

# Rule Five: Motions

## 5.1 Motions for Continuance

Motions for Continuance require good cause shown and will not be granted for delay purposes. A Motion for Continuance shall be filed with the Court as soon as the Attorney for the Defendant, or the State or pro se Defendant is aware of the necessity for seeking a continuance. An Attorney seeking a continuance from an Attorney Plea Docket shall contact the Court to determine if there is another time that he/she could be present to process the Plea Docket before the scheduled date, in lieu of asking that cases be reset.

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### 5.1.1 Code

Continuances are governed by Chapter 29 of the Texas Code of Criminal Procedure. This Rule 5.1 is intended to supplement and not to replace the provisions of the Code of Criminal Procedure.

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### 5.1.2 Form

- All Motions for Continuance shall be in writing and shall be filed with the Court Clerk in which the case is set at least five (5) working days prior to the scheduled court date.
  - Each Motion for Continuance shall contain:
    - The Cause Number;
    - The name of the Defendant;
    - The date and time of the setting for which the continuance is sought;
    - The specific facts justifying the continuance. If the reason for the continuance is a conflict with a setting in another court, the Motion shall contain the Style and Cause Number of the other case, as well as the Court Number and time of the conflict;
  - A certificate of conference indicating the agreement or disagreement of the opposing party;
  - An oath attesting to the truth of the matters contained in the Motion; and
  - A proposed order for the Judge to designate whether the motion is “Granted” or “Denied.”
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### 5.1.3 Emergency Motions

Where the underlying facts (good cause) which form the basis for a Motion for Continuance were not discovered and could not have been discovered through the exercise of due diligence, an Emergency Motion for Continuance may be filed. Such Motion may be filed at any time prior to the respective Court proceeding and will be ruled on by the Judge at the call of the docket.

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## **5.1.4 Factors**

With the exception of continuances sought on Constitutional or Statutory grounds, the following factors will be considered in determining whether the Motion shall be granted or denied:

- The specific nature of the conflict in scheduling;
  - The age of the case;
  - The number of previous continuances granted to each party;
  - The timeliness of the filing of the Motion, including the date on which the scheduling conflict, if any, became known to the Movant; and
  - Any other matter relevant to the Motion.
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## **5.1.5 Forum**

A Motion for Continuance shall be presented to the Court. In all cases, the ruling on a Motion for Continuance shall be at the discretion of the Judge.

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## **5.1.6 Denied Motions**

If a Defendant's Motion for Continuance is denied, in order for the Defendant to avoid a warrant, a bond in the amount set by the Court may be required to be posted, at the discretion of the Judge denying the Motion. It is the responsibility of the Prose Defendant or the Counsel for Defendant to determine whether the Motion was granted or denied and to determine whether a bond is required. If a State's Motion for Continuance is denied, the case will proceed to trial, plea, or other disposition.

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## **5.2 Vacation Letters**

Attorneys shall file a vacation letter no less than 60 days prior to the anticipated date that the vacation is to begin. Such notices shall be filed at the court window at 201 East Main St., by fax, by electronic mail, or regular mail. If the vacation letter is not filed at least 60 days prior to the vacation commencement date, the Attorney shall file Motions for Continuance in each case set

during the vacation period for the Judge to consider.

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## **5.3 Motions to Withdraw**

Any Attorney who makes an appearance on behalf of a Defendant shall continue to be considered by the Court as the Attorney of record for that Defendant until a written Motion to Withdraw is filed by that Attorney and is granted by the Court, or the case is disposed of by trial, plea, deferred disposition, drivers safety course is granted, dismissal or substitution of counsel.

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### **5.3.1 Withdrawal without a Hearing**

A Motion to Withdraw as Counsel for Defendant may be granted without a hearing only if the moving Attorney files a verified certificate stating the last known mailing address of the Defendant and describes what efforts have been made to locate the Defendant, or if Counsel files along with the Motion a written consent to the withdrawal signed by the client which consent acknowledges that the Defendant has been advised of all future court settings.

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### **5.3.2 Withdrawal with a Hearing**

If the requirements of Rule 5.3.1 are not satisfied, a Motion to Withdraw must be presented to the Court at a hearing after notice to the Defendant and to all other parties.

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### **5.3.3 Substitution of Counsel**

A Motion to Substitute Counsel shall be signed by the Attorney who currently represents the Defendant as well as the attorney who wishes to undertake representation of the Defendant. The Motion must include an affirmative statement that Defendant has consented to the substitution. If a Motion to Withdraw as Counsel for Defendant also contains a Motion to Substitute Counsel and a Notice of Appearance by another Attorney, and a written agreement by the State, that appearance will satisfy the requirements of Rule 5.3.1 and the Attorney named in the Motion to Substitute will thereafter be considered by the court as Attorney of record for the Defendant.

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### **5.3.4 Affidavit of Intent to Surrender and Affidavit of Surrender**

Any attorney wishing to be removed from the bond of a Defendant shall file the appropriate Affidavit under either Article 17.19 CCP (for Defendants who are not incarcerated) or Article 17.16 CCP (for Defendants who are incarcerated). Such Affidavit may be presented at any time prior to or at a setting of the case.

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### **5.3.5 Motions for Discovery, Pre-trial, Trial, and Post-Trial Motions**

All other Motions shall be filed with the Clerk of the Court. All pretrial motions shall be filed at least 14 days prior to the trial date, and responses thereto, if any, shall be filed at least 7 days prior to the trial date. If a pretrial Motion has not been ruled on before the trial date, such Motion shall be heard on the date of trial. Each Motion or Response shall contain a certificate of service signed by the Movant or Respondent indicating that a copy of such Motion or Response has been served upon the opposing party, the manner of service, and the date of service.