

POLICIES AND PROCEDURES (ALL CASES)  
401st Judicial District Court  
Collin County, Texas  
JUDGE GEORGE B. FLINT

**Court Staff**

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**Settings:**

Settings are available at 9:00 a.m. and 1:30 p.m. Criminal settings are generally in the morning and civil settings in the afternoon. Friday is reserved for emergency matters.

**Policies:**

The 401st District Court is a general jurisdiction court which handles Family, Civil, and Criminal law cases. Specific policies applicable to each type of case begin on page 5 of these Policies and Procedures.

**ZOOM HEARINGS**

In-courtroom proceedings are currently restricted. Please review the Court's Rules for Remote Proceedings. Some of these policies modify some of the Policies and Procedures (which relate to in-courtroom activities) in this document. Zoom hearings for civil and family law cases may well continue partially or wholly in that format once restrictions are lifted.

**ALL CASES**

**Discovery Motions:** Always personally confer before filing any motion related to discovery and include the certificate of conference required by Local Rule 3.3. Unless prohibited by a confidentiality agreement or order, please state verbatim the request(s) and answer(s) in the body of your motion and attach a copy of the discovery request(s) and response(s) at issue. Proposed orders should list each discovery issue to be ruled on separately. Always submit a proposed order whether you are the movant or respondent.

**Motions for Summary Judgment and Contested Motions:** A courtesy notebook for the court is very helpful. **Please submit a notebook to the Court Coordinator by Noon the day before the hearing or submission date** that includes the applicable motion, responses, replies, statutes and/or key case law referenced with relevant portions highlighted. If submitting a courtesy notebook to the Court, an identical copy must also be provided to opposing counsel. Motions for Summary Judgment will always be set for submission; the Court will set a hearing on certain issues if oral argument is deemed necessary on those issues.

**Motion for Default Judgment:** Before you file a Motion for Default Judgment, make sure you have completed and filed the Court's Default Judgment Checklist. Default judgments asking for liquidated damages may be set by submission or oral hearing. Default judgments asking for unliquidated damages require an oral hearing. Upon filing a default judgment, please contact the Court Coordinator by email and set a date for submission of the motion and let her know if you are requesting an oral hearing. When proving damages in a motion for default judgment, show the Court how you calculated the damage figure and provide evidence to support your calculation.

**Motion for Substituted Service (Rule 106):** All motions for substituted service under Rule 106 must be accompanied by an affidavit that describes the efforts taken to verify that the defendant actually lives or works at the subject address, at least three attempts of service at different time of day with the specific dates and times, the identity of person(s) present at the subject address and what was said, the identity of the owners of any cars in the driveway, or other indications that the defendant resides at the subject address. All Rule 106 motions must be filed with a proposed order.

**Motion for Severance:** The motion for severance must be set either by submission or oral hearing and state the basis for the severance. The order of severance must include the following information: (1) style of the case; (2) case number, i.e., 401-\_\_\_\_\_; (3) parties to be included in the severed case; (4) whether the severed order disposes of the severed case or if the case shall remain active; and (5) party paying for cost of the severance.

**Withdrawals:** The Collin County local rules provide a way for attorneys to withdraw without the necessity of appearing and should be followed. **Review and follow local rule 4.3.** Prior to filing the Motion to Withdraw, please use the Court's Withdrawal Checklist to make sure that your Motion is proper.

**Dismissal for Want of Prosecution:** A case may be dismissed for want of prosecution for any of the following reasons:

1. Failure of the Plaintiff/Petitioner to request a setting or take other appropriate action after notice from the Clerk that the case has been pending without action for more than sixty days.
2. Failure of the Plaintiff/Petitioner's counsel to appear for pretrial, docket, conference, or other preliminary hearing, especially where there has been a previous failure to appear or where no amendment has been timely filed to meet expectations previously sustained.
3. Failure of Plaintiff/Petitioner to make an announcement of "ready" when a case is called for trial or hearing of any preliminary matters.
4. For any other reason provided by the Local Rules of the District Courts of Collin County, Texas, Texas Rules of Civil Procedure, or the general law.

**Affidavit Signatures:** All signatures on affidavits supporting requests for temporary restraining orders or emergency relief of any kind must be manual signatures, not "/s/ Typed Name."

**Hearings:** If you want a hearing, contact the Court Coordinator. Merely requesting one in your pleading will not be effective to notify the Court that you want a hearing and none will therefore be set.

## **PROCEDURES FOR HEARINGS AND TRIAL**

**Announcements:** All parties must announce ready/not ready for any jury trial no later than 10:00 A.M. on the Wednesday before trial.

**Docket Call:** Please check in with the Bailiff before doing anything else and make sure the Bailiff knows where you will be (give him your cell phone number) if you plan to be in another court. Inform the Bailiff of (a) how much time you estimate is required for your hearing and (b) whether you have an expert or professional as a witness. Hearing will be set giving consideration to (a) the order of counsel/parties appearing and announcing ready, (b) the amount of time required, and (c) conserving the time of independent professionals and experts who may be witnesses.

**Proof of Notice:** If the other side is not present, before proceeding on a scheduled hearing counsel must either (a) have e-filed proof of notice in advance of the hearing or (b) offering proof of notice as an exhibit.

**Safety/Security:** If you think your case might need extra security, please e-mail both the Bailiff and the Court Coordinator at least three (3) business days prior to your hearing so that extra security can be scheduled.

**Displaying Exhibits/In-Courtroom Technology:** Exhibits can be displayed on the visual presenter or digitally using a computer. Exhibits can be seen on all courtroom monitors and heard on all courtroom speakers. It is counsel's responsibility to ensure that documents displayed on monitors have been first admitted in evidence and redacted, if necessary, to comply with the Court's rulings. It is counsel's responsibility to ensure that counsel's computers and devices are compatible with the courtroom technology and it is highly recommended that counsel test its equipment in advance of the hearing. Apple devices do not work well with existing technology. The Court is not responsible for playing audio/video exhibits and hearings will not be delayed if counsel has not previously tested the equipment. Therefore, advanced testing of playback volume and clarity is recommended.

**Large Exhibits:** Exhibits exceeding 8 ½" x 11" in size will be accompanied by an 8 ½" x 11" copy. After completion of trial, the court reporter will retain only the 8 ½" x 11" copy and the original exhibit will be returned to the offering party.

**Demonstrative Exhibits and Trial Aids:** Demonstrative exhibits and trial aids may be used by all counsel, subject to the Court's rulings. Counsel shall not mark on or attach any item to an opposing counsel's demonstrative exhibit while using it.

**Exhibits Brought to Court on Day of Trial:** All exhibits shall be PRE-MARKED, three-hole punched on the left side, and in a three-ring binder notebook with numbered index tabs with the notebook labeled as to which party's exhibits. If you are not able to provide a notebook, please have the exhibits three-hole punched. If three-hole punching the original exhibit will destroy a part of the exhibit, such exhibit may be placed in a plastic envelope in the exhibit notebook.

- Any pre-admitted/agreed to exhibit numbers must still be read into the record at trial (parties should not simply refer to "all pre-admitted exhibits").

**Deposition Testimony:** Before trial begins, any deposition or video that will be presented during the trial will need to be submitted to the court reporter already officially transcribed, or if video

excerpts are used, the video excerpts in MP3 format will need to be submitted to the Court Reporter.

**Proposed Jury Questions/Instructions (or Findings of Fact/Conclusions of Law):** The pleading should be named “[Name of Party]’s Proposed Jury Questions and Instructions” in Microsoft Word format and emailed to the Court Coordinator by the date of the Formal Pre-trial Conference. The pleading on this disk should be in Times Roman, 12 point font, free of any typographical emphasis i.e. bolding, all caps, underlining, italics, etc., free of case cites or footnotes, and labeled with the case style and submitting party’s name. This document should be exactly as it would be presented to a jury without signature blocks for the Judge for granting, denying or modifying any requests. A PDF version containing such emphases (and citations) may (and in complex cases, should) be submitted to the Court at the same time.

**Vocabulary List** (if one is filed): Required in medical malpractice cases.

**Courtesy Copies for Court Reporter** (To be delivered at Pretrial Conference): (1) Exhibit List, (2) Witness List, and (3) Vocabulary List.

**Motions for New Trial:** Motions for new trial will only be set for hearing if argument is requested by the Court. The court will set a hearing if: (1) the motion shows that an evidentiary hearing is required pursuant to TRCP 324(b)(1) or other law; (2) the verified motion and sworn affidavits are in proper form and timely filed; (3) the motion alleges specific facts that, if true, would entitle the movant to a new trial; and (4) a hearing is timely requested.

**General Time Limits:** When setting hearings and trials, the following general time limits apply:

1. Scheduling and status conferences: 15 minutes total.
2. Hearings involving only argument or “prove up” type testimony: 15 minutes a side (30 minutes total).
3. Temporary Orders (family law cases): 20 minutes a side (40 minutes total).
4. Half-day bench trial (hearing with multiple witnesses): 1 hour, 15 minutes a side (2 ½ hours total)
5. Full day bench trial: 2 ½ hours a side (5 hours total)
6. Three day jury trial: 6 hours a side (12 hours total).

A side’s “time” includes opening and closing arguments, direct and cross examination of all witnesses, objections and responses, and any motions filed during trial.

**Electronic Devices (cell phones, etc.):** Silent use of phones, laptops, tablets, etc. in the Courtroom is permitted unless such use becomes disruptive. After one warning, continued disruption will result in surrender of the device to the Court for the remainder of the day. If your device makes any sound during a jury trial, you will be subject to an immediate \$50 fine.

## **FAMILY LAW CASES**

**Hearing:** To set a hearing, please email the Court Coordinator, Tammy Sharkey. You will be provided the Court's available dates and should work with the other side to get an agreed date. Please e-file a notice of hearing with the date filled in and e-mail this to the Court Coordinator. The Court Coordinator does not add the case to the Court's calendar until a completed notice of hearing is submitted. Please also copy opposing counsel (or the self-represented litigant) when emailing the Court.

For a temporary order hearing and final trial, each side should provide to the Court a copy of their Requested Relief at the beginning of the hearing or trial.

**Time Limits:** At Temporary Orders Hearings, each party is limited to 20 minutes per side per Local Rule 8.1. Bench trials are limited to 2 ½ hours per side. Jury trials are limited to 6 hours per side. If additional time is needed, please submit a request to the Court with the amount of additional time requested and basis for the request.

**Temporary Restraining Orders:** Do not request TRO's which contain items which are in Collin County's Standing Orders. Your request for TRO should only contain the few additional items of genuine concern.

**Spousal Support:** If your request includes spousal support, you must provide a Financial Information Statement. You are encouraged to use the form provided on the 401<sup>st</sup> website.

**Property Division:** If your request includes division of property, you must provide a Proposed Property Division listing all assets and debts. You are encouraged to use the form provided on the 401<sup>st</sup> website.

**Interpreters:** If interpreters are needed, please advise the Court when setting the case for hearing or trial, and also let the Court know if additional time is requested because of the need for interpreters.

**Trial Settings:** Cases will normally be set for trial either at a temporary orders hearing or a scheduling conference.

Please use the form based on the discovery level of your case:

**Bench Trial Discovery Control Plan and Scheduling Order – Family**

-OR-

**Jury Trial Discovery Control Plan and Scheduling Order - Family**

After an Answer is filed, the case will normally be set for a scheduling conference 30-45 days from the answer date. To avoid the need to appear at the scheduling conference, the parties should submit their own agreed Scheduling Order at least two (2) business days before the scheduling conference. If the parties cannot agree on a trial date, the parties do need to appear at the scheduling conference and address this with the Court.

The Court Coordinator will provide available trial dates and the parties should agree on a trial date prior to submitting an agreed scheduling order. The parties should also confer and agree on a mediator prior to submission of the agreed scheduling order.

A formal pre-trial conference is required for all jury trials and for bench trials expected to take longer than one day, and will normally be set at least ten (10) days prior to trial.

**Mediation:** Mediation is required before trial. Scheduling orders without mediator name(s) will be rejected. If the parties are not able to agree to a mediator, they should submit a letter with their scheduling order stating they could not agree and request that the court appoint a mediator. If the court appoints a mediator, pursuant to Tex. Gov't Code Ch. 36, the mediator is approved for up to 8 hours at a fee of no more than \$3,000 to be paid by the parties. Any additional time/fees are by agreement of the parties and not subject to reporting by the court.

**Continuances:** A hearing and Court approval is required for all requests for continuances of a final trial date.

**Child Interviews:** If Texas Family Code sec. 153.009 requires the Court to interview a child, the interview will be conducted sometime during the week of or the week before trial, after the child is released from school. Please arrange for the child to be brought to the courthouse by an adult who is not a party to the case. Contact the Court Coordinator well before your trial date to ensure the child interview is properly scheduled on the Court's calendar.

**Restrictions on Sealing Cases:** Parties may not agree to seal cases. Sealing requires Court approval after an evidentiary hearing. Cases will not be sealed before final trial. If you are requesting to seal a case, please contact the Court Coordinator to schedule the hearing, which will be held after the final judgment is signed.

**Prove-Ups and Affidavit Prove-Ups:** Please schedule prove-ups by emailing the Court Coordinator. Prove-Ups may also be heard in the Auxiliary Court. Prove-ups may also be by affidavit if the affidavits are proper, contain all required information, and are accompanied by an agreed decree or order signed by every party and attorney involved in the case.

No prove-up is required in person or by affidavit if there is an agreed final order and all these conditions are met: (a) the agreed decree or order is signed by every party and attorney and every party has agreed to all of its terms, (b) all signatures are manual and/or meet digital signature requirements (are not /s/ typed name), and (c) the appearance section shows that the parties did not appear in person and that the making of a record is waived.

## CIVIL CASES

**Hearing:** To set a hearing, please email the Court Coordinator, Tammy Sharkey, for available dates. You should then work with the other side to get an agreed date. Please e-file a notice of hearing with the date filled in. The Court Coordinator does not add the case to the Court's calendar until a completed notice of hearing is submitted (e-filed and e-mailed to the Court Coordinator). Please also copy opposing counsel (or the self-represented litigant) when emailing the Court.

Parties may but are not required to e-file proposed orders prior to a hearing. The Court will sign the proposed order of the prevailing party at the hearing (hard copies are fine), or the Court will request the prevailing party to prepare an order that reflects the Court's rulings, submit to opposing counsel for review, and then e-file with the Court within the time limits established by the Court.

**Trial Settings:** After an Answer is filed, the case will normally be set for a scheduling conference 30-45 days from the answer date. The Court also monitors cases to determine if no Answer has been filed. If no Answer has been filed, the case will normally be set for a status conference within 90 days from the date the Original Petition is filed.

To avoid the need to appear at the scheduling conference, the parties should submit their own Agreed Scheduling Order at least three (3) days before the scheduling conference, or submit a Motion for Default Judgment.

Please use the form based on the discovery level of your case:

**Discovery Control Plan and Scheduling Order (Level 1 or 2 - Civil)**

-OR-

**Discovery Control Plan and Scheduling Order (Level 3 - Civil)**

The Court Coordinator will provide available trial dates and the parties should agree on a trial date prior to submitting an Agreed Scheduling Order. The parties should also confer and agree on a mediator prior to submission of the Agreed Scheduling Order. If the parties cannot agree on a trial date, the parties must appear at the scheduling conference and address this with the Court.

**Continuances:** A hearing and Court approval is required for any request for a continuance of the final trial date.

## CRIMINAL CASES

**Settings:** Please contact Bailiff Brian Nelson by email and copy the State (to include Defendant's name, cause, and Attorney's name). Settings for motions and complex hearings are available during non-jury weeks any morning Monday through Thursday beginning at 9:00 a.m.

**Pre-trial Hearings:** Pre-Trial Hearings are on Wednesday at 9:00 a.m. the week prior to the trial setting. Attorneys and their clients are expected to be present and in the courtroom promptly.

**90 Day Writ Procedure:** The court will sign a 90 day writ after the defendant has provided notice to the State of intent to file and opportunity to respond. Notice of intent to file to the State after the 85<sup>th</sup> day will suffice.

**Paper v. E-file Orders:** E-File your motion, get a date set with the Court, and bring a proposed order with you to the hearing. We will still accept proposed orders if you e-file them with your motion, but it is easier if you bring a proposed order with you that the Court can sign after the hearing to reflect the Court's ruling.

**Setting Rules:** Defendants who are represented should have 3 settings before a final announcement setting. The court will allow more than 2 weeks between the initial settings but no more than 4 weeks without court approval. A disposition must be set after the final announcement setting. Attorneys must get court approval for settings beyond the schedule.

**Appearance Times:** Appearances are at 9:00 a.m. Defendants are REQUIRED to appear absent a waiver approved by the Court. Waivers are only granted for the next setting and do not carry over multiple times.

**Check-in:** Defendants must appear and check in with the Bailiff to note their arrival.

**Bond Forfeiture Policy:** A defendant's bond will be forfeited at noon (12 p.m.) for failure to show for their required court date.

**Request for PSI:** All requests for a presentencing investigation report must be made in writing and e-filed (with e-mail service upon the Bailiff) no less than thirty (30) days before a dispositive hearing or is deemed waived.

**Withdrawals:** Because a defendant should be represented at all times, Motions to Withdraw will not be granted unless (a) the defendant has been properly notified, (b) the defendant appears at the next regularly scheduled setting, and (c) defendant has new counsel or a determination is made on the ability of the defendant to either obtain new counsel or qualify for a court-appointed attorney.

**Pleas.** Plea agreement paperwork must be signed and e-mailed to the Bailiff the day before the plea hearing before the 401<sup>st</sup>.