnesses to leave the courtroom so they cannot hear the testimony of other witnesses. The victim shall be allowed to remain in the courtroom unless the court determines that the victim's testimony would be materially affected by hearing the other testimony at the trial.
  - h. After testimony is concluded by both sides, each side may make a closing argument based upon the testimony provided during the trial. Additional testimony is not admissible in the closing argument. The verdict will be based upon the testimony and other evidence presented at trial. In making the determination, the judge or jury shall only consider the testimony of the witnesses who testify under oath. If found not guilty, the defendant is acquitted of the charges. If found guilty, punishment is announced.
  - i. In a trial before the court, the judge will announce the penalty. In a trial before a jury, if the defendant requested the jury to determine punishment, the jury foreperson will announce the finding of either not guilty or guilty and, if guilty, will state the punishment assessed, if any. If the defendant requested the judge to determine punishment, upon the jury finding of guilty, the judge shall announce punishment. The fine amount after trial (before the court of jury) may be different from the amount quoted by the court clerk prior to trial (later is referred to as the "window fine").
  - j. Upon a finding of guilty, a person has 10 days to file an appropriate appeal bond or pay the amount due.

RULE THIRTEEN: POST TRIAL

- 13.1. *Appeals.* Appeals from this court must comply with the procedures and requirements set forth in Chapter 30 of the Texas Government Code.
- 13.2. *Appellate Information.* Following a trial in which there is a guilty judgment, the clerk of the court shall make available to each defendant a handout summarizing the appeal process. The appellate process form is in the Mesquite Municipal Court website <https://www.cityofmesquite.com/240/Municipal-Court>
- 13.3. *Indigency.* If a defendant cannot pay for either the appeal bond or the transcript, he or she may file a motion to waive costs and an affidavit of Indigency with the court. The motion must be filed before the expiration of the time allowed by law to file an appeal bond. Upon timely request, a hearing on a motion to waive costs shall be provided an expedited hearing date.
- 13.4. *Inability to Pay Fine.*
  - a. If the defendant does not appeal the court's decision but is unable to pay the fine when due, the case will be set on a show cause hearing where the defendant can request an extension to pay or a payment plan.
  - b. If the defendant cannot pay fines or make payments on a payment plan, the Court will conduct an ability to pay hearing and consider lesser alternative means such as discharging the fine and costs through the performance of community service if able to perform such without undue hardship or upon the Judge's finding good cause to waive fines and costs in full or part.
- 13.5. *Warrant.* If a defendant does not pay the fine, meet all obligations of an installment payment plan, or fully perform all orders of the court, a warrant will be issued which will subject the defendant to arrest.

RULE FOURTEEN: WARRANTS

- 14.1. *Recall Warrants.* Anyone with warrants in the Mesquite Municipal Court may appear Monday through Friday 8:00 A.M. – 5:00 P.M. to recall their warrant(s).
  - a. A good faith effort to resolve a Capias Warrant is:
    - (1) Entering a plea of not guilty for a bench or jury trial;
    - (2) If eligible and by plea and affirming ability to pay, receiving deferred disposition with full payment due in 60 days or longer.

- (3) If not eligible for deferred disposition and by plea and affirming ability to pay, the court will order a monthly pay plan covering one or more cases.
  - (4) Judge will review the defendant's ability to pay and consider alternatives to full payment such as payment plan with a lower monthly payment or longer term, perform community service to discharge fine and costs, or waiver and suspension of fine and costs.
- b. A good faith effort to resolve a Capias Pro Fine Warrant is:
- (1) The Judge will review the defendant's ability to pay and consider alternatives to full payment such as payment plan with a lower monthly payment or longer term, perform community service to discharge fine and costs, or waiver and suspension of fine and costs.

**RULE FIFTEEN: ATTORNEYS WHO SERVE AS BAIL BONDSMEN**

**15.1. *Consent of Defendant Required for Entry of No Contest or Guilty Plea.***

- a. In Ethics Opinion 599 (August 2010), the Professional Ethics Committee for the State Bar of Texas held that the Texas Disciplinary Rules of Professional Conduct prohibit a lawyer who serves as bail bondsman for his client in a criminal prosecution from adding to the bail bond form any provision in which the client agrees that, if the client fails to appear in court, the attorney is authorized to enter a "no contest" plea that will result in a fine and may result in the issuance of a warrant for the client's arrest. Such an arrangement is a prohibited business transaction between lawyer and client that is not on terms fair and reasonable to the client, creates an impermissible conflict of interest for the lawyer, and impermissibly purports to eliminate the lawyer's duty to consult with and abide by the decision of the client concerning the entry of a plea.
- b. Accordingly, it is ORDERED that any lawyer who appears in this court as legal counsel for a defendant and is also acting as a bail bondsman or surety for that defendant must, before entering a plea of "no contest" or "guilty":
  - (1) Advise the court of this fact, and
  - (2) Have the client/defendant personally appear or have written consent from the client to enter the plea.

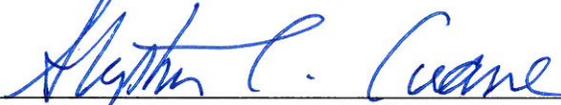
RULE SIXTEEN: Marshal

A Marshal shall be present at all times when the court is in session or in recess, unless excused by the judge. No duty shall be assigned to the Marshal without prior approval of the judge. The Marshal has full authority to enforce these rules and shall perform other duties as assigned by the judge.

RULE SEVENTEEN: ACKNOWLEDGMENT AND ENDORSEMENT

- 17.1. All attorneys practicing before this court, all pro se defendants, and one of the parents or legal guardians of any juvenile defendant under 17 years of age are required to:
- a. Read these rules completely;
  - b. Conform their conduct to these rules; and
  - c. To ensure that they have the most current version of these rules.

SIGNED AND ORDERED on March 8, 2019.



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Honorable Stephen C. Crane, Presiding Judge  
City of Mesquite Municipal Court of Record