

## WHARTON COUNTY COURT CRIMINAL DOCKET POLICY

This policy is intended to comply with the Texas Code of Criminal Procedure and other applicable laws of the State of Texas, the Wharton County Board of Judges Plan for Qualifications of and Appointment of Attorneys to Represent Indigent Defendants, and other applicable Local Rules.

Justice demands the speedy disposition of all criminal cases. To this end, the Wharton County Court's criminal case docket will require the appearance of defendants and the attorneys for the defendant and the State as follows:

### ARRAIGNMENT

The first setting date of the case is the arraignment or "bond out" date. In accordance with Chapter 26 of the Texas Code of Criminal Procedure, this appearance will be used to read the charges against a defendant, advise the defendant of his or her rights including the right to counsel and procedures for requesting counsel. The Court will also enter an initial plea of "Not Guilty" unless the defendant demonstrates a desire to plead "Guilty" at that time. The State shall also have discovery prepared for all evidence in the District Attorney's possession at that time.

Correspondence or communication between the defendant and the prosecutor for the case will not be allowed if a request for counsel is pending. Tex. Crim. Pro. art. 1.051.

Arraignment may be waived by an attorney representing a defendant by filing a Waiver of Arraignment prior to arraignment of the defendant. The Court will provide a form waiver on the day of arraignment or counsel may file their own so long as it meets these requirements:

- (1) The waiver states that the defendant and counsel have received a copy of the information in the cause;
- (2) The waiver states that the defendant's name is spelled correctly OR correctly sets forth the defendant's name in the waiver;
- (3) The waiver states whether or not the defendant can read, write and understand the English language;
- (4) The waiver states that the defendant and counsel represent that the defendant is of sound mind, is mentally competent and thoroughly understands the nature of the charge(s) pending against the defendant as well as the range of punishment attached to such charge(s);
- (5) The waiver states that the defendant waives the requirements of formal arraignment, enters his or her appearance, and pleads either "Guilty" or "Not Guilty" to the information;
- (6) The waiver states that the defendant and counsel understand that the cause is set for further appearance according to the Criminal Case Scheduling Order issued by the Court.

## **CRIMINAL CASE SCHEDULING ORDER**

Subsequent court dates following arraignment will be assigned using a Criminal Case Scheduling Order. The attorney for the State, the defendant, and the attorney for the defendant will be ordered to appear subject to the schedule set forth in the Order. No other notice of setting will be provided. Permission for the defendant not to be present must be obtained by the attorney prior to the setting. Defendants claiming that absence is due to an emergency will be required to submit documentation to the Court.

Each case will be provided with three "status" appearances which will be set at roughly two month intervals. The court will also give the parties a plea negotiation deadline. If the parties have not reached a plea agreement by the plea negotiation deadline, the court may refuse to accept any plea. It is not necessary for the plea to be entered by this deadline so long as a defendant's acceptance of this plea has been communicated in writing between the attorneys.

## **PRETRIAL CONFERENCE AND FORMAL 28.01 PRETRIAL HEARING**

The Criminal Case Scheduling Order will also provide a date for a pretrial hearing in accordance with Art. 28.01. Preliminary matters to be heard must be raised by filing an appropriate motion with the clerk's office seven days before the hearing and copies of the motions delivered to opposing counsel. Preliminary matters not raised or filed seven days before the hearing are waived in accordance with Art. 28.01 except by permission of the Court or for good cause shown.

## **ACTIVE TRIAL DOCKET**

Once a case has made its final status appearance, if no plea agreement has been reached between the parties, the case will be placed on the active trial docket. The Court, in its discretion, shall determine how many cases with highest setting priority shall be placed on any particular call of the docket. Once a ready case has started to trial, the other cases will be passed for another trial setting and other attorneys excused.

Criminal cases will generally be heard at each trial docket in the following order of preference:

- (1) Cases against defendants who are detained in jail pending trial;
- (2) Cases involving a charge that a defendant committed an act of family violence, as defined by Section 71.004, Family Code;
- (3) Cases alleging a violation under Penal Code 25.06 (Harboring a Runaway);

- (4) Cases in which a preferential setting has been requested by a party and granted by the Court;
- (5) Cases in which the defendant is charged with DWI;
- (6) Cases in which a victim is alleged in the information;
- (7) All other cases will be tried in order of the time spent on the active trial docket, the oldest being tried first.

In months where the Court is able to conduct two or more jury trials, one trial setting will be dedicated to pending DWI trials with the oldest being tried first.

## **CONFLICTING ENGAGEMENTS OF ATTORNEYS**

When an attorney becomes aware of a conflicting engagement, it is the attorney's duty to promptly bring that conflict to the court's attention. This court will resolve attorney conflicts in accordance to Rule 10 of the Regional Rules of Administration of the Second Administrative Judicial Region of Texas. The full text of Rule 10 is reproduced here:

### **RULE 10: CONFLICTING ENGAGEMENTS OF ATTORNEYS.**

- 10.1 Attorney already in trial in another Court.
  - 10.1.1 When informed that an attorney is presently in trial, the Court will determine where and when assigned. This information will be verified upon request of opposing counsel. The case will be placed on "hold" or reset, depending upon when the attorney will be released.
  - 10.1.2 If the attorney is not actually in trial as represented by the attorney or agent, the case will be tried without further notice.
- 10.2 Attorney assigned to two Courts for the same date:
  - 10.2.1 It is the duty of the attorney to call the affected Judge's attention to all dual settings as soon as they are know[n].
  - 10.2.2 Insofar as practicable, Judges should attempt to agree on which case has priority, otherwise the following priorities shall be observed by the Judges of the respective Courts:
    - 10.2.2.1 Criminal Cases.
    - 10.2.2.2 Cases given preference of Statute.
    - 10.2.2.3 Preferentially set cases.
    - 10.2.2.4 Case set at earliest date.
    - 10.2.2.5 Case with earliest filing date.
    - 10.2.2.6 Courts in metropolitan County areas should yield to Courts in rural County areas in all other instances of conflicting settings.
    - 10.2.2.7 In event of unresolved conflict between two judges, the issue will be decided by the Local Administrative Judge or the Regional Presiding Judge.

**CASES WHICH HAVE PENDING COMPANION CASES IN DISTRICT COURT**

If a defendant has related cases pending in both County Court and District Court, upon agreement of the parties, the Court will continue the defendant's misdemeanors beyond a third status hearing.

***PRO SE* DEFENDANTS**

*Pro se* defendants found to be indigent will be appointed counsel. Non-indigent *pro se* defendants who retain counsel prior to their plea negotiation deadline will be afforded additional time so that counsel can provide diligent representation.


**CASES FILED PRIOR TO IMPLEMENTATION OF POLICY**

Cases already existing on the Court's docket will be subject to a Criminal Case Scheduling Order. Those cases will be receive settings for second and third status hearings as well as a plea negotiation deadline.

**EFFECTIVE DATE OF POLICY**

This policy is effective immediately and shall be revised as is necessary.

Signed this day, July 23, 2014.

  
Phillip Sperrath  
County Judge