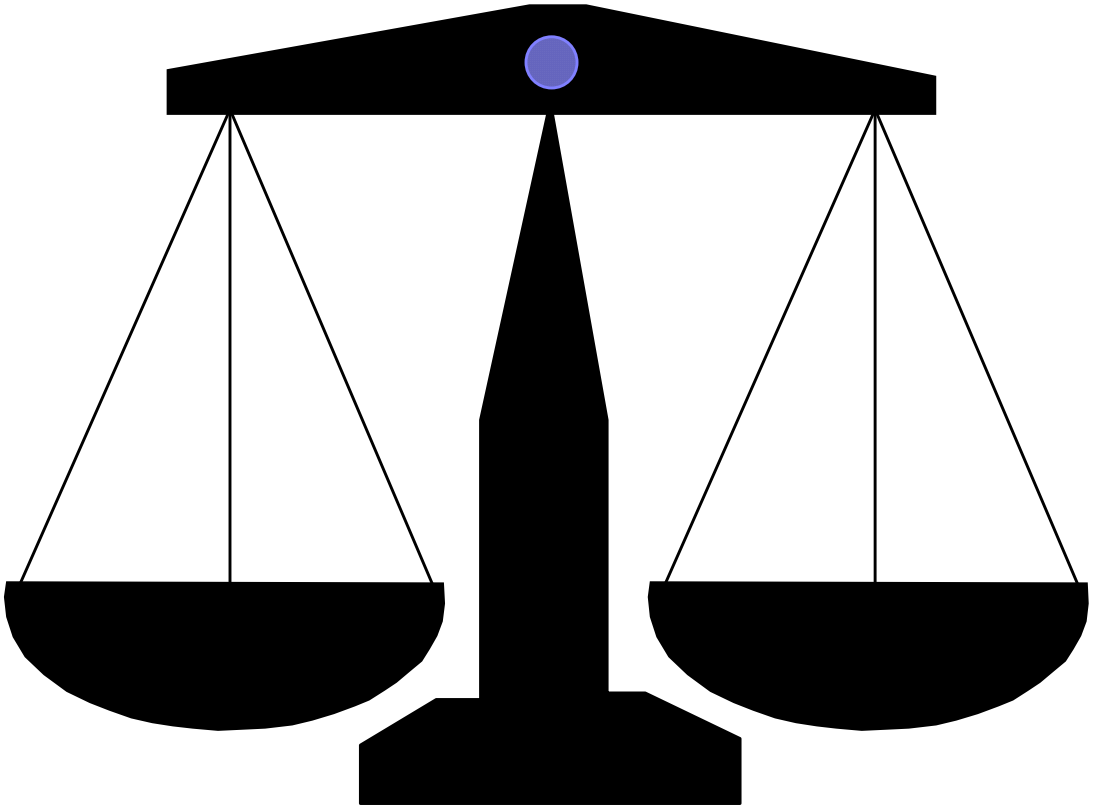
RULES

OF THE

MUNICIPAL COURT

CITY OF AUSTIN



eff. 6/1/09

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BE IT KNOWN that on this day, _____, 2009, the Municipal Court of Austin, Texas has adopted its **RULES OF COURT**, in order to provide efficiency, uniformity, and fairness in conducting the business of this court.

_____
Evelyn J. McKee
Presiding Judge

Associate Judges:
Barbara Garcia
Alfred Jenkins, III
Ronald S. Meyerson
Mitchell B. Solomon
John R. Vasquez
Ken Vitucci
Yvonne Williams
Michael Coffey, DACC

Clerk of the Court:
Rebecca Stark

Substitute Judges:
Arturo Alvarez
Donna Beckett
Erik Cary
Ferdinand Clervi
Kelly Evans
David L. Garza
Belinda Herrera
Stanley Kerr
Kirk Kuykendall
Beverly J. Landers
Ryan Runkle
Olga Seelig
Sherry M. Statman
Linda K. VonQuintus

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CITY OF AUSTIN

RULES OF THE COURT

RULE ONE: RECORDS SYSTEM

1.1 The Court's record system is electronic. The public has access to case histories and status at www.cityofaustin.org/court. A name and date of birth is required.

1.2 Attorneys of record can have full online access to their clients' files. A bar card number and password is required. The password must be obtained from the Clerk of the Court.

RULE TWO: ENTRY OF A PLEA

2.1 **Written plea**. All pleas shall be in writing, except for pleas entered in open court before a judge. A fine payment shall constitute a plea of nolo contendere as allowed by law.

2.2 **Requests for Assistance**.

A. A request 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 (1) week prior to trial so that arrangements can be made for the proper equipment to be available.

2.3 **Court Reporter Request**. A defendant may request, or waive, a court reporter at the initial announcement of the case or at the time of trial.

2.4 **Plea by Mail**. The date of the postmark shall be designated as the date of filing of any plea received by mail.

2.5 **Plea by FAX**. The date of receipt of a FAX by the Clerk's office shall be designated as the date of filing of any plea.

2.6 **Defendant Appearance**. A defendant who is not represented by an attorney must appear at all court settings of his/her case(s).

RULE THREE: COURTROOM DECORUM

3.1 **Order**. Order shall be maintained at all times. Violation of this rule can result in a reprimand by the judge, expulsion from the courtroom or a contempt citation.

A. Unless an attorney is making an objection, only one person may speak at a time.

B. No one may talk while the judge is talking.

C. Participants will address others respectfully.

D. Courtrooms shall not be used as passageways.

3.2 **Weapons**. Absolutely no illegal weapons shall be brought into the courtroom, with the exception of those intended to be offered as evidence. Commissioned peace officers may bring weapons into the courtroom. The judge shall have the discretion to have any object removed from the courtroom.

3.3 **Food\Drink**. In order to maintain cleanliness and decorum in the courtroom, no open containers of food or drink shall be consumed in or brought in to the courtroom, except with permission of the judge.

3.4 **Reading Materials**. Reading by non-participants shall not be permitted in the courtroom when it causes noise or other distractions to the participants.

3.5 **Seating**. All persons in the courtroom shall be seated, except when addressing the judge or jury, when a seat is not available, when directed to rise by a court officer, or with permission of the judge.

3.6 **Hats**. No hats shall be worn in the courtroom, except with permission of the judge.

3.7 **Electronic Devices.** All electronic devices must be turned off or in silent mode in the courtroom.

RULE FOUR: NOTICE

4.1 **Responsibility**. It is the responsibility of all persons with business before the court to a) determine the date, time and nature of each setting of case(s): and b) update or notify the court of any change of address. Information is available on the court's website.

4.2 **Notice**. Notice of the date, time and nature of each setting shall be given to each party in writing, by e-mail, in person or by mail, to the last known address of a party or counsel. All notices to attorneys will be by e-mail. A copy of each notice shall be included in the papers of the case, and marked as to the manner of its delivery.

4.3 **Verbal Representations**. Reliance upon verbal representation from any court personnel concerning any matter shall not be considered grounds for continuance, setting aside of a warrant or any other relief. Reliance upon a police officer's verbal statement(s) regarding disposition of an offense is not binding upon the court.

4.4 **Complaint**. A copy of the complaint will be made available to the defendant or counsel upon request to the clerk of the court. Attorneys of record who have obtained a password can view the complaint online.

RULE FIVE: MOTIONS

5.1 **Motions for Continuance**

5.2 **Code**. Continuances are governed by Chapter 29, Texas Code of Criminal Procedure. These rules augment but do not replace that code.

5.3 **Form**.

A. All motions for continuance shall be in writing (fax acceptable) and shall be filed with the clerk of the court (motions clerk). Such motions shall be filed immediately upon discovering the necessity for a continuance. Motions filed less than two working days prior to the scheduled event may be ruled on at the call of the docket.

B. Each motion shall contain:

1) the cause number;

2) the name of the defendant;

3) the date and time of the setting to be continued;

4) the specific facts justifying the continuance;

5.4 **Emergency Motions**. Motions filed less than two working days prior to the scheduled event may be ruled on at the call of the docket.

5.5 **Late Motions** . Late motions will be ruled on by the judge who called the docket.

5.6 **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 schedule including court and case number, out of town, etc.)

B. The time from the date on which the charge was initiated by citation or affidavit.

C. The number of continuances previously granted to each party.

D. The timeliness of the filing of the motion, including the date on which the conflict became known to Movant.

5.7 **Forum**. In all cases the ruling on a motion for continuance shall be at the discretion of the judge to whom it is presented. A subsequent motion for the same setting shall be presented to the judge who denied the original motion, if practicable.

5.8 **Denied Motion**. If a motion is denied, in order to avoid an arrest warrant, a bond in the amount set by the Court may be posted.

It is the responsibility of the defendant to determine whether the motion was granted or denied. Information is available online.

5.9 **Motions to Withdraw**. Any attorney who makes an appearance on behalf of the defendant or represents to the court that he or she is the attorney of record shall remain the attorney of record until a motion to withdraw as counsel or substitute other counsel is granted.

5.10 **Without a Hearing**. A motion to withdraw as attorney of record will be granted without a hearing only if the moving attorney:

A. files a certificate stating the last known mailing address of the Defendant, and

B. files a written consent to the withdrawal signed by the client,

C. or includes in the motion a specific statement: 1) of the circumstances that prevent the moving attorney from obtaining the client's written consent and 2) that the client has been notified of the attorney's intent to withdraw by forwarding a copy of the motion to said client and notice of any current settings.

5.11 **With a Hearing**. If all requirements of Rule 4.21 are not satisfied, a motion to withdraw must be presented at a hearing after notice to the Defendant and to all other parties, as prescribed by Rule Seven: Pre-Trial Settings.

5.12 **Substitution**. If a motion to substitute another attorney includes an appearance by another attorney, that appearance will satisfy the requirements of Rule 4.21.

RULE SIX: APPEARANCE DOCKET

6.1 Generally, cases in which defendants have pleaded "not guilty" will be set for an appearance docket prior to being set for trial.

6.2 At the appearance docket, the defendant will be given an opportunity to speak with the prosecutor and be made aware of options in lieu of trial.

6.3 Cases in which an attorney enters a not guilty plea on behalf of their client will be set on an attorney appearance docket. Only attorneys are set on this docket.

6.4 The appearance docket can be waived in writing. A waiver may result in the defendant losing any opportunity to negotiate with the prosecutor for an alternate resolution prior to trial

RULE SEVEN: PRETRIAL SETTINGS

7.1 **Motions**. Pretrial Motions shall be filed in writing in all cases where Defendants claim there are legal issues involving the sufficiency of the criminal complaint or the law from which the complaint is drawn. These issues shall include, but not be limited to, any factual situations that would invalidate the premise upon which a law or ordinance has been promulgated.

7.2 **Hearings**. No more than one pretrial hearing shall be set per case without leave of the Court. Failure to file pretrial motions as indicated herein shall constitute a waiver of having those issues heard before trial.

7.3 **Deadline to File**. Unless leave of Court has been granted, all pretrial motions shall be filed at least 14 days prior to trial. Such motions shall be heard no later than three (3) days prior to trial.

7.4 **Service**. It shall be the responsibility of the party filing any pretrial motion to serve opposing counsel or party with a copy of the motion within three (3) days of the filing of said motion. Service may be made by hand delivery, certified mail, or FAX.

7.5 **Setting the Hearing Date**. It shall be the responsibility of the party filing any pretrial motion to obtain a hearing from the Clerk of the Court.

7.6 **Subpoena/Evidence**. The State is responsible for the appearance of all necessary witnesses in response to a defendant's motion to suppress evidence. In all other cases, each party shall be responsible for subpoenaing its own witnesses and physical evidence.

RULE EIGHT: TRIAL SETTINGS

8.1 **Docket Order**.

Subject to the discretion of the Judge calling the docket, the order of cases proceeding to trial (both bench and jury) shall be as follows:

A. Preferential settings.

B. Cases according to age, oldest first.

All cases not reached will be noted as the court's reset, with no penalties assessed against either the defendant or the state.

8.2 **Preferential Setting**. To receive a preferential setting, subject to the judges approval, a party must meet one of the following criteria:

A. Reside more than fifty (50) miles outside of the city.

B. Have a condition, illness, or injury that would necessitate an expedited disposition of the case.

C. Have a non-defendant witness who has appeared on at least two prior trial settings without their case having been reached.

8.3 **Required Appearance**. All interested parties must be present and in the courtroom at the time the docket is called. Interested parties are defined as:

A. Defendants.

B. Defense counsel.

C. State's counsel.

8.4 **Failure to Appear**.

If defendant or defense counsel is not present, a bond must be posted in order to have the case reset, unless waived by a judge for good cause shown.

If state's witness is not present, state shall show good cause for witness's absence, or proceed to trial.

8.5 **Record of the Proceedings**.

A. **Request and Availability**. A defendant may request a court reporter at the initial announcement of the case or at time of trial. No fee is required to have a court reporter present.

B. **Purpose**. Austin Municipal Court is a court of record. It is the court reporter's function to record (transcribe) the entire trial proceeding. In order to appeal a finding of guilt to County Court, a defendant should have a written record of the trial proceeding sent to the appellate court either by a court reporter's transcript or by an agreed statement of facts approved by the Assistant City Attorney.

8.6 **Visual/Audio Aids**.

A. A defendant who wishes to use visual or audio aids in their defense must notify the court at least one (1) week prior to trial so that arrangements can be made for the proper equipment to be available.

B. The sitting judge shall make the final decision on what audio or video recordings, if any, are to be admitted into evidence.

8.7 **Media Access**. As a general rule, broadcast media will not be allowed to record any court proceeding. Any exceptions may be made by the judge presiding in each particular case.

RULE NINE: POST TRIAL

9.1 **Code**. Motions for new trials and appeals are governed by the Texas Government Code, Section 30.00014, et seq.

9.2 **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.

9.3 **Indigency**. If a defendant is indigent or otherwise too poor to pay either the appeal bond or the transcript, she\he may file an Affidavit of Indigency with the court and a Motion to Waive Costs within the ten (10) day period to file an appeal bond. A hearing on the motion to waive costs shall then be scheduled by the court.

9.4 **Inability to Pay Fine**. If a 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. If the defendant qualifies, the court may allow the defendant to pay the fine in installments or discharge the fine by performing community service.

9.5 **Warrant**. If a defendant does not pay the fine, meet all obligations of an installment payment plan, or discharge the fine by performing community service as ordered by the court, a warrant will be issued which will subject the defendant to arrest.