

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 bailiff;
 - (3) Refusing to answer questions in court;
 - (4) Arguing combatively;
 - (5) Talking over the court, opposing counsel, witnesses, or court personnel; or
 - (6) Engaging in any similar behavior that interferes with court proceedings.

- 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 bailiff 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; 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.
- 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 may, by facial expressions, shaking or nodding of head, or by any other conduct, express approval or disapproval of any testimony, statement, or transaction in the courtroom.
- l. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags, or containers into the courtroom without prior approval of the bailiff.
- m. No person shall be permitted any verbal or physical contact with any other person who is taken into custody without prior approval by the bailiff or the court.
- n. No person shall recline anywhere in the courtroom unless specifically permitted to do so by the judge.
- o. 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 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. An attorney is late for attorney docket if he or she arrives more than 30 minutes after the docket begins or does not provide attorney docket dispositions to the clerk before 5:00 p.m. on the date of the docket. 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. 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. 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.

- k. 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.
- l. 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.
- m. 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.
- n. Objections shall be in proper legal form and shall comply with the Texas Rules of Evidence. Argument will be entertained upon an objection only when requested by the judge.
- o. 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.
- p. 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.
- q. Parties shall not rest arms, hands, files, purses, briefcases, umbrellas, or other items on the bench or clerk's desk.

- r. When at the judge's bench, counsel shall not appear to engage the court in a confidential manner unless so requested by the court.
- s. Racist, sexist, obscene, and profane language or gestures are prohibited unless pertinent to a case and elicited and quoted from facts in the case.
- t. Purses, bags, briefcases, etc., must be left at the defense table when called to the judge's bench.
- u. All paperwork, driver's license, proof of auto liability insurance, evidence, etc., must be ready when called to approach the bench.

RULE THREE: INFORMATION MANAGEMENT

3.1. *Files.* The Mesquite Court of Record has an open discovery file policy. Defendants and their attorneys may inspect defendants' files and related judicial records in the presence of court personnel. Copies of available files may be obtained upon request and payment of the applicable fee. The clerk shall produce and copy requested materials within three working days from the date 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 inspection or 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.* Municipal courts are the judicial branch of city government. In addition, the municipal court is part of the State judicial system. Municipal courts hear Class C misdemeanor criminal cases, including traffic violations, for which the maximum fine, upon conviction, does not exceed \$750.00, and for which no jail sentence may be assessed. Municipal courts also hear cases involving violations of city ordinances, which may have fines up to \$2,000.00 for certain 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 guilt 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 4.10. 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 4.4);
- b. Requesting a driving safety course (“DSC”) or a deferred disposition, if eligible (see Sections 4.5 and 4.6.); or
- c. Dismissal, if eligible, with proof of compliance in cases involving expired registration, inspection, or insurance matters. (See Section 4.7.)

4.4. *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 7:00 a.m. and 6:00 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:
<https://www.texasonline.state.tx.us/NASApp/rap/apps/cmotpa/jsp/eng/welcome.jsp>.

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).

c. After 23 days, an additional administrative fee will be added. Under these circumstances, call 972-216-6206 to confirm the fine amount for payment by mail.

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

a. A request for DSC or MOTC is only available by right if made by the response date on the front of 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 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
- (6) Has a commercial driver's license.

4.6. *Request Deferred Disposition (Probation).*

- a. A request for deferred disposition is only available by right if made by the response date on the front of the citation.
- b. A defendant is not eligible for deferred disposition if he or she:
 - (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.

4.7. *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 motor vehicle inspection (cannot be expired more than 60 days).
 - (3) Driving with expired driver's license.
 - (4) Fail to report change of address or name.
- 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 4.4.
 - 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 4.4.
 - 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.
- 4.8. *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.
- 4.9. *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.
- 4.10. *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: NOTICE

- 5.1. *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.
- 5.2. *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.
- 5.3. *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.
- 5.4. *Complaint.* The sworn complaint need not be filed until the day before the mandatory 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 SIX: DOCKET PROCEDURES

- 6.1. A pro se defendant is allowed two mandatory pretrial hearings at which time the case will be disposed of by pretrial plea or set for a trial.
- 6.2. An original attorney of record is allowed two attorney appearance docket settings for consideration of a pretrial plea. If no pretrial plea is made at or before the second attorney appearance docket, the attorney is allowed two mandatory pretrial docket settings at which time the case will be disposed of by pretrial plea or set for a trial. No case shall be set for trial unless both the attorney and the defendant attend the mandatory pretrial docket.
- 6.3. The mandatory pretrial docket will be the final opportunity for the acceptance of a plea bargain.
- 6.4. *Attorney Motion Docket.* An attorney may enter a plea with all fines, costs, and fees payable in 30 days. If no payment is made, the case shall be set for a noncompliance hearing. If the defendant fails to appear at the noncompliance hearing, a capias warrant shall be issued in accordance with law.

RULE SEVEN: MOTIONS FOR CONTINUANCES

- 7.1. *Motions for Continuance.* These rules supplement Chapter 29 of the Texas Code of Criminal Procedure.
- 7.2. *Procedures Governing Continuances.*
 - a. *Continuances for Trials.*
 - (1) A pro se defendant may request a motion for continuance. The motion must be in writing, explain the reason for the request, be filed five days before the setting, and include an order. Rulings on such motions shall be at the discretion of the judge. If a defendant's motion for continuance is denied and the defendant fails to appear at the scheduled docket, the defendant may be required by the court to post a cash bond to avoid a warrant being issued in the case. The defendant and the State shall be allowed one continuance. Subsequent requests shall be approved only upon a showing of just cause.
 - (2) An attorney's motion for continuance must be in proper form and filed within five days before the setting with an order attached. An original attorney of record is allowed only two continuances. The defendant's signature is not required on first request for attorney appearance but is required for a subsequent request.

- b. *Other Continuances.* The court may grant up to two continuances if filed within three days of the missed setting. However, on all continuances filed after the setting date, there shall be assessed a No Show fee of \$100 [not to exceed the maximum fine of the offense charged].
 - c. *Substitutions of Counsel.* If the original attorney of record uses two continuances and then files a motion to substitute, the substituting attorney shall be set for the next available mandatory pretrial and will only be allowed one continuance through and including the trial. Any additional continuances will require the posting of a cash bond. Upon a showing of just cause, the court may grant additional continuances.
 - d. *Reset Date.* If a motion for continuance is granted, the case shall be reset for the next available docket.
 - e. *Timely Filing.* A motion is considered timely filed if mailed by U.S. mail and postmarked within the time required by these rules.
 - f. *Cash Bond.* Failure to comply with the filing deadlines will require the posting of a cash bond.
- 7.3. *Form.* All motions for continuance shall be in writing, acknowledged by the defendant or the defendant's attorney, and filed with the clerk of the court. Each motion shall contain the following:
- a. The cause number;
 - b. The name of the defendant;
 - c. The date and time of the proceeding to be continued;
 - d. The specific facts or reasons justifying the continuance and supporting documentation (if any);
 - e. If the motion for continuance is due to a conflict with a higher court setting, the motion shall include the name of the higher court, the cause number of the case with the conflicting setting, the date and time of the conflicting setting, and the contact information of the scheduling clerk or coordinator of the higher court;
 - f. A description of the history of the case including a list of all prior motions for continuance and rulings thereon;
 - g. A certificate of service showing that the motion has been provided to opposing counsel; and

- h. An oath attesting to the truth of the matters and information contained in the motion for continuance

7.4 *Denial for Failure to Comply.* Motions that are not timely or do not comply with the requirements of these rules shall be denied. The clerk shall notify the defendant or the defendant's attorney of deficiencies. An amended motion may be submitted within five days of the date of denial. If no amended motion is timely submitted or if the subsequent submission is still deficient, said motion shall be denied and the defendant must post a cash bond to obtain a continuance. The defendant's attorney may file a motion to withdraw.

7.5. *Notice to Defendant.* Defense attorneys submitting a motion for continuance shall mail a copy of the motion to the defendant. Any motion for continuance filed by an attorney shall attach a copy of the transmittal letter to the defendant and shall include a signed acknowledgement by the attorney that a copy has been provided by mail to the defendant.

7.6. *Factors.* Except in cases where constitutional or statutory continuances are sought, the following factors will be among those considered in determining a motion for continuance:

- a. The specific nature of the conflict (illness, higher court scheduling conflict, out of town, etc.).
- b. The lapse of time between the date of the request and the date on which the charge was initiated.
- c. The history of appearances by the complainant or outside witnesses and any inconvenience that they would suffer from a continuance.
- d. The number of continuances previously granted.
- e. The timeliness of the filing of the motion including the date on which the conflict became known to the defendant or defendant's attorney.

7.7. *Rule Re: Signature of Defendant.* If the Court has concerns about the authenticity of the defendant's signature, the form with the suspect signature will be returned and the submitting party must have said defendant's signature properly verified by a notary public which includes the following averment:

I hereby certify that on this ____ day of _____, 201__, _____ personally appeared before me the signer and subject of the above form, who signed or attested to the same in my presence, and presented a form of identification as proof of his or her identity (suggested driver's license, government or international identification card, social security card, passport, birth certificate, military identification card, or other documented identification).

- 7.8. *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 may be approved if filed as soon as practical upon the prosecutor's learning of the circumstances. Such a request shall not count as the allowed first continuance. State requests for a continuance based upon vacations and other non-emergency grounds shall exhaust the allowed first continuance. Such requests must be filed on or before the fifth day before the date and time of trial. Upon a showing of good cause, the court may grant untimely or additional requests.

RULE EIGHT: MOTIONS TO WITHDRAW AND SUBSTITUTE COUNSEL

- 8.1. *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.
- 8.2. *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 will be granted only if the motion contains the defendant's signature approving said substitution and the motion contains the information described below. 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. The defendant's last known cell phone number (if any);
 - c. The defendant's business address and phone number (if any);
 - d. The contact information for any person having knowledge of the defendant's whereabouts;
 - e. Signatures of the moving attorney, the substituting attorney, and the written consent of the defendant to both the withdrawal and the substitution of counsel;
 - f. 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; and

- g. Two personal references for the defendant including home, cell and/or business phone numbers.

8.3 *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 8.2 (a)-(d), 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 and include a specific statement describing the attempted efforts made to contact the defendant, including, at a minimum, the following:

- (a) The date and time of each attempt;
- (b) The name and phone number of the person making each attempt;
- (c) Whether the attempt was by phone, mail, email or, if by other form of communication, describing the form of communication;
- (d) For each attempt by phone, a list of each phone number contacted;
- (e) For each attempt by mail or email, the address used;
- (f) A statement of all facts showing counsel has exhausted all known means to contact the defendant; and
- (g) A sworn statement that the withdrawing attorney has advised the defendant in writing to contact the Mesquite Municipal Court at 211 Municipal Way, Mesquite, Texas 75149, 972-216-6206.

8.4. *Motions to Withdraw Without the Defendant's Written Consent but With Substitution of Counsel.* In addition to all available information listed in Sections 8.2 and 8.3, a motion to withdraw without the defendant's written consent and also to substitute counsel must contain a statement from the substituting attorney

that he or she is willing and able to assume all legal duties owed to a client even though no one can contact the defendant.

8.5. *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 for the process in 8.6 (b) below.
- b. Attorneys who file an attorney bond in the Mesquite Court of Record and later want to withdraw and be released from the original bond and substitute another counsel shall submit the motion to withdraw and substitute counsel. The substituting counsel must file a new attorney bond and must appear with the defendant before the clerk's window during open hours. The defendant must produce identification items for the clerk to verify his or her identity, and must sign the bond together with the defense counsel in the clerk's presence. The motion, including supplemented information, shall be presented to the judge for consideration.
- c. Article 17.16(a)(1) and (2) of the Texas Code of Criminal Procedure states that a surety may be released from the responsibility on a bond if, before a judgment is issued, the surety surrenders the principal into custody or produces an affidavit that the defendant is in custody. If an attorney is aware that a client is in custody and wants to go off bond, the attorney should submit a request for time served to avoid issuance of a capias warrant.

8.6. *Restrictions or Limitations on Attorney's Right to Post Bond (the Dirty Board).*

- a. The Mesquite Judge 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 15-day letter to the attorney advising counsel to file another motion for continuance, a motion to withdraw, or make disposition on the case. Further inaction will lead to a second letter being sent advising a warrant will be issued after 30 days. Any attorney who is sent the 15-day letter and subsequent 30-day failure to appear letter shall be 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. Alternatively, said attorney may post a cash bond and lift the suspension.

- 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 permanently or for a defined period of time.
- d. On a case where the court has suspended and denied an attorney the right to post an attorney bond, the defendant may post a cash bond and file a motion requesting that the attorney of record be removed as attorney of record by filing a notarized statement explaining the facts and circumstances of the attorney's failure to communicate with the defendant or properly notify him or her of any court settings or any other grounds. The defendant may proceed pro se or designate a successor attorney who shall file a letter of representation.

RULE NINE: ATTORNEY APPEARANCE (AA), MANDATORY PRETRIAL (MPT), AND JURY PRETRIAL (JPT) HEARINGS

9.1. *Attorney Appearance (AA) Docket.*

- a. Attorneys who enter a not guilty plea for a defendant shall be set on an AA docket. The defendant's attendance is waived at the AA docket.
- b. AA dockets are scheduled every Monday from 1 p.m. until 3 p.m. For attorney docket, attorneys shall:
 - (1) Timely appear;
 - (2) Sign in with the bailiff;
 - (3) Obtain the jackets from clerk; and
 - (4) Review files quietly in the courtroom.
- c. After conferring with the prosecutor and obtaining the disposition slip, attorneys shall directly proceed to wait in line and process the slips through the clerk's window, and remain at the window until all slips are processed.

- d. No dispositions shall be entered without counsel present nor shall dispositions be mailed to counsel.
- e. No attorney shall break into line in front of a citizen.
- f. 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 matter should be referred to the Sixth District Grievance Committee; and
 - (3) The attorney should be allowed to post attorney bonds on cases in the Mesquite Municipal Court.
- g. It is the court's objective to have all resets on the attorney docket set within the 14th day. No case may be set for a third AA docket without leave of the court upon a written motion stating supporting grounds. If such motion is denied, the case shall be set for the mandatory pretrial hearing.

9.2. *Mandatory Pretrial (MPT).*

- a. Attorneys advanced from an AA docket and pro se parties who plead "not guilty" shall be set for a MPT prior to being set for trial.
- b. At the MPT docket, an opportunity will be provided to speak with the prosecutor and be made aware of options available in lieu of trial.
- c. All pre-trial motions for trials before the judge must be received by the clerk's office and served the opposing party no later than three working days before the date of the MPT. Any motions filed less than three working days prior to the date of the MPT shall only be heard upon approval of the court. Any motions filed less than three working days prior to the date of the MPT shall only be heard upon approval of the court.

9.3. *Pretrial Motions to be Heard at the Mandatory Pretrial (MPT) or the Jury Pretrial Hearing:*

- a. The following motions must be heard at the MPT hearing:
 - (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) Discovery motions.
 - (6) Motions to list witnesses.
 - (7) Motions to appoint an interpreter.
 - (8) Motions to suppress.
 - (9) Motions for a speedy trial.
 - (10) Other challenges based on statutory and/or constitutional grounds.
- 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 respective mandatory pretrial hearing unless the court sets a special pretrial hearing to allow more time.
 - 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 10 working days to re-file the complaint.

9.4. *Jury Pretrial (JPT).*

- a. Complex cases involving discovery shall be set on a JPT for the first Friday of each month.
- b. All pretrial motions to be heard at the JPT must be received by the clerk's office and served on the opposing party no later than five working days before the date of the JPT hearing. Any motions filed less than five working days prior to the date of the hearing shall only be heard upon approval of the court.

9.5. *Requests for Assistance.*

- a. Requests for a language interpreter should be made in writing at the time a plea is entered.
- 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 TEN: TRIALS

10.1. *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 mandatory 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 jury pretrial hearing on the first Friday of the next month. At the conclusion of the jury 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 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. No extension to pay or payment plan shall be allowed after the jury pretrial hearings.

10.2. *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.

10.3. *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.

- 10.4. *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.
- 10.5. *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 issue a warrant for the defendant's arrest and shall require the defendant to post a cash bond for any future court settings.
 - b. If the defendant is represented by counsel who fails to appear without showing good cause, the court may issue a show cause notice for contempt of court to the offending attorney and may further require the defendant to post a cash bond.
 - c. 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.
- 10.6. *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.
- 10.7. *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.
- 10.8. *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.

10.9. *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 ELEVEN: POST TRIAL

- 11.1. *Appeals.* Appeals from this court must comply with the procedures and requirements set forth in Chapter 30 of the Texas Government Code.
- 11.2. *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.
- 11.3. *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.
- 11.4. *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 defendant can request an extension to pay or a payment plan.
- b. If the defendant qualifies and fully completes the contact information form, the court may allow the defendant to pay the fine in installments.
- c. If the defendant cannot pay fines or make payments on a payment plan, he or she may request an alternative sentencing or a finding of indigency. The court will only make a finding of indigency if the defendant proves, through documented and credible evidence, that he or she has no source of funds to satisfy his obligation. The defendant must further show that he or she has made unsuccessful efforts to obtain support from family, friends, and other community resources. Upon a finding of indigency, the court will suspend payment of the fine and court costs.

11.5. *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 TWELVE: ATTORNEYS WHO SERVE AS BAIL BONDSMEN

12.1. *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 THIRTEEN: BAILIFFS

A bailiff 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 bailiff without prior approval of the judge. The bailiff has full authority to enforce these rules and shall perform other duties as assigned by the judge.

RULE FOURTEEN: ACKNOWLEDGMENT AND ENDORSEMENT

- 14.1. 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 September 7, 2012.



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