



383rd DISTRICT COURT

HON. LYDA NESS GARCIA, PRESIDING JUDGE

HON. KAREN PELLETIER, ASSOCIATE JUDGE

RULES OF PRACTICE

Effective **January 1, 2021**, the following rules of practice will apply to all legal proceedings in the 383rd District Court. These policies and procedures do not supplant the El Paso County Local Rules. They are subject to change.

The 383rd District Court adheres to the Texas Rules of Professional Conduct, the Texas Lawyer's Creed, and the Texas Code of Judicial Conduct. Violations will result in appropriate sanctions. Personal attacks and side bar remarks will not be tolerated.

383rd Judicial District Court Lyda Ness Garcia

Request for Settings: 383DC@epcounty.com

Exhibits for Hearings: 383DistrictCourt@gmail.com

Zoom Link: <https://txcourts.zoom.us/j/97146165849> / Passcode: 422857

Telephone: 915-546-2132

Fax: 915- 546-2020

In person days for emergency hearings under Supreme Ct Orders: Mondays/Thursdays

383rd Associate Court Karen Pelletier

Request for both Settings and Exhibits: 383FC2@epcounty.com

Zoom link: <https://txcourts.zoom.us/j/6282449794>

Telephone: 915-543-3871

Fax: 915-534-7726

In person days for emergency hearings under Supreme Ct Orders: Mondays/Wednesday

The following rules apply to both attorneys and self-represented litigants.

1. GENERAL

- a. Each party shall consult the applicable state law(s), Supreme Court of Texas Emergency Orders and the El Paso County Local Rules for additional specifics and time deadlines.
- b. The court staff does **not** provide legal advice or participate in ex parte communications.
- c. Hearing requests with the District court is preferred by email to David Herrera, Court Coordinator or Ana Sanchez, Court Administrator, 383DC@epcounty.com. **(Do not use this email address to request submit exhibits. Please follow the instructions below.)**
- d. Hearing requests with the Associate court is preferred by email to Gina Arias, 383FC2@epcounty.com
- e. The 383rd is a paperless court. Pleadings and other documents are routed electronically through the El Paso County District Clerk's office.
 - i. Please ensure that you DO NOT enable the field restrictions in your hearing request forms if you have them in pdf. There is information the Court may need to add.
 - ii. Please submit orders, separately from your Motions as we may need to electronically sign them. Ex. Motion to Withdraw should not have the Order attached in the same document.
- f. **All pleadings and/or documents must be filed with the District Clerk.** Questions regarding documents, files, filings, service, etc. should be directed to the District Clerk's office. Please do not include the Court or the Court Coordinator on any e-service requests.
- g. CASE ASSIGNMENTS: Case assignment will be assigned between the Associate Court and District Court. You will receive a referral order from the Court without request. Please file any objections within statutory guidelines so we can reassign.
- h. Appropriate professional attire is required for all appearances whether in person or on Zoom. Electronic devices should be in silent mode at all times and not referred to during hearings. No food or gum chewing is allowed in the courtroom or during Zoom proceedings. During in person hearings or trials, attorneys may have beverage at counsel table. **No photos or videos are allowed, except in adoption cases.** Zoom hearings may be broadcast live on the court's YouTube channel. **Recording or screenshotting of the proceedings on YouTube is strictly prohibited.** Please refer to the court's Zoom Hearing Procedures for more information. Social Distancing regulations apply at all times in the courtroom.
- i. LATE CALLS: While we are under the Supreme Court's COVID-19 Emergency Orders all attorneys and parties are expected to appear at their scheduled time. It is recommended, but

not required, that you enter the Zoom early so that we can have you in breakout rooms to talk before your case is called. Attorneys are responsible for ensuring that they do not have conflicting settings and resolving them before hearing. If there are extenuating circumstances, please contact the Court Coordinator or bailiff directly. **In cases of Inclement Weather, please refer to the court's Inclement Weather Policy on page 14.**

- j. DOCKET CALLS: There will be no in- person hearings while we are under the Supreme Court's COVID-19 Emergency Orders. At some point there may be designated days we have in-person hearings. **Do NOT appear in person unless prior approval is obtained from the Court Coordinator.**

- k. UNCONTESTED DOCKET: There will be no in-person walk-in/sign-up dockets while we are under the Supreme Court's COVID-19 Emergency Orders. Agreements may be approved by Zoom hearing on our Uncontested Docket held by both Courts on Friday mornings or by submission with affidavit(s).
 - i. If you prefer not to present the uncontested via zoom on Friday morning you may request a hearing on an uncontested matter, please send an email to: 383DC@epcounty.com. The subject line of the email must include the cause number, the case name, and the type of hearing requested. For example, "*Cause Number 2021DCMxxx, Smith v. Smith, Uncontested Final Divorce Hearing*". The Court Coordinator will respond with available dates/times.

 - ii. Please review the **Zoom Hearing Procedures** which will be on the court's website and disseminated herein. Please make sure all required pleadings filed with the District Clerk's office at least 24 hours before the date of your hearing. If necessary, also send a copy to the designated exhibit email.

- l. AGREED ORDERS: Agreed orders must contain signatures of all parties and attorneys. All signatures must be distinctive written signatures or electronic signatures generated by the signing party.
 - i. Agreed Orders must indicate (1) that the parties did not appear in person but agreed to the terms of the order as evidenced by their signatures; and (2) that the making of a record was waived if applicable.

 - ii. Any sworn affidavit must be attached to the proposed order as an exhibit and must include the same information that would be solicited during a prove-up with the witness in the courtroom.

- m. ENTRY OF JUDGMENT SUBMISSION DOCKET: Notice of the submission setting must be served at least 10 days before the date of the hearing, or more if required by statute or rule. The notice must state that: (1) the motion will be heard by submission; (2) no party need appear

for the hearing in person; and (3) any response to the motion must be on file at least 3 days before the submission date, or longer if required by statute or rule.

The following non-agreed/contested motions will be heard by submission; if an objection is filed, if a hearing is requested or the court believes that a hearing is needed, the court will contact the parties with further instructions:

- Motions for Adoption Evaluation
- Motions for Alternative or Substituted Service
- Motions to Consolidate or Sever
- Motions to Enter
- Motions for Judgment Nunc Pro Tunc
- Motions to Confer with Child
- Motions to Reinstate/Retain
- Motions for Withdrawal/Substitution of Counsel
- Pre-trial submissions unless parties request a Pretrial before the Court

*Motions may be set concurrently with a hearing for temporary orders, pretrial, or final trial if there is not enough time to set them by submission before the hearing/trial.

- n. OBJECTION TO ZOOM HEARINGS: An objection to a Zoom hearing must be set on the court's docket. A lack of comfort or familiarity with Zoom will not constitute good cause.
- o. CHILDREN IN COURT: Children may not be brought into the courtroom without court approval. If the court approves a request for a child to be interviewed in chambers, the child should be brought to the courthouse at the scheduled interview time. Upon arrival, please check in with the Court Coordinator by phone. Do not enter the courtroom.

2. PARENTING CLASSES

- a. Parents and/or conservators in all contested cases involving children are required to complete a 4-hour parenting class. The certificates of completion must be filed with the District Clerk's office before the case is finalized.
- b. The Court recognizes and approves the following **in person** courses (in no particular order): Children First, Center Against Sexual and Family Violence — (915) 562-0077; <https://casfv.org/prevention-education/children-first-class>
- c. The Court recognizes and approves the following **online** courses (in no particular order):

Putting Kids First

<https://puttingkidsfirst.org>

Texas Cooperative Parenting

<https://txparent.com>

Parent Class Online

<https://www.parentclassonline.com>

Co-Parenting into the Future

<https://coparentingintothefuture.com>

Family Affairs

<http://familyaffairs.org>

Kids First

<https://kidsfirsttoday.com>

Parenting Choice

<https://www.parentingchoice.com>

3. MEDIATION

- a. Mediation will be ordered on a case by case basis or upon agreement of parties.
- b. Mediation is required prior to final hearing in all cases over 1 day (except protective orders, enforcement/contempt actions or on cases involving family violence). Failure to mediate before trial may result in the case being reset on the Court's discretion.
- c. The Court may waive a mediation requirement in response to motion and upon a showing of good cause. The motion must be heard at least 10 days prior to the trial date.
- d. Parties may agree to resolve a case without formal mediation. *Please see the rules governing Agreed Orders above.*
- e. The El Paso County Dispute Resolution Center with licensed attorneys only (address and phone) will mediate cases for parties with proof of limited income at a reduced or nominal fee.
- f. Parties should make a good faith attempt to agree on mediators. If no agreement can be

reached, a motion should be filed with the court and the court will choose a mediator from the wheel. *The court may deviate from the wheel for good cause.

4. CONTESTED HEARINGS/TEMPORARY ORDERS

- a. Requests for contested hearing dates **must** be made by sending an email to: 383DC@epcounty.com or 383FC2@epcounty.com. All attorneys and self-represented litigants must be copied. The subject line of the email must include the cause number, the case name, and the type of setting requested. For example, “Cause Number 2021DCM0000, Smith v. Jones, Temporary Orders Hearing”. The Court Coordinator will reply-all with the court’s availability. **Emails requesting contested hearing dates must include the total estimated time for the hearing.**
- b. Notice and proof of notice to the opposing attorney or party shall be pursuant to the Texas Rules of Civil Procedure. Please refer to the court’s **Zoom Hearing Procedures** for a sample Notice of Zoom Hearing. The Zoom meeting ID and password must be included the Notice of Hearing.
- c. Please talk to opposing counsel prior to your hearing. We can open a break-out room before your hearing for the parties to engage in settlement.
- d. **If your case is assigned to the Associate Judge for temporary orders over 2 (two) hours, the Waiver of Appeal from Associate Judge’s Findings and Recommendation form must be signed by all attorneys and parties and filed at least three business days prior to your hearing.** Failure to file the form may result in your case being removed from the Associate Judge’s docket.
- e. Otherwise Temporary Orders with the Associate Court may be limited to 1 hour per side.
 - i. In any hearing for temporary orders in which child support or spousal support is an issue, completion and exchange of Financial Information Statements, copy of income tax returns for the last year, and the three most recent payroll stubs shall be exchanged prior to the commencement of the hearing. Working copies of the Financial Information Statements are advised for the court.
 - ii. **Temporary restraining orders:** In divorce actions, ex parte temporary restraining orders should use the language included in section 6.501 of the Texas Family Code. If requesting extraordinary relief please clearly label as such in the Temporary restraining order and bold/highlight requests beyond standard maybe as per the Texas Family Practice Manual. The court WILL STRIKE certain proposed injunctions (such as exclusion of possession, imposition of geographic restriction, excluding of residence, attachment, alcohol or paramour injunctions) if not supported by an affidavit. Writ of attachments should be in separate pleadings and documents supported by evidence.

1. TRIAL SETTINGS

- a. Requests for trial dates must be made in accordance with paragraphs 4(a) and (b) above.
- b. Provide proposals for final hearings if the value of the marital estate exceeds \$50,000. The Court would request that proposed parenting plans be submitted which includes rights and duties, possession and proposed calculation of child support particularly when deviated from standard. Please ensure that you provide the Court an editable version.
- c. **If your case is assigned to the Associate Judge for trial and the case is more than 2 (two) hours, the Waiver of Appeal from Associate Judge's Ruling/Recommendation form must be signed by all attorneys and parties and filed prior to hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial.** Failure to file the form may result in your case being removed from the Associate Judge's docket.
- d. **Scheduling Orders and Pretrial Conferences** are required for jury trials, terminations and adoptions, and bench trials with a total time estimate that exceeds **4 hours or half a day. They will also be scheduled upon request of counsel or the discretion of Court.** Pretrial conferences will be set no less than 30 days prior to the trial setting. Blank *Scheduling Orders* and *Pretrial Conference Checklists* will be found on the court's website. Please ensure that you are in compliance with the new discovery rules.
 - i. If the hearing is less than half a day **and** a *Pretrial Conference Checklist* is completed and signed by all attorneys and parties, with all prerequisites met, attendance at the pretrial conference setting is **not** required. A copy of the signed *Pretrial Conference Checklist* must be filed prior to the date of the Pretrial Conference.
 - ii. Parties may request a Pretrial Conference with the Court for any length hearing or scheduled by the Court at their discretion.
 - iii. A nonappearance by attorneys and parties without a completed and signed *Pretrial Conference Checklist* being on file may result in the case being reset

2. EXHIBITS – PLEASE READ CAREFULLY

- a. In all cases other than contempt proceedings and cases under a Scheduling Order, exhibits **should** be marked and exchanged **by 12:00 p.m.** the business day before the hearing and mailed to the District Court at [383District Court@gmail.com](mailto:383DistrictCourt@gmail.com) and to the Associate Court at 383FC2@gmail.com. It is the Courts preference that you exchange exhibits to expedite your

hearing time. However, the exchange of exhibits on the day of hearing or trial will be permitted and screen sharing enabled to facilitate hearings as if we were in person. Evidentiary rules regarding exclusions or admission will apply. Those exhibits **MUST** be emailed to the Court before the conclusion of the hearing or upon discretion of the Judge.

- b. Parties should attempt in good faith to obtain an agreement regarding exhibit admissibility before the hearing or trial.

C. Court Copies:

- i. Exhibits for all proceedings **must** be delivered to the District court via email to: 383DistrictCourt@gmail.com or the Associate Court at 383FC2@epcounty.com or if voluminous on a USB Flash Drive or a binder. **Do not email exhibits to the Court Coordinator or to the Court Reporter.**
- ii. Exhibit emails **must** include a subject line of the exhibit email must include the cause number, party designation/name, and hearing date. For example, "*Cause No. 2020DCM0000, Respondent Jones, January 1, 2021.*" All attorneys and self-represented litigants must be copied.
- iii. Please note advised that the Court Reporter and Judge may not have access to a color printer. Admitted exhibits will be printed and delivered by the Court to the Court reporter in black and white. If color is important, exhibits must be delivered on a USB Flash Drive as indicated below.
- iv. **AUDIO/VIDEO:** Please ensure that they can be opened. Audio and video files may also be on a USB Flash Drive.
- v. Flash Drives **must be received** by 12:00 PM the business day before the hearing. Flash Drives must be clearly labeled with the cause number, party name and hearing date.
- vi. Flash Drives may be delivered in person or mailed to:

383rd District Court
Attn: David Herrera or
Gina Arias
500 E. San Antonio Ave., Ste. 1101
El Paso, TX 79901

Please be mindful of the deadline when delivering by mail.

- vii. **All exhibits must be accompanied by an Exhibit List.** A sample Exhibit List will be found on the court's website. Exhibit Lists may be e-filed with the District Clerk's office, but the exhibits should NOT be filed.
 - viii. The only formats accepted are PDF for documents, JPG and PNG for images, and MP4 for audio and videos.
 - ix. Each exhibit **must** be saved or attached as a separate file and the file name **must** include the exhibit number AND a brief description of the exhibit. For example, "*Petitioner Exhibit 5 - Bank Statements*"
- d. The party tendering the exhibits is responsible for ensuring that files are saved correctly. Documents and photos should be as clear as possible and scanned upright (not sideways or upside down).
 - e. The party tendering the exhibits is responsible for ensuring that witnesses have copies of the exhibits for use during Zoom hearings. The Court Reporter will NOT forward or otherwise circulate exhibits to anyone other than the court. The "share screen" feature may be used during Zoom hearings. The party tendering the exhibits is responsible for screen sharing and technology associated.
 - f. For property divisions involving marital estates with numerous assets or debts, include with the exhibits an editable file (e.g., MS Excel) containing the party's proposed property division.
 - g. **Failure to comply with these procedures may result in exhibit exclusion.**

3. ADOPTIONS

- a. A pre-trial conference is required in all adoption cases. The consummation date will be set at the pre-trial conference. To request a setting, please send an email to 383DC@epcounty.com. All attorneys and court-appointed advocates must be copied. Please include the cause number and case name in the subject line of your email.
- b. Failure to file the required documents prior to the pre-trial conference could result in the pretrial conference being reset.

4. CONTINUANCES

- a. For cases pending more than one year, a request for continuance requires a motion and a hearing (even if it is unopposed or agreed).

5. DISMISSALS FOR WANT OF PROSECUTION (DWOP)

- a. While COVID protocols remain in effect, the first two Dismissals will be with Court staff and the third with the Court. You may contact staff before that date for scheduling orders or resolve the Dismissal before the Dismissals.

6. DISCOVERY DISPUTES

- a. The Court will require that the *Certificate of Conference* summarizes efforts made to communicate with opposing counsel or self-represented party regarding the discovery dispute. A lack of substantial efforts to communicate (e.g., leaving a single voicemail) may affect the outcome of the hearing.
- b. Motion to Quash Deposition: If the motion is based on the unavailability of the lawyer or witness, the party filing the motion to quash must provide at least **3** alternative dates within the body of the motion for the taking of the deposition.

7. AMICUS/AD LITEM APPOINTMENTS

- a. To be eligible for Court Appointments in the 383rd, an *Application for Court Appointments* should be completed and submitted. Appointments are made based on the facts and/or conduct of the parties and as required by law.
- b. The parties may agree to an Amicus/Ad litem Attorney, but judicial approval is required. In the absence of agreement, the court will select an Amicus/Ad Litem from the wheel. *The court may deviate from the wheel for good cause.
- c. The Court may appoint an amicus on own motion.

8. DEFAULTS

- a. All default hearings require the following documents to be filed **before** the hearing date:
 1. Certificate of Last Known Address per Rule 239a
 2. Non-Military Affidavit
 3. Return of Service (on file for a minimum of 10 days)
 4. A sworn inventory and appraisalment (divorce matters >\$50,000)
 5. Proof of service

9. NAME CHANGES (EXCEPT IN DIVORCE MATTERS)

- a. All requests for an adult name change require a fingerprint card. All documents must be 383rd Rules of Practice/July 2021-revised ZOOM

filed with the District Clerk's office prior to the final hearing.

10. INCLEMENT WEATHER POLICY

- a. The 383rd District Court will follow the announcement of El Paso County School Districts.
- b. If El Paso school County Districts closes due to inclement weather, the 383rd District Court will also close unless all parties and attorneys are available.
- c. **Court Closure:** All cases set on a day that the court is closed due to inclement weather will automatically be reset priority setting.
- d. **Delayed Start:** If the El Paso Districts are on a "delayed start," the 383rd will delay start as well. Please contact the Court Coordinator to confirm the time of your hearing. Due to anticipated time constraints, the time allowed for each hearing may be limited. If an attorney or party is unable to appear at the updated start time, a reset may be requested.