

IN THE SUPREME COURT OF TEXAS


Misc. Docket No. 11- 9168


**APPROVAL OF LOCAL RULES FOR
THE 38TH JUDICIAL DISTRICT COURT OF
MEDINA, REAL, AND UVALDE COUNTIES AND
THE MEDINA COUNTY COURT AT LAW**

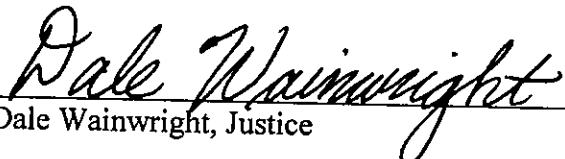
ORDERED that:

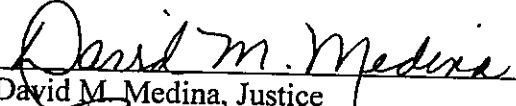
Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following local rules for the 38th Judicial District Court of Medina, Real, and Uvalde Counties and the Medina County Court at Law.


Dated: August 22, 2011.



Wallace B. Jefferson, Chief Justice

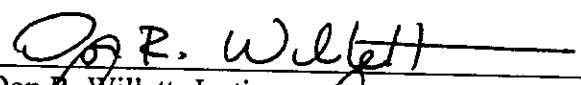

Nathan L. Hecht, Justice

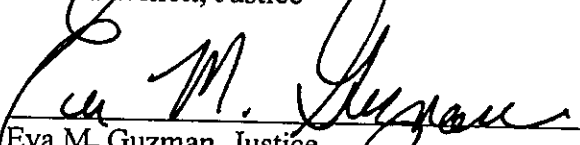

Dale Wainwright, Justice

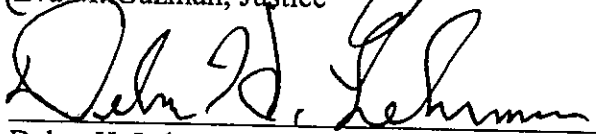

David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice


Eva M. Guzman, Justice


Debra H. Lehrmann, Justice

LOCAL RULES OF PRACTICE
38TH JUDICIAL DISTRICT COURT
MEDINA, REAL AND UVALDE COUNTIES
AND
THE MEDINA COUNTY COURT AT LAW

RECEIVED
IN SUPREME COURT
OF TEXAS
JUN 14 2011
BLAKE HAWTHORNE, Clerk
By _____ Deputy

TITLE 1. RULES GOVERNING ALL PROCEEDINGS

RULE 1.1 CONDUCT AND COURTROOM DECORUM

A. Policy

Judges and attorneys have a duty to uphold the highest standards of conduct and to earn and promote public respect for the judiciary, the legal profession and the American system of justice.

B. The Texas Lawyer's Creed

The Standards of Professional Conduct in Section IV of the Texas Lawyer's Creed, as promulgated by the Texas Supreme Court and the Texas Court of Criminal Appeals are adopted and incorporated herein by reference as guidelines for participating in litigation in the 38th Judicial District Court and the Medina County Court at Law.

C. Conduct Required of Counsel

1. Counsel shall timely appear before the court at each setting and following each recess.
2. Counsel shall be appropriately attired for all court proceedings in conservative business attire. Blue Jeans, resort wear,

sportswear, jumpsuits and similar clothing are not considered appropriate courtroom attire.

3. Counsel shall rise and remain standing while addressing the Court.
4. Counsel shall address all statements, requests and objections to the Court and not to opposing counsel.
5. Counsel shall not argue objections in the presence of the jury without prior leave of court.
6. Counsel shall not interrupt or talk over opposing counsel, except to state formal objections.
7. Counsel shall remain behind counsel table while examining witnesses. If requested by counsel, counsel may stand at a podium while examining witnesses.
8. Counsel shall neither make nor insinuate derogatory or insulting remarks about opposing counsel.
9. Counsel shall address the Court as "Your Honor" or "Judge" and except with leave of court, shall refer to all counsel, parties and witnesses (except children) by their surnames, using such titles as Mr., Mrs., Miss, Dr., etc., as appropriate, and not by first names or nicknames, or any discriminatory or inappropriate classification.
10. Counsel shall request leave of court before approaching the bench or to approach the witness when necessary to work with documentary or tangible evidence.
11. Counsel shall not lean on the bench except as may be necessary to prevent jurors from overhearing bench conferences. Counsel shall not engage in personal discussions

with the Court or each other during trial while in the presence of jurors, parties, or witnesses.

12. Counsel shall advise counsel's clients, witnesses and others subject to counsel's control of these rules of conduct and courtroom decorum.

D. Conduct Required of All Persons

All persons in the courtroom during trials and other proceedings shall be attentive to the proceedings and shall refrain from any action which may disrupt the proceedings. Therefore, all persons shall comply with the following:

1. All persons shall be appropriately attired for court proceedings and in a manner reasonably befitting the dignity and solemnity of court proceedings. Tank tops, T-shirts that are tattered or soiled or which contain lewd or inappropriate language, shorts and clothing that is tattered or soiled are among those items not considered appropriate courtroom attire. No hats, caps or sunglasses shall be worn in the courtroom.
2. No tobacco use in any form is permitted.
3. No bottles, beverage containers, paper cups or edibles are allowed in the courtroom, except as permitted by the Court.
4. No gum chewing is permitted.
5. No reading of newspapers, books, or magazines is permitted.
6. No propping of feet on tables or chairs is permitted.
7. No talking or unnecessary noise is permitted which interferes with the court proceeding.

8. No person may, by facial expression, shaking or nodding of the head, or by any other conduct, express approval or disapproval of any testimony, statement or transaction in the courtroom.
9. All persons shall rise when the judge enters the courtroom, and at such other times as the bailiff shall instruct.
10. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags or containers into the courtroom without the prior approval of the bailiff.
11. No person shall be permitted any verbal or physical contact with a prisoner without the prior approval of the bailiff.
12. No person shall bring radios, tape recorders, computers, cameras, cellular telephones, pagers or other electronic devices into the courtroom unless the device is required for the court proceeding and prior approval has been given by the bailiff or the Court. Counsel may bring cellular telephones or computers into the courtroom as long as the devices are on silent or are turned off.

E. Enforcement

The bailiff of the court shall enforce the rules of conduct and courtroom decorum.

RULE 1.2 REQUESTS FOR CONTINUANCE OR POSTPONEMENT

A. Consent or Notice Required

No request for a continuance, to pass, postpone or reset any trial, pretrial, or other hearing shall be granted unless counsel for all parties consent, or unless all parties not joining in such request have been notified and have had an opportunity to object.

B. Contents of Motion

Unless counsel for all parties consent in writing to the request for a continuance and the same is approved by the Court, a motion must be filed pursuant to Rule 251, et seq. of the Texas Rules of Civil Procedure, as amended, or Article 29.01, Texas Code of Criminal Procedure, as applicable, and the motion must be accompanied by an order setting the motion for a hearing. Any motion that does not meet these requirements will be denied without prejudice to the right to refile.

RULE 1.3 CONFLICT IN TRIAL SETTINGS

A. Duty of Counsel to Notify Court

Whenever an attorney has two or more cases on trial dockets for trial at the same time, it shall be the duty of the attorney to bring the matter to the attention of the courts concerned immediately upon learning of the conflicting settings.

B. Priority of Cases In Event of Conflict

Insofar as practicable, the affected courts shall attempt to agree upon which case shall have priority. Absent such agreement, conflicting trial settings shall be resolved in the priority set forth in the 6th Judicial Regional Rules, Rule 10:

1. Criminal cases
2. Cases given statutory preference
3. Preferentially set cases, other than those given statutory preference
4. The earliest set case

5. Case with earliest filing date

TITLE 2. RULES GOVERNING ALL CIVIL PROCEEDINGS

RULE 2.1 APPLICATION FOR EX PARTE ORDERS

Counsel presenting any application for an ex parte order shall, at the time the application is presented to the Court, certify in writing that:

- A. To the best of counsel's knowledge, the party against whom the relief is sought is not represented by counsel; or
- B. If the party against whom the relief is sought is represented by counsel, that (i) such counsel has been notified of the application and does not wish to be heard by the Court thereon; or (ii) counsel presenting the application has diligently attempted to notify opposing counsel, has been unable to do so, and the circumstances do not permit additional efforts to give such notice.

RULE 2.2 PRETRIAL AND TRIAL SETTINGS

1. When setting or resetting a case for trial, pre-trial hearing, etc., please contact the District Court Coordinator at the Uvalde County Office, or the Medina County Court at Law Coordinator, as applicable, for available dates, or you may view the District Court's calendar online at www.uvaldecounty.com (click on the District Court tab, and on Calendar in the drop-down menu).
 - A. Submit an Order Setting to the Court, with a Request for Setting when obtaining a trial date, or a letter when obtaining a pre-trial date, stating the date the parties have agreed to.
 - B. At the bottom of all Orders Setting, please list all the parties; and, if the parties are represented by counsel, please list the attorney's name, address and fax number. If they are pro-se litigants, please

give their address. Do not put, “..a copy has been sent to all opposing counsel”.

- C. If you cannot obtain a date that is agreeable to all counsel, send your Order Setting with a letter stating the dates that were given to opposing counsel and their reasons for not agreeing.
 - D. **Always advise the Court in your request or cover letter than you have contacted the opposing counsel and that they are available for hearing on the date you have requested.**
 - E. When setting or resetting a case for trial, pre-trial, etc., please advise the Court Coordinator as to the estimated time you will need for the hearing.
 - F. If, for any reason, you have to cancel a hearing, or if you are running late to a scheduled hearing, please contact the Court Coordinator as soon as possible.
2. Hearings conducted by telephone conference call are acceptable and encouraged by the Court. To request a hearing in the District Court through Court Call, please contact the District Court Coordinator. All parties must agree as to the hearing date and time and as to the responsibility for payment. Hearings requiring a record in the Medina County Court at Law may not be conducted telephonically.
3. Any attorney practicing in the 38th Judicial District Court, and the Medina County Court at Law, will, at the time a case is being set for trial, advise the Court as to any scheduled vacation dates. Should an attorney file a notice of vacation after the date a case has been set for trial or pre-trial matters, it is the responsibility of that attorney to file a motion for continuance seeking leave of court to reschedule said setting.
4. Any attorney practicing in the 38th Judicial District Court, and the Medina County Court at Law, if practicable, shall have access to a fax machine and answering machine that will be operative 24 hours a day, seven days a week. Said numbers shall be provided to the Courts, the

Clerks of Court, and all opposing counsel. All communications between the Courts and attorneys sent via fax to the numbers provided shall be deemed received. This does not include filing documents with the District Clerk, unless the District Clerk has implemented an Electronic Filing Plan.

5. If counsel wishes to be sent electronically transmitted copies of court dockets prior to court settings, counsel must provide his/her e-mail address and contact information to the appropriate Court Coordinator.
6. In the District Court, at any time after a case is filed, and all parties have been served, whether or not it has been classified as a complex case, a docket control conference will be scheduled, upon the Court's motion or upon request by any party.
 - A. At any time such conference is scheduled, the Court shall notify all attorneys of record of the date and hour at which the attorneys are to appear.
 - B. Upon Court approval, the docket control conference may be held by telephone conference call. To request a hearing through Court Call, please contact the Court Coordinator. All parties must agree as to the hearing date and time and as to the responsibility for payment.
 - C. If counsel does not wish to have a hearing for entry of a docket control order, counsel may submit a completed docket control order to the Court, signed by all parties, prior to the setting date for the scheduled docket control conference. A copy of the approved docket control order may be found at www.uvaldecounty.com under the District Court tab.

RULE 2.3 WITHDRAWAL OF COUNSEL

1. Withdrawal

Withdrawal of counsel shall be governed by Rule 10 of the Texas Rules of Civil Procedure, and the following rules.

2. Notice to Client

If another attorney is not to be substituted as attorney for the party or if the party does not consent to the motion to withdraw, the withdrawing attorney shall notify the client in writing that the Court will be requested to sign an order granting the withdrawal on or after ten (10) days following the date of such notice. Notice shall be sent by certified mail, return receipt requested.

3. No Delay of Trial

Unless allowed in the discretion of the Court, no motion to withdraw shall be granted that is presented within thirty (30) days of the trial date or at such time as to require a delay of trial.

RULE 2.4 ALTERNATIVE DISPUTE RESOLUTION

A. Policy

It shall be the policy of the 38th Judicial District Court and the Medina County Court at Law to encourage the peaceable resolution of disputes and early settlement of pending litigation, including family law litigation, by referral to alternative dispute resolution (ADR) pursuant to the Texas Alternative Dispute Resolution Procedures Act, Texas Civil Practice and Remedies Code, Chapter 154.

B. ADR Mandatory

No trial on the merits shall be conducted in any case until all contested issues have been referred to an ADR procedure, and ADR has been unsuccessful; or the Court has determined that ADR is inappropriate for the case.

C. Manner of Referral

It is anticipated that the parties shall cooperate in referring such issues to an ADR procedure under terms and conditions as are mutually agreeable, without the need for court intervention. If the parties are unable to cooperate or agree to a referral of such issues to an ADR procedure, then upon written notification to the Court by one of the parties that efforts to coordinate a referral have been unsuccessful, the Court, without a hearing, shall enter an order of referral to an ADR procedure, and under such terms and conditions selected by the Court.

D. Objection to Referral

If the Court enters an order of referral to an ADR procedure, any party may object to such referral pursuant to Texas Civil Practice and Remedies Code, Chapter 154. Upon the filing of an objection, the Court shall schedule a hearing. If the Court finds that there is a reasonable basis for the objection, the Court may, in its discretion, order that the case not be referred to an ADR procedure and order the case to proceed to trial on the merits.

RULE 2.5 DISMISSAL FOR WANT OF PROSECUTION

A. Procedure

The Court, on its own motion, may dismiss a case for want of prosecution. The procedure provided in Rule 165a of the Texas Rules of Civil Procedure, as amended, shall apply.

B. Reasons For Dismissal

A case may be dismissed for want of prosecution for any of the following reasons:

1. Failure of a party seeking affirmative relief to take appropriate action when the case has been pending without action for six months.
2. Failure of counsel for a party seeking affirmative relief to appear for a pretrial or preliminary hearing, particularly if there has been a previous failure to appear.

3. Failure of a party seeking affirmative relief to make an announcement as scheduled when the case has been set for trial.

RULE 2.6 ORDERS AND DECREES

A. Reduction to Writing Within Sixty (60) Days

Within sixty (60) days after rendition, announcement of the Court's ruling or announcement of settlement by counsel, counsel shall cause all judgments, decrees or orders of any kind to be reduced to writing, forwarded to opposing counsel for approval as to form, and delivered to the Court for signing.

B. Dismissal if Written Order Not Furnished

Upon failure to furnish the Court with a judgment, order or decree disposing of the case within the sixty (60) day period, the Court shall place the case on the next regularly scheduled dismissal docket, whereupon the case may be dismissed and costs may be taxed at the Court's discretion.

C. Procedure for Entry of Order

If counsel is unable to secure all opposing counsel's approval as to form, counsel may:

1. File a motion for entry of the proposed judgment, order or decree and secure a hearing for the same, with notice to all opposing counsel pursuant to Rule 21a, Texas Rules of Civil Procedure. At a hearing, the Court may assess costs and attorney's fees within the Court's discretion; or
2. Present the Court with the proposed judgment, decree or order, together with a letter requesting the Court to sign the same if the Court has not received a written objection from opposing counsel within ten

(10) days from the date of the letter. Each party who submits a proposed judgment for signature shall serve the proposed judgment and a copy of the letter on all other parties who have appeared and remain in the case, in accordance with Rule 21a, Texas Rules of Civil Procedure. If the Court receives a written objection from opposing counsel within the stated time, the proponent of the judgment, decree or order shall schedule a hearing for entry of the same pursuant to subdivision 1 of this rule.

TITLE 3. RULES GOVERNING CRIMINAL PROCEEDINGS

RULE 3.1 DISTRICT COURT-ARRAIGNMENT

After indictment, all defendants, their attorneys and bondpersons shall be notified and are required to personally appear for the defendant's formal arraignment. A waiver of arraignment shall be allowed upon good cause shown.

RULE 3.2 DISTRICT COURT-SCHEDULING OF PLEAS

- A. All felony plea forms may be found online at www.38thda.org under the Defense Attorney tab. All forms are to be filled out and sworn to before the District Clerk prior to setting a case for a plea hearing. All counsel and defendants are to be present at docket call hearings and are to have conferred with the District Attorney prior to said scheduled hearing.
- B. It is the responsibility of defense counsel to advise the court of the need for a court interpreter, by notifying the Court Coordinator, prior to any scheduled plea hearing.

RULE 3.3 ALL COURTS-DUTIES OF COURT APPOINTED COUNSEL

All court appointed criminal defense counsel shall be required to do the following:

- A. Appear promptly at all times required by the Court.

- B. It shall be counsel's continuing duty to visit an incarcerated defendant regularly until the defendant's case is concluded. Counsel's continuing duty to visit the defendant in jail is not satisfied simply by accepting collect telephone calls from an incarcerated defendant. Counsel should be able to assure the trial court that counsel has devoted sufficient time to visit an incarcerated defendant should a dispute arise concerning counsel's fulfillment of this duty.
- C. Ensure that an incarcerated defendant is provided with appropriate attire for a jury trial. This provision shall not be construed to permit counsel to purchase clothing for a defendant without first seeking approval of the Court.
- D. Comply with all requirements set forth in the Indigent Defense Plan for Medina, Uvalde and Real counties regarding court-appointed counsel. A complete copy of said plan may be found at www.uvaldecounty.com under the District Court tab.
- E. If counsel wishes to be sent electronically transmitted copies of court dockets prior to court settings, counsel must provide his/her e-mail address and contact information to the appropriate Court Coordinator.

RULE 3.4 ALL COURTS-WITHDRAWAL OF RETAINED COUNSEL

Absent good cause shown, retained defense counsel in criminal proceedings shall not be permitted to withdraw from representation of a defendant unless the defendant has employed other defense counsel, and provided that the substitution of counsel does not interfere with the orderly disposition of the criminal proceeding.

TITLE 4. RULES GOVERNING FAMILY LAW PROCEEDINGS

(other than those proceedings which are initiated by the Texas Attorney General or the Texas Department of Protective and Regulatory Services)

RULE 4.1 TEMPORARY HEARINGS

A. Scheduling

All temporary hearings shall be set on a date and at a time scheduled by the Court. At the time set for the temporary hearing, counsel shall make an announcement of the estimate of time required to present the case.

B. Notice Required When Responding Party Seeking Affirmative Relief

An application to the Court for a temporary order and notice of any hearing thereon which is presented by a party responding to an application for temporary orders in which that party is seeking affirmative relief shall be served on the adverse party in accordance with Rule 5 and Rule 21a of the Texas Rules of Civil Procedure, as amended.

C. Standing Order Regarding Property and Conduct of Parties in Divorce

The "Standing Order Regarding Property and Conduct of Parties in Divorce and Suits Affecting the Parent-Child Relationship" attached hereto as Appendix 1, is to be attached by counsel to the original citation in all suits of divorce and suits affecting the parent-child relationship. The Order attached as Appendix 1 will remain in effect throughout the pendency of a suit unless specifically modified or set aside by the Court.

D. Time Limits

In all matters in which **managing conservatorship is in issue**, the parties shall be granted not more than three (3) hours to present the case, which time shall be equally divided. In all other temporary matters, including a modification of a temporary order, the parties shall be granted not more than one (1) hour to present the case, which time shall be equally divided. Counsel should request a special setting at the time the application for temporary relief is presented to the Court for scheduling when, because of unusual circumstances, the time limits are unworkable or inappropriate, or, if the case would require more than one (1) hour to present. The Court shall determine the amount of time that shall be allotted for the hearing.

E. Order of Cases

All cases in which counsel announce a settlement shall be heard first. All other cases shall be docketed according to counsel's announcement, with those matters requiring the least amount of time to be heard first.

F. Documents Required

In all cases in which temporary support of a spouse and/or the child is in issue, each party shall be required to furnish all payroll statements, pay stubs, W2 forms and 1099 forms which evidence that party's earnings for the calendar year prior to the temporary hearing, a statement of monthly income and expenses, and copies of that party's federal income tax returns for the two calendar years prior to the temporary hearing.

RULE 4.2 PARENT EDUCATION AND FAMILY STABILIZATION COURSE

A. Course Mandatory

All parties in a suit affecting the parent-child relationship, including an action to modify an order in a suit affecting the parent-child relationship, in which the issue of conservatorship is contested, shall attend and complete a parent education and family stabilization course approved by the court in which the suit is pending. Except as provided herein, the provisions governing a parent education and family stabilization course in Sec. 105.009, Texas Family Code, as amended, shall apply.

B. Waiver of Course

For good cause shown, after notice and hearing, the court may waive the requirement of a course. If a party claims an inability to afford to take a course, and the court finds the claim is meritorious, the court may order that party to attend and complete a course that is offered on a sliding scale fee or without charge, if a course of that type is available.

C. Deadline for Completion

Each party shall complete the course prior to a final hearing on the merits of the case.

D. Verification of Attendance

Each party completing the course shall file a certificate of completion with the court within thirty (30) days of completion of the course, or at the time of that party's next court appearance, whichever is sooner.

E. Sanctions

If a party fails to attend and complete the course, the court may make such orders with regard to the failure as are just, including holding the party in contempt of court, striking pleadings, or invoking any sanction provided by Rule 215, Texas Rules of Civil Procedure, as amended.

RULE 4.3 FINAL HEARINGS

- A. In all cases to be tried to the bench, the attorneys are required to submit a proposed property division to the court on the date of trial.
- B. In all contested cases where the value of assets in dispute exceeds \$250,000, the following documents are required:
 - 1. Each party shall file, not less than thirty (30) days prior to trial, a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties. It is recommended that each party file this inventory in a form substantially similar to that attached hereto as Appendix 2.
 - 2. After each party's sworn inventory and appraisal has been filed, the parties shall file a composite inventory and appraisal in a form substantially similar to that attached as Appendix 3. The Petitioner shall initiate the composite inventory and forward it to the Respondent for completion not less than fourteen (14) days prior to trial. The

Respondent shall complete and file the composite inventory with the Court and serve a copy of the same on the Petitioner not less than (7) days prior to trial.

3. If a party of the parties fail to prepare and/or file the initial inventory or the composite inventory as requested, the court may conduct a pretrial hearing and make such orders with regard to the failure as are just, including but not limited to, sanctions pursuant to Rule 215(2)(b) of the Texas Rules of Civil Procedure, as amended.

TITLE 5. (Reserved for Expansion)

TITLE 6. MISCELLANEOUS

RULE 6.1 AUTHORITY FOR RULES

These rules are adopted pursuant to the Texas Government Code, Section 75.011 and Rule 3a of the Texas Rules of Civil Procedure, as amended and the constitutional, statutory and inherent powers of the courts to regulate proceedings before them and to provide for the orderly and efficient dispatch of litigation.

RULE 6.2 TITLE AND CITATION

These rules shall be known as the *Local Rules of Practice of the 38TH Judicial District Court Medina, Real and Uvalde Counties and the Medina County Court at Law.*

RULE 6.3 PARTIAL CIVIL INVALIDITY

In the event any of the foregoing rules or any part thereof is held to be invalid for any reasons, such invalidity shall not affect the validity of the remaining rules and parts of rules, all of which have been separately numbered and adopted.

RULE 6.4 TERMS

The terms *counsel, lawyer and attorney of record* as used in these rules shall apply to an individual litigant in the event a party appears *pro se*.

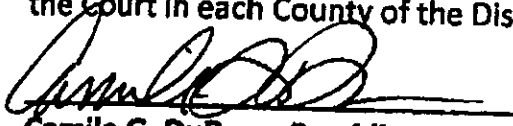
RULE 6.5 CONSTRUCTION OF RULES

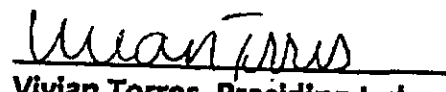
Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine or neuter gender shall each include the other; and the singular and plural shall each include the other.


RULE 6.6 APPLICATION OF RULES

These rules supersede any prior local rules of practice. These rules shall become effective upon approval by the Texas Supreme Court.

Adopted effective May 3, 2011. SIGNED AND ORDERED FILED in the Minutes of the Court in each County of the District and of the Medina County Court at Law.


Camile G. DuBose, Presiding Judge
38th Judicial District


Vivian Torres, Presiding Judge
County Court at Law,
Medina County, Texas

APPROVED: 
STEPHEN B. ABLES
DATE: 6/8/11