

# THE CITY OF SAN MARCOS MUNICIPAL COURT OF RECORD RULES

BE IT KNOWN that on this day, January 1st, 2019, the City of San Marcos Municipal Court of Record, Texas has adopted its RULES OF COURT, in order to provide efficiency, uniformity and fairness in conducting the business of this court.

***Dallari Landry***  
***Presiding Judge***

## RULE ONE: ENTRY OF A PLEA

**1.1 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 (no contest) as allowed by law.

### **1.2 Requests for Assistance.**

A request for a language interpreter should be made in writing at the time a plea is entered. Requests for assistance from persons with disabilities should be made at the time the plea is entered. 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

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

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

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

## RULE TWO: COURTROOM DECORUM

**2.1 Electronic devices:** All pagers & cell phones carried into the courtroom must be on silent mode or turned off

**2.2 Court schedules:** All persons scheduled to appear before the court must appear at the time scheduled.

**2.3 Court Protocol:** All persons present in the courtroom will rise when the judge enters the courtroom and will remain standing until instructed to be seated.

- A. The judge's bench should not be approached without permission.
- B. The judge should be addressed as "Your Honor" or "Judge" and other individuals in the court addressed respectfully.
- C. Persons addressing The Court will not talk at the same time as the judge, opposing counsel, or witnesses.

**2.4 Inappropriate Language/Gestures:** Racist, sexist, and other forms of discriminatory language or gestures, as well as obscene, or profane language or gestures are prohibited, unless they are pertinent to a case being heard by the Court, or are elicited and quoting from facts in the case.

**2.5 Inappropriate Conduct:** Conduct that disturbs or distracts the Judge, counsel, witnesses, or other Court personnel is prohibited.

**2.6 Reading Materials:** The reading of newspapers, magazines, periodicals, books, etc. in the courtroom during proceedings is prohibited.

**2.7 Food/Drinks:** Food, chewing gum, and drinks are not permitted in the courtroom.

**2.8 Weapons:** No weapons are permitted in the courtroom, except those carried or possessed by law enforcement officers, or as needed for evidence in Court.

**2.9 Attire:** All persons attending sessions of the City of San Marcos Municipal Court of Record must be dressed appropriately in regard for the dignity and decorum of a court proceeding.

All persons attending sessions of the Court shall wear, at a minimum, a shirt, (or blouse, sweater, etc.), pants, dress, or skirt, and shoes.

The following attire is deemed by the Court to be inappropriate for Court sessions:

- Shorts and cut-offs
- Swimwear
- Tank tops or muscle shirts
- Clothing with offensive, vulgar, racist, sexist, obscene or suggestive words, slogans, depiction, or pictures, including grotesque creatures
- Provocative and/or exposing clothing
- Flip-flops
- Hats and caps

## RULE THREE: NOTICE

**3.1 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).
- B. Update or notify the court of any change of address.

**3.2 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 included in the papers of the case.

**3.3 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. Reliance upon a police officer's verbal statement(s) regarding disposition of an offense is not binding upon the court.

**3.4 Complaint.** A copy of the complaint will be made available to the defendant or counsel upon request to the clerk of the court.

## RULE FOUR: MOTIONS

**4.1 Motions for Continuance.**

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

**4.3 Rule.** All Motions for Continuances must be physically received by the Court five (5) working days prior to the Court setting. Continuances may be received by mail, email, fax, or hand delivery. YOU CANNOT RESCHEDULE A COURT DATE ON THE TELEPHONE.

**4.4 Form.**

- A. All motions for continuance shall be in writing (fax acceptable) and shall be filed with the court clerk.
- B. Such motions shall be filed immediately upon discovering the necessity for a continuance.
- C. 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.

**4.5 Emergency Motions.** Motions filed less than five working days prior to the scheduled event will be ruled on at or prior to the call of the docket.

**4.6 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, other court schedule including court and case number, out of town, etc.)
- B. The time from the date on which the charge was initiated.
- 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 the defendant.

**4.7 Forum.** In all cases the ruling on a motion for continuance shall be at the discretion of the judge.

**4.8 Denied Motion.** If a motion is denied, in order to avoid an arrest warrant, a bond in the amount set by the Court must be posted. It is the responsibility of the defendant to determine whether the motion was granted or denied.

**4.9 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.

**4.10 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, OR
- C. 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.

**4.11 With a Hearing.** If all requirements of Rule 4.17 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).

**4.12 Substitution.** If a motion to substitute another attorney includes an appearance by another attorney, that appearance will satisfy the requirements of Rule 4.17.

## RULE FIVE: APPEARANCE DATE

**5.1 Citation Date.** Defendants must address their ticket with the court by the appearance date listed on citations; failure to do so may result in additional charges and increased fines.

**5.2 Filed.** If the citation has not been filed with the court the court may not complete any transactions regarding the case until it has been filed with the court.

**5.3 Statute of Limitations.** Citations filed after the date listed as the appearance on the citations are considered filed timely as the statute of limitations is two (2) years from the date of the offense. In these cases a letter will be sent to the defendant at the address listed on the citation of the new appearance date.

**5.4 Files.** Defendants and their attorneys have access to defendant files in the presence of court personnel. Clerks shall not release files to anyone except court personnel. Files shall not be removed from the courtroom except with authorization by the judge.

## RULE SIX: PLEA DOCKET

**6.1** Generally, cases in which defendants have elected not to resolve their case at the court service window will be set for a plea docket appearance prior to being set for trial.

**6.2** At the plea 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** The plea 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 Setting.** All cases set for jury trials will be set for a pretrial hearing. Cases set for bench trials will not be set for pretrial hearings unless specifically requested by the judge or either party in the case.

**7.2 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.

**7.3 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.

**7.4 Deadline to File.** Unless leave of Court has been granted, all pretrial motions must be filed prior to the pretrial hearing.

**7.5 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, email, or FAX.

**7.6 Setting the Hearing Date.** It shall be the responsibility of the party filing any pretrial motion for a bench trial to obtain a hearing date from the Clerk of the Court. All cases set for jury trial will be set for a pretrial hearing and motions must be filed on the scheduled dates.

**7.7 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 to request subpoenas for his/her own witnesses and physical evidence. Requests for subpoenas must be in writing.

## 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:

Preferential settings.

Cases according to age, oldest first.

### Jury Docket Announcement

Should any case not be reached during this session of the court they 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 judge's 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 Failure to Appear.** If defendant or defense counsel is not present, a bond or attorney surety bond must be posted in order to have the case reset, unless waived by the judge for good cause shown. Good cause includes a defendant who does not have sufficient resources or income to give bond.

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

**8.4 Visual/Audio Aids.** 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.

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

**8.5 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.** The Clerk of the Court shall make available a handout summarizing the appeal process.

**9.3 Indigency.** If a defendant is indigent or otherwise too poor to pay for either the appeal bond or the transcript, the defendant 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 must appear at the clerk's office and request their case be set on a show cause docket. 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.