Rule 9. Papers Generally

* * *

9.4. Form

Except for the record, a document filed with an appellate court must — unless the court accepts another form in the interest of justice — be in the following form:

* * *

(e) *Typeface.* ~~A document must be printed in standard 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or in 13-point or larger proportionally spaced typeface. But if the document is printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point.~~ A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

* * *

(i) *Length.*

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document must be included except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The appellate documents listed below must not exceed the following limits:

(A) A brief in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not.

(C) A reply brief in an appellate court: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(ij) *Nonconforming Documents*. Unless every copy of a document conforms to these rules, the court may strike the document and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind. The use of footnotes, smaller or condensed typeface, or compacted or compressed printing features to avoid the limits of these rules are grounds for the court to strike a document.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits for appellate documents and establish word limits for appellate documents produced on a computer. All documents produced on a computer must comply with the new word limits. Headings, footnotes, and quotations count toward the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Rule 38. Requisites of Briefs

* * *

~~**38.4. Length of Briefs**~~

~~An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the~~

~~signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.~~

Rule 49. Motion and Further Motion for Rehearing

* * *

~~**49.10. Length of Motion and Response**~~

~~A motion or response must be no longer than 15 pages.~~

Rule 52. Original Proceedings

* * *

~~**52.6. Length of Petition, Response, and Reply**~~

~~Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.~~

Rule 53. Petition for Review

* * *

~~**53.6. Length of Petition, Response, and Reply**~~

~~The petition and any response must be no longer than 15 pages each, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition, response, or reply.~~

Rule 55. Brief on the Merits

* * *

~~**55.6. Length of Briefs**~~

~~A brief on the merits or brief in response must not exceed 50 pages, exclusive of pages~~

~~containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented the signature, and the proof of service. A brief in reply may be no longer than 25 pages, exclusive of the items stated above. The Court may, on motion, permit a longer brief.~~

Rule 64. Motion for Rehearing

* * *

~~**64.6. Length of Motion and Response**~~

~~A motion or response must be no longer than 15 pages.~~

Rule 68. Discretionary Review With Petition

* * *

~~**68.5. Length of Petition and Reply**~~

~~The petition must be no longer than 15 pages, exclusive of pages containing the table of contents, the index of authorities, the statement regarding oral argument, the statement of the case, the statement of procedural history, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition or reply.~~

Rule 70. Brief on the Merits

* * *

70.3. Brief Contents and Form

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

Rule 71. Direct Appeals

* * *

71.3. Briefs

Briefs in a direct appeal should be prepared and filed in accordance with Rules 9 and 38, except that the brief need not contain an appendix (Rule 38.1(k))~~, and the brief in a case in which the death penalty has been assessed may not exceed 125 pages~~. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TEXAS RULES OF CIVIL PROCEDURE

PART V - RULES OF PRACTICE IN JUSTICE COURTS

SECTION 1. GENERAL RULES

RULE 500. DEFINITIONS

In Parts V and VII of these Rules of Civil Procedure:

(a) "**Answer**" is the written response a defendant must file with the court after the defendant is served with a citation.

(b) "**Cause of action**" is the legal basis, or reason, that a party claims to be entitled to relief from the court.

(c) "**Certified process server**" is a person certified under order of the Supreme Court of Texas to serve civil citations, notices, and other papers issued by Texas courts.

(d) "**Citation**" is the court-prepared document required to be served upon a party to inform the party that the party has been sued.

(e) "**Civil Cases**" are all non-criminal cases filed in a Justice Court, including Small Claims Cases, Eviction Cases, Debt Claim Cases, and Repair and Remedy Suits.

(f) "**Clerk**" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(g) "**Contest**" means to challenge a statement made by a party claiming inability to pay filing fees, appeal costs, or other costs of court.

(h) "**Co-Party**" is another party on the same side of a lawsuit; for example, if there are two plaintiffs, the two plaintiffs are co-parties. The term is also used if there is more than one defendant in the same lawsuit.

(i) "**Counterclaim**" is a cause of action brought by a party who has been sued against the party suing them, for example, a defendant suing a plaintiff who has sued them.

(j) "**County court**" means the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice court.

(k) "**Cross-claim**" is a cause of action brought by a party against another party on the same side of a lawsuit. For example, plaintiff sues two defendants, A and B. Defendant A can seek relief against defendant B by means of a cross-claim.

(l) "**Debt Claim Case**" is a claim for the recovery of a debt, brought by an assignee of a claim, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000 in damages, which includes attorney's fees, if any, but does not include statutory interest or court costs.

(m) "**Default Judgment**" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff's claims in the lawsuit.

(n) "**Defendant**" is a person against whom or entity against which the plaintiff files a case. The term includes a plaintiff against whom a counterclaim is filed.

(o) "**Defense**" is a claim by a defendant that could prevent the plaintiff from being awarded a judgment.

(p) "**Discovery**" is the process through which parties obtain information from other parties in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(q) "**Dismissed without prejudice**" means a case has been dismissed but has not been finally decided. If a case is dismissed without prejudice it may be refiled. If a case is dismissed and the order is not specific with regard to prejudice, it is considered a dismissal without prejudice.

(r) "**Dismissed with prejudice**" means a case has been dismissed AND it has been finally decided. If a case is dismissed with prejudice it may not be refiled.

(s) "**Due diligence**" means that a party or other actor has taken all reasonable and prudent measures necessary to accomplish a duty imposed under the law.

(t) "**Eviction Case**" is a case seeking to recover possession of real property. A suit for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000.

(u) "**General denial**" is an answer filed by a responding party that doesn't specify the reasons it feels its opponent should not recover, but instead merely states that it generally denies the allegations and demands that they be proven.

(v) "**Judge**" in these rules refers to a justice of the peace.

(w) "**Judgment creditor**" is the party awarded relief in a lawsuit and is legally entitled to enforce the award with the assistance of the court.

(x) "**Judgment debtor**" is the party against whom a court has made a judgment for relief.

(y) "**Judgment**" is an order by the court outlining the relief, if any, a party is entitled to or must provide.

(z) "**Jurisdiction**" refers to the inherent authority of a court to hear a case and to award a judgment.

(aa) "**Motion**" is a request from a party asking the judge to order some requested relief, or to compel a party to do something.

(bb) "**Movant**" means the person or party making a motion to be considered by the court.

(cc) "**Notice**" means a document prepared and delivered by the court to a party announcing that something is required of the party receiving the notice. It is to alert the party to take some action or forfeit some right or privilege, or suffer some consequence for failing to take action.

(dd) "**Parties**" include plaintiffs, defendants, counter-plaintiffs, counter-defendants, co-plaintiffs, co-defendants, third parties, and intervenors.

(ee) "**Personal delivery**" means deliver to the defendant, in person, a true copy of the citation, with the date delivered endorsed on the citation, along with the petition and any documents filed with the petition.

(ff) "**Petition**" means to make a formal written application requesting a court for a specific judicial action. It is the first document filed with the court to begin a lawsuit.

(gg) "**Plaintiff**" is a person who or entity which seeks relief in a civil case in justice court. The term includes defendant who files a counterclaim.

(hh) "**Plea**" means an earnest request, justification, excuse, or pretext.

(ii) "**Pleading**" is a written document filed with a court by a party that expresses a cause of action or defense and outlines the recovery sought, if any.

(jj) "**Plenary Power**" is the ability a court has to exercise its power and authority over a case.

(kk) "**Relief**" is what a party wants in a final judgment from the court, such as the recovery of money or personal property.

(ll) "**Repair and Remedy Case**" is a case brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition that Chapter 92 of the Property Code creates a duty for the landlord to remedy or repair.

(mm) "**Restricted delivery**" means delivery service where delivery must be made only to the named addressee, and delivery will not be allowed without the signature of the addressee so named on the item mailed.

(nn) "**Small Claims Case**" is a claim for money damages, civil penalties, or the recovery of personal property. The claim can be for no more than $10,000 in damages, which includes attorney's fees, if any, but does not include statutory interest or court costs.

(oo) "**Sworn statement**" is a written statement signed in front of someone authorized to take oaths and notarize the party's signature. Filing a false sworn statement could result in criminal prosecution. Instead of being signed in front of someone authorized to take oaths or a notary, the statement may be signed under penalty of perjury.

(pp) "**Third party claim**" is a cause of action brought by a party being sued against another individual or entity, other than the original plaintiff, to have the new party included in the lawsuit.

(qq) "**Trial de novo**" means an appeal where a new trial will be held in which the entire case is presented as if there had been no previous trial.

(rr) "**Venue**" refers to the county and precinct where a lawsuit occurs.

(ss) "**Voir Dire**" means "to see" "to say", and is the part of the jury selection process where the parties, or their attorneys, conduct a brief examination of prospective jurors who were summoned to serve for a trial.

RULE 501. JUSTICE COURT CASES

(a) Small Claims cases in justice court shall be governed by Part V of these rules of civil procedure.

(b) Debt Claim cases in justice court shall be governed by SECTION 8, and also by Part V of these rules of civil procedure. To the extent of any conflict between Part V and SECTION 8, SECTION 8 shall apply.

(c) Repair and Remedy cases in justice court shall be governed by SECTION 9, and also by Part V of these rules of civil procedure. To the extent of any conflict between Part V and SECTION 9, SECTION 9 shall apply.

(d) Eviction cases in justice court shall be governed by SECTION 10, and also by Part V of these rules of civil procedure. To the extent of any conflict between Part V and SECTION 10, SECTION 10 shall apply.

RULE 502. APPLICATION OF RULES IN JUSTICE COURT

Civil cases in the justice courts shall be conducted in accordance with the rules listed in Rule 501 of the Texas Rules of Civil Procedure. Any other rule in the Texas Rules of Civil Procedure shall not govern the justice courts except:

(a) to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or,
(b) where otherwise specifically provided by law or these rules.

Applicable rules of civil procedure shall be available for examination during the court's business hours.

RULE 503. COMPUTATION OF TIME AND TIMELY FILING

In these rules days mean calendar days. The day of an act, event, or default shall not count for any purpose. If the last day of any specified time period falls on a Saturday, Sunday or legal holiday, the time period is extended until the next day that is not a Saturday, Sunday or legal holiday. If the last day of any specified time period falls on a day during which the court is closed before 5:00 PM, the time period is extended to the court's next business day. Any document required to be filed or served by a given date is considered timely filed or served if deposited in the U.S. mail on or before that date, and received within ten days of the due date. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

RULE 504. RULES OF EVIDENCE

The Texas Rules of Evidence do not apply to justice courts except to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties.

RULE 505. DUTY OF THE JUDGE TO DEVELOP THE CASE

The judge may develop the facts of the case, and for that purpose may question a witness or party and may summon any person or party to appear as a witness as the judge considers necessary to ensure a correct judgment and speedy disposition of the case.

RULE 506. EXCLUSION OF WITNESSES

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. Additionally, a court may issue such an order without any request. This rule does not authorize the exclusion of:
(1) a party who is a natural person or the spouse of such natural person;
(2) an officer or employee designated as a representative of a party who is not a natural person; or
(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

RULE 506.1. SUBPOENAS

A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

Every subpoena must be issued in the name of the "State of Texas" and must:

(a) state the style of the suit and its cause number;
(b) state the court in which the suit is pending;
(c) state the date on which the subpoena is issued;
(d) identify the person to whom the subpoena is directed;
(e) state the time, place, and nature of the action required by the person to whom the subpoena is directed;
(f) identify the party at whose instance the subpoena is issued, and the party's attorney
of record, if any;
(g) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and
(h) be signed by the person issuing the subpoena.

A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on

which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

RULE 507. PRETRIAL DISCOVERY

Any requests for pretrial discovery must be presented to the court by written motion before being served on the other party. The discovery request shall not be served upon the other party until the judge issues a signed order approving the discovery request. The court shall permit such pretrial discovery that the judge considers reasonable and necessary for preparation for trial, and may completely control the scope and timing of discovery. Failure to comply with the judge's order can result in sanctions, including sanctions that may prove fatal to a party's claim.

RULE 507.1. POST-JUDGMENT DISCOVERY

Post-judgment discovery need not be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must

order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.

SECTION 2. INSTITUTION OF SUIT

RULE 508. PLEADINGS AND MOTIONS

Except for oral motions during trial, or when all parties are present, all pleadings and motions must be written and signed by the party or its attorney, and an exact copy must be sent to all other parties to the suit by the party filing the motion or pleading as provided by Rule 515.

RULE 509. PETITION

(a) *Contents of Petition.* To initiate a suit, a petition must be filed with the court. A petition must contain:
   (1) the name, address, telephone number, and fax number, if any, of the plaintiff;
   (2) the name, address, and telephone number, if known, of the defendant;
   (3) the amount of money, if any, the plaintiff seeks;
   (4) a description and claimed value of any personal property the plaintiff seeks;
   (5) the basis for the plaintiff's claim against the defendant; and
   (6) any email contact information where the plaintiff consents to accept service of the answer and any other motions or pleadings. A party is not required to accept service by email.

(b) *Fees and Statement of Inability to Pay.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to pay the fees must file a sworn statement that it is unable to do so.

   (1) *Contents of the Statement of Inability to Pay.* The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, et.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

   The statement must contain the following: "I am unable to pay court costs. I verify that the statements made in this statement are true and correct." The statement shall be sworn before a notary public or other officer authorized to administer oaths or signed under penalty of perjury. If the party is represented by an attorney on a contingent fee basis, due to the party's indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party.

   (2) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services because of the party's indigency, without contingency, and the attorney is

providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of inability to pay accompanied by an attorney's IOLTA certificate may not be contested.

(3) *Contest.* The defendant may file a contest of the statement of inability to pay at any time within 20 days after the day the defendant's answer is due. If contested, the judge must hold a hearing to determine the plaintiff's ability to pay. The court may, regardless of whether the defendant contests the statement, examine the statement and conduct a hearing to determine the plaintiff's ability to pay. If the court finds the plaintiff is able to afford the fees, the plaintiff must pay the fees in the time specified by the court or the case will be dismissed without prejudice.

RULE 510. VENUE

Comprehensive laws regarding where a lawsuit may be brought may be found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online at www.***therules.com*** and also is available for examination during the court's business hours.

Generally, a defendant in a small claims case or debt claim case is entitled to be sued in one of the following venues:

(a) In the county and precinct where the defendant resides;
(b) In the county and precinct where the incident, or the majority of incidents, that gave rise to the cause of action occurred;
(c) In the county and precinct where the contract or agreement, if any, that gave rise to the cause of action was to be performed; or
(d) In the county and precinct where the property is located, in a suit to recover personal property.

If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

If a plaintiff files suit in an improper venue, the defendant may file a Motion to Transfer Venue under Rule 522. If the case is transferred, the plaintiff is responsible for the filing fees in the new court and is not entitled to a refund of any fees already paid.

RULE 522. MOTION TO TRANSFER VENUE

(a) *Motion.* If a defendant wishes to challenge the venue the plaintiff selected, the defendant may file a motion to transfer venue. This motion must be filed no later

than the 20th day after the day the defendant's answer is filed under Rule 516, and must contain a sworn statement that the venue chosen by the plaintiff is improper. The motion must also contain a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to do so, the court must inform the defendant of the defect and allow the defendant 10 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(b) *Hearing.*

(1) *Procedure.*

(A) *Judge to Set Hearing.* In response to a motion to transfer venue, the judge shall set a hearing at which the motion will be considered.

(B) *Response.* A plaintiff may file a response to a defendant's motion to transfer venue.

(C) *Evidence and Argument.* The parties may present evidence and make legal arguments at the hearing. The defendant presents evidence and argument first. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system. Written documents offered by the parties may also be considered by the judge at the hearing

(2) *Judge's Decision.* The judge must either grant or deny the motion to transfer venue. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(3) *Further Consideration of Judge's Ruling.*

(A) *Motions for Rehearing.* Motions for rehearing of the judge's ruling on venue are not permitted.

(B) *Appeal.* No interlocutory appeal of the judge's ruling on venue is permitted.

(4) *Time for Trial of the Case.* No trial shall be held until at least the 15th day after the judge's ruling on the motion to transfer venue.

(c) *Order.* If the motion to transfer venue is granted, the court must issue an order of transfer stating the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the cause,

certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the cause, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and that the plaintiff has 10 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay, as described in Rule 509. Failure to do so will result in the case being dismissed without prejudice.

RULE 523. FAIR TRIAL VENUE CHANGE

If a party believes they cannot get a fair trial in a specific precinct or before a specific judge, they may file a sworn statement stating such, and specifying if they are requesting a change of location or a change of judge. This statement must be filed no less than seven days before trial, unless the sworn statement shows good cause why it was not so filed. If the party seeks a change in presiding judge, the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. If the party seeks a change in location, the case shall be transferred to any other precinct in the county requested by the defendant. If no specific precinct is requested, it shall be transferred to the nearest justice court in the county. If there is only one justice of the peace precinct in the county, then the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in Eviction Cases, the only remedy available is a change in presiding judge.

A party may apply for relief under this rule only one time in any given lawsuit.

RULE 524. CHANGE OF VENUE BY CONSENT

The venue shall also be changed to the court of any other justice of the peace of the county, or any other county, upon the written consent of all parties or their attorneys, filed with the court.

RULE 511. ISSUANCE AND FORM OF CITATION

(a) *Issuance.* When a petition is filed with a justice court to initiate a suit, the clerk must promptly issue a citation and deliver the citation as directed by the requesting party. The party filing the petition is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(c) *Form.* The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;
(3) contain the name and location of the court;
(4) show the date of filing of the petition;
(5) show the date of issuance of the citation;
(6) show the file number and names of parties;
(7) state the plaintiff's cause of action and relief sought;
(8) be directed to the defendant;
(9) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;
(10) contain the time within which the defendant is required to file a written answer with the court issuing citation;
(11) contain the address of the court; and
(12) must notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

(c) *Notice.* The citation shall include the following notice to the defendant: "*You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Generally, your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday.* ***Do not ignore these papers.*** *If you do not file an answer by the due date, a default judgment may be taken against you. For further guidance, consult Rules of Civil Procedure 500-575, which are available online at* ***www.therules.com*** *and also at the court listed on this citation.*" *If a statement of inability to pay has been filed by the plaintiff in this suit, you may have the right to contest that statement.*

(d) **Copies.** The party filing the petition shall provide enough copies to be served on each defendant. If they fail to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 512. SERVICE

The plaintiff is responsible for ensuring that the defendant is served with the citation, the petition and all documents filed with the petition. However, the plaintiff, or any other person with an interest in the case, **MAY NOT** directly serve the papers on the defendant. Instead, a plaintiff may have a defendant served with the citation by any of the following methods:

(a) Request the sheriff or constable to serve the defendant with the citation, the petition and all documents filed with the petition via personal delivery. The plaintiff must pay the service fee or provide a sworn statement that they are unable to pay it and why they are unable to.

(b) Request the court, sheriff or constable to serve the defendant with the citation, the petition and all documents filed with the petition via registered mail or certified mail, return receipt requested, restricted delivery requested. The plaintiff must pay a service fee that may not be higher than is necessary to pay the expenses of providing the services.

(c) Employ a certified private process server to serve the defendant with the citation, the petition and all documents filed with the petition via personal delivery, registered mail, or certified mail, return receipt requested, restricted delivery requested.

(d) File a written request with the court to allow any other uninterested party who is at least 18 years of age to serve the defendant with the citation, the petition and all documents filed with the petition via personal delivery, registered mail, or certified mail, return receipt requested, restricted delivery requested. If the court approves the request, the uninterested party may serve the defendant in any of the above listed methods.

If the method utilized is through registered mail or certified mail, return receipt requested, the defendant's signature must be present acknowledging receipt in order for the service to be valid. Additionally, a return of service must be completed as provided by Rule 575.

RULE 513. ALTERNATIVE SERVICE

If the methods under Rule 512 are insufficient to effect service on the defendant, the plaintiff, or the constable, sheriff, or certified process server if utilized, may make a request for alternative service. This request must include a sworn statement detailing the methods attempted under Rule 512. The request shall be that the citation, petition and documents filed with the petition be:

(a) mailed first class mail to the defendant, and also left at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age, or

(b) mailed first class mail to the defendant, and also served by any other method that the movant feels is reasonably likely to provide the defendant with notice of the suit.

The judge shall determine if the method requested is reasonably likely to provide the defendant with notice of the suit, and if so, shall approve the service. If not, the requestor can request a different method.

RULE 514. SERVICE BY PUBLICATION

In the event that service of citation by publication is necessary, the process is governed by Rules 109-117 of the Rules of Civil Procedure.

RULE 515. SERVICE OF PAPERS OTHER THAN CITATION

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under these rules of civil procedure, other than the citation, may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify and may be served by:

(a) delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, in person or by agent;

(b) courier receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail will be complete when the document is properly addressed and deposited in the United States mail, postage prepaid;

(c) fax to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day;

(d) sending an email message to an email address expressly provided by the receiving party, if the party has consented to email service. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day; or,

(e) by such other manner as the court in its discretion may direct.

If service is effectuated by mail, three days will be added to the length of time a party has to respond to the document.

The party or its attorney of record must state in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or its attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice will be proof of service.

However, a party may offer evidence or testimony that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

RULE 516. ANSWER FILED

(a) A defendant must file an answer to a lawsuit with the court and must also serve a copy of the answer on the plaintiff as provided by Rule 515. Generally, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition. If the 14th day is a Saturday, Sunday, or legal holiday, the defendant's answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Also, if the court closes before 5:00 PM on the day the answer is due under this rule, the answer is due on the next business day.

(b) *When the Defendant is Served by Publication.* A defendant served by publication must file an answer to a lawsuit with the court and must also serve a copy of the answer on the plaintiff as provided by Rule 515. Generally, the defendant's answer is due by the end of the 42nd day after the day the citation was first published. If the 42nd day is a Saturday, Sunday, or legal holiday, the defendant's answer is due by the end of the first day following the 42nd day that is not a Saturday, Sunday, or legal holiday. Also, if the court closes before 5:00 PM on the day the answer is due under this rule, the answer is due on the next business day.

RULE 517. GENERAL DENIAL

A general denial of the plaintiff's cause of action is sufficient to constitute an answer or appearance and does not bar the defendant from raising specific defenses at trial. The defendant's appearance must be noted on the court's docket.

RULE 518. COUNTERCLAIM

A defendant who seeks relief from a plaintiff arising from the same transaction or occurrence that is the subject matter of the plaintiff's suit must file a counterclaim if the relief sought is within the jurisdiction of the justice court. The defendant may file a counterclaim if they seek any other relief from the plaintiff that is within the jurisdiction of the justice court. The counterclaim petition must follow the requirements of Rule 509, including the requirement of a filing fee or a sworn statement of inability to pay the fees to the court where the initial suit is pending. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim on the plaintiff and all other parties as provided by Rule 515.

RULE 519. CROSS-CLAIM

A plaintiff seeking relief against a co-plaintiff, or a defendant seeking relief against a co-defendant may file a cross-claim. The filing party must include all information in its petition that is required under Rule 509, and it must pay a filing fee or provide a sworn statement of inability to pay the fees to the court where the initial suit is pending. A citation must be issued and served as provided by Rule 512 on any party that has not yet filed a petition or an answer, as appropriate. A citation is not necessary if the party filed

against has filed a petition or an answer, but the filing party must serve the cross-claim as provided by Rule 515.

RULE 520. THIRD-PARTY CLAIM

A defendant seeking to bring another party into a suit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 509, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 512.

RULE 521. INSUFFICIENT PLEADINGS

Any party may file a motion with the court asking that another party be required to clarify a pleading. The court shall determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If it is insufficient, the court shall order the party to amend the pleading, and shall set a date by which the party shall make the needed corrections. If the party fails to make the required corrections, its pleading may be dismissed.

SECTION 3. TRIAL

RULE 525. IF DEFENDANT FAILS TO ANSWER

If the defendant fails to file an answer by the due date listed in Rule 516, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that proper service did occur, the judge must proceed in the following manner:

(a) If the plaintiff's claim is based on a written instrument executed and signed by both parties, and a copy of this instrument has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the instrument and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge shall proceed to render judgment for the plaintiff in the requested amount, without necessity of a hearing. The plaintiff's attorney may also submit affidavits supporting an award of reasonable and necessary attorney's fees, if they are so entitled, and the court may also award those fees.

(b) If the suit is a Debt Claim case that is filed with all required documentation, as provided in Rule 578, the judge shall proceed to render judgment for the plaintiff in the requested amount, without necessity of a hearing. The plaintiff's attorney may also submit affidavits supporting an award of reasonable and necessary attorney's fees, if they are so entitled, and the court may also award those fees.

(c) In situations other than those described in (a) and (b) above, the plaintiff must request, orally or in writing, a default judgment hearing if it seeks the entry of a default judgment against the defendant. If the defendant files a written answer with the court before the default judgment is granted, the default judgment may not be awarded. If the defendant does not answer, the plaintiff must appear at the default judgment hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge shall render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge shall render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

RULE 526. SUMMARY DISPOSITION

(a) *Motion.* A party may file a motion with the court requesting judgment in its favor without a need for trial. A plaintiff's motion for summary disposition should state that there is no genuine dispute of any material fact in the case, and that it is therefore entitled to judgment as a matter of law. A defendant's motion for summary disposition should state that the plaintiff has no evidence of one or more essential elements of its claim against the defendant.

(b) *Hearing.* If a summary disposition motion is filed, the judge must hold a hearing, unless all parties waive the hearing in writing. Parties may respond to the motion orally at the hearing, unless the court orders them in writing to reduce their responses to writing, which may or may not be sworn, at the discretion of the court.

(c) *Order.* The court may enter judgment after the hearing as to an entire claim, or parts of a claim, as the evidence requires. The court should deny the motion if any material factual dispute exists.

RULE 527. SETTING

After the defendant answers, the case will be set on a pretrial docket or a trial docket at the discretion of the judge. The date, time, and place of this setting must be sent to all parties at their address of record no less than 45 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. All subsequent settings must be sent to both parties at their address of record.

RULE 528. CONTINUANCE

The judge, for good cause shown, may continue any setting pending before the court to some other time or day.

RULE 529. JURY TRIAL DEMANDED

Any party is entitled to a trial by jury. A party wishing to request a jury trial must pay the jury fee and submit a written request for a jury no later than the 20th day after the date the defendant's answer was filed. If the jury is not timely requested, the right to a jury is waived. If, after a case is docketed for a jury trial, the party who demanded the jury thereafter withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party withdrawing its jury demand is not entitled to a refund of the jury fee.

RULE 530. IF NO DEMAND FOR JURY

If no party timely demands a jury and pays the jury fee, the judge will try the cause without a jury.

RULE 531. PRETRIAL CONFERENCE

If all parties have appeared in a suit, any party may request, or the court may order a pretrial conference. Appropriate issues for this setting include:

(a) Discovery issues;
(b) The need for amendment or clarification of pleadings;
(c) The admission of facts and documents to streamline the trial process;
(d) Limitation on the number of witnesses at trial;
(e) Identification of facts, if any, which are not in dispute between the parties.
(f) Ordering the parties to mediation or other alternative dispute resolution services;
(g) The possibility of settlement;
(h) Trial setting dates that are amenable to the court and all parties;
(i) Appointment of interpreters, if needed;
(j) Any other issue that the court deems appropriate.

RULE 531a. ALTERNATIVE DISPUTE RESOLUTION

It is the policy of this state to encourage the peaceable resolution of disputes thru alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. It is the responsibility of judges and their court administrators to carry out this policy and develop an alternative dispute resolution system to encourage peaceable resolution in all justice court suits. For that purpose the judge may order any justice court case to mediation or another appropriate and generally accepted alternative dispute resolution process.

RULE 532. TRIAL SETTING

On the day of the trial setting, the judge must call all of the cases set for trial that day. If the plaintiff fails to appear when the cause is called in its order for trial, the judge may postpone or dismiss the suit. If the defendant fails to appear when the cause is called in its order for trial, the judge may postpone the cause, or may proceed to take evidence. If

the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered in favor of the defendant.

RULE 533. DRAWING JURY AND OATH

If no method of electronic draw has been implemented, the judge must write the names of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys.

After the draw, the judge must swear the panel as follows: "You, and each of you, do solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror, so help you God."

RULE 534. VOIR DIRE

The parties or their attorneys will be allowed to question jurors as to their ability to serve impartially in the given trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

RULE 535. CHALLENGE FOR CAUSE

If any party desires to challenge any juror for cause, such challenge will be made during voir dire. The party should explain to the judge why the juror will be prejudiced or biased, and therefore should be excluded from the jury. The judge will evaluate the questions and answers given and either grant or deny the challenge. When a juror has been challenged for cause, and the challenge has been sustained, the juror must be dismissed.

RULE 536. PEREMPTORY CHALLENGE

After challenges for cause are complete, the parties may make their peremptory challenges in the manner prescribed by the judge. Each party will be entitled to three peremptory challenges, which means they may select up to three jurors whom they may dismiss for any reason, or no reason at all, other than membership in a Constitutionally protected class.

RULE 537. THE JURY

After peremptory challenges have been made, the judge will call off the first remaining six names that have not been eliminated by a peremptory challenge or challenge for cause, and these six will constitute the jury to try the case.

RULE 538. IF JURY IS INCOMPLETE

If the jury by challenge for cause or peremptory challenges is left incomplete, the judge will direct the sheriff or constable to summon others to complete the jury; and the same proceedings will be had in selecting and impaneling such jurors as are had in the first instance.

RULE 539. JURY SWORN

When the jury has been selected, they must be sworn by the judge. The form of the oath must be in substance as follows: "***You and each of you do solemnly swear or affirm that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and the evidence, so help you God.***"

RULE 540. JUDGE MUST NOT CHARGE JURY

The judge must not charge the jury in any civil cause tried in his court before a jury.

RULE 541. JURY VERDICT

When the suit is for the recovery of specific articles, the jury must, if they find for the plaintiff, assess the value of each article separately, according to the proof presented at trial.

SECTION 4. JUDGMENT

RULE 545. JUDGMENT UPON JURY VERDICT

Where the case has been tried by a jury and a verdict has been returned by them, the judge will announce the same in open court and note it in the court's docket, and will proceed to render judgment thereon.

RULE 546. CASE TRIED BY JUDGE

When the case has been tried before the judge without a jury, the judge must announce the decision in open court and note the same in the court's docket and render judgment accordingly.

RULE 547. JUDGMENT

The judgment must be recorded at length in the judge's docket, and must be signed by the judge. The judgment is effective from the date of signature. The judgment must clearly state the determination of the rights of the parties in the subject matter in controversy and the party who must pay the costs, and must direct the issuance of such process as may be necessary to carry the judgment into execution.

RULE 548. COSTS

The successful party in the suit will recover its costs, except in cases where it is otherwise expressly provided.

RULE 549. JUDGMENT FOR SPECIFIC ARTICLES

Where the judgment is for the recovery of specific articles, their value must be separately assessed, and the judgment will be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed with interest at the prevailing post-judgment interest rate.

RULE 550. TO ENFORCE JUDGMENT

The court will cause its judgments to be carried into execution, and where the judgment is for personal property the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by contempt.

RULE 551. ENFORCEMENT OF JUDGMENT

Justice court judgments are enforceable in the same method as in county and district court, except as provided by applicable law.

SECTION 5. NEW TRIAL

RULE 555. SETTING ASIDE DEFAULT JUDGMENTS AND DISMISSALS

A plaintiff whose case is dismissed may file a motion within ten days of that dismissal seeking reinstatement. The plaintiff must serve the defendant with a copy of this motion no later than the next business day using a method approved under Rule 515. The court may reinstate the case on good cause shown.

A defendant against whom a default judgment is granted may file a motion within ten days of that judgment seeking the judgment to be set aside. The defendant must serve the plaintiff with a copy of this motion no later than the next business day using a method approved under Rule 515. The court may set aside the judgment and proceed with a trial setting on good cause shown.

If a court denies either of these motions, the party making the motion is entitled to appeal that decision as provided by SECTION 6, and will receive a trial de novo at county court if they successfully perfect the appeal.

RULE 556. NEW TRIALS

A party may file a motion for a new trial within ten days of the signing of judgment. They must give notice to the other party of this motion no later than the next business

day. The judge may grant a new trial upon a showing that justice was not done in the trial of the cause. A party does not need to file a motion for new trial in order to appeal.

RULE 557. ONLY ONE NEW TRIAL

Only one new trial may be granted to either party.

RULE 558. MOTION DENIED AS A MATTER OF LAW

If the judge has not ruled on a motion to set aside a dismissal or default judgment, or a motion for new trial, the motion is automatically denied at 5:00 PM on the 20th day after the day the judgment was signed.

SECTION 6. APPEAL

RULE 560. APPEAL

(a) *Plaintiff's Appeal.* If the plaintiff wishes to appeal the judgment of the court, the plaintiff or its agent or attorney shall file a bond in the amount of $500 with the judge no later than the 20th day after the judgment is signed or the motion for new trial, if any, is denied. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy such costs if judgment or costs be rendered against it on appeal.

(b) *Defendant's Appeal.* If the defendant wishes to appeal the judgment of the court, the defendant or its agent or attorney must file a bond with the judge no later than the 20th day after the judgment is rendered or the motion for new trial, if any, is denied. This bond is calculated by doubling the amount of the judgment rendered in justice court. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy the judgment which may be rendered against it on appeal.

(c) *Appeal Perfected.* When such bond has been filed with the court, the appeal will be held to be perfected. The appeal will not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same. This notice will be given by the court to which the cause has been appealed.

(d) *Notice Required.* Within five days following the filing of such appeal bond, the party appealing must give notice as provided in Rule 515 of the filing of such bond to all parties to

the suit who have not filed such bond. No judgment may be taken by default against any party in the court to which the cause has been appealed without first showing compliance with this rule.

RULE 561. INABILITY TO PAY APPEAL COSTS

A party that wishes to appeal, but is unable to pay the costs of appeal, or secure adequate sureties, may appeal by filing a sworn statement of this inability no later than the 20th day after the judgment was signed or the motion for new trial, if any, was overruled. This statement must include the contents of section (a) below. The statement may be the same one that accompanied the filing of the petition, if one was filed at that time. Notice of this statement must be given by the court to the other party no later than the next business day.

(a) *Contents of the Statement of Inability to Pay.* The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, et.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

The statement must contain the following: "I am unable to pay court costs. I verify that the statements made in this statement are true and correct." The statement shall be sworn before a notary public or other officer authorized to administer oaths or signed under penalty of perjury. If the party is represented by an attorney on a contingent fee basis, due to the party's indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party.

(b) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services because of the party's indigency, without contingency, and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of inability to pay accompanied by an attorney's IOLTA certificate may not be contested.

(c) *Contest.* The sworn statement is presumed true and will be accepted to allow the appeal unless the opposing party files a contest within five days after receiving notice of the statement. If contested, the judge must hold a hearing to determine the plaintiff's ability to pay. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge should make a written finding as to the inability of the appellant to pay. If the judge rules that the party desiring to appeal is able to pay the costs of appeal, the party desiring to appeal may appeal the judge's ruling to the county court

within five days of the judge's ruling, or may post an appeal bond complying with Rule 560 with the justice court within five days of the judge's ruling.

(d) *Appeal of Ruling.* If the decision is appealed by the appealing party, the judge shall send all papers to the county court. The county court shall set a day for hearing, not later than ten days after the appeal, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice of the peace to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules. If the county court denies the appeal, the party will have five days to post an appeal bond that satisfies Rule 560 in order to perfect its appeal.

RULE 563. TRANSCRIPT

Whenever an appeal has been perfected from the justice court, the judge who made the order, or the judge's successor, must immediately make out a true and correct copy of all the entries made on the docket in the cause, and certify thereto officially, and immediately send it together with a certified copy of the bill of costs taken, and the original papers in the cause, to the clerk of the county court, or other court having jurisdiction.

RULE 564. NEW MATTER MAY BE PLEADED

No new ground of recovery may be set up by the plaintiff, nor may any set-off or counterclaim be set up by the defendant which was not pleaded in the justice court.

RULE 565. TRIAL DE NOVO

The cause shall be tried de novo in the county court.

SECTION 7. ADMINISTRATIVE RULES FOR JUDGES, COURT PERSONNEL AND SERVERS OF PROCESS

RULE 570. PLENARY POWER

A justice court loses plenary power over a case at any of the following times:

(a) An appeal is perfected;

(b) 20 days have expired since the judgment was signed if no motion for new trial was filed; or

(c) 20 days have expired since the motion for new trial was overruled.

RULE 571. FORMS

A justice court may provide blank forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

RULE 572. DOCKET

Each justice of the peace must keep a civil docket, which may be maintained electronically, in which judge will enter:

(a) The title of all suits commenced before the court.

(b) The time when the first process was issued against the defendant, when returnable, and the nature of that process.

(c) The time when the parties, or either of them, appeared before the court, either with or without a citation.

(d) A copy of the petition filed by plaintiff, and any documents filed with the petition.

(e) Every adjournment, stating at whose request and to what time.

(f) The time when the trial was had, stating whether the same was by a jury or by the judge.

(g) The verdict of the jury, if any.

(h) The judgment signed by the judge and the time of signing same.

(i) All applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date thereof.

(j) The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, the judge must note such return on said docket, with the manner in which it was executed.

(k) All stays and appeals that may be taken, and the time when taken, the amount of the bond and the names of the sureties.

The judge must also keep such other dockets, books and records as may be required by law or these rules, and must keep a fee book in which shall be taxed all costs accruing in every suit commenced before the court.

RULE 573. ISSUANCE OF WRITS

Every writ from the justice courts must be issued by the judge, be in writing and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or

party upon whom it is to be served, be made returnable to some regular term of court, and note the date of its issuance.

RULE 574. WHO MAY SERVE AND METHOD OF SERVICE

No person who is a party to or interested in the outcome of a suit may serve any process, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a writ that requires the actual taking possession of a person, property, or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. No fee may be imposed for issuance of an order authorizing a person to serve process.

RULE 575. DUTY OF OFFICER OR PERSON RECEIVING AND RETURN OF CITATION

(a) The officer or authorized person to whom process is delivered must endorse on the process the date and hour on which he or she received it, and execute and return the same without delay.

(b) The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.

(c) The return, together with any document to which it is attached, must include the following information:

(1) the cause number and case name;
(2) the court in which the case is filed;
(3) a description of what was served;
(4) the date and time the process was received for service;
(5) the person or entity served;
(6) the address served;
(7) the date of service or attempted service;
(8) the manner of delivery of service or attempted service;
(9) the name of the person who served or attempted service;
(10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and
(11) any other information required by rule or law.

(d) When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(e) When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and

the cause of failure to execute it, and where the defendant is to be found, if ascertainable.

(f) The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____, and my address is (Street) (City) (State) (Zip Code) (County), and I declare under penalty of perjury that the foregoing is true and correct.
Executed in _____County, State of _____, on the ____day of (Month), (Year)

_____
Declarant"

(g) Where citation is executed by an alternative method as authorized by Rule 513, proof of service must be made in the manner ordered by the court.

(h) The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(i) No default judgment may be granted in any cause until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under Rule 513, has been on file with the clerk of the court three (3) days, exclusive of the day of filing and the day of judgment.

SECTION 8. DEBT CLAIM CASES

RULE 576. SCOPE

(a) This section applies to:
(1) Any financial institution seeking to collect on an alleged consumer debt;
(2) Any collection agency seeking to collect on an alleged consumer debt;
(3) Any assignee seeking to collect on an alleged consumer debt;
(4) Any original creditor who extended credit on a revolving or open-end account and seeks to collect on that debt; and
(5) Any original creditor who is primarily engaged in the business of lending money at interest and seeks to collect the debt on the money loaned.

(b) This chapter does not apply to:
(1) Any original creditor who is not primarily engaged in the business of lending money at interest and who is also not a financial institution; and

(2) An original creditor or assignee seeking to collect a deficiency balance after the disposition of collateral in a consumer transaction involving a secured debt.

RULE 577. PLAINTIFFS PLEADINGS

(a) The following information must be set forth in the petition of a suit filed under this chapter:

(1) The defendant's name and address as appearing on the original creditor's records;
(2) The name of the original creditor;
(3) The original account number;
(4) The date of origination/issue of the account;
(5) The date and amount of the last payment;
(6) The charge-off date and amount;
(7) If the plaintiff seeks post-charge-off interest, then the petition shall state whether the rate is based on contract default or statute, and the amount of post-charge-off interest claimed;
(8) If the plaintiff is represented by an attorney, then the attorney's name, address, and telephone number; and
(9) Whether the plaintiff is the original creditor.

(b) If the plaintiff is not the original creditor, the petition shall also state:
(1) The date on which the debt was assigned to the plaintiff;
(2) The name of each previous owner of the account and the date on which the debt was assigned to that owner.

(c) If the plaintiff is a third party debt collector, the debt collector must plead that it has complied with Texas Finance Code Section 392.101 requiring a bond. The petition should include the name of the bonded debt collector and the date it filed a copy of the bond with the Texas Secretary of State.

RULE 578 DEFAULT JUDGMENTS

(a) *Default Judgment Without Hearing.* The following documents may be attached to the petition, and must be served on the defendant before a default judgment can be granted without a hearing:

(1) A copy of the contract, promissory note, charge-off statement or an original document evidencing the original debt which must contain a signature of the defendant. This document shall be supported by affidavit from the original creditor.

(2) If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then a copy of the card member agreement in effect at the time the card was charged-off and copies of documents generated when the credit card was actually used must be attached and shall be supported by affidavit from the original creditor.

(b) *Required Documents.* To support a default judgment, these documents must include:

(1) A document signed by the defendant evidencing the debt or the opening of the account; or
(2) a bill or other record reflecting purchases, payments, or other actual use of the credit card or account by the defendant; or
(3) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(c) *Requirements of Affidavit.* Any affidavit from the original creditor must state:

(1) that they were kept in the regular course of business,
(2) that it was the regular course of business for an employee or representative of the creditor with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information to be included in such record;
(3) the record was made at or near the time or reasonably soon thereafter; and
(4) the records attached are the original or exact duplicates of the original.

(d) *Default Judgment after Hearing.* If the plaintiff does not file with the court and serve on the defendant the documents required above, and the defendant files a timely answer, the court will proceed with the case as usual. If the plaintiff does not file with the court and serve on the defendant the documents required above, and the defendant fails to file a timely answer, the case will proceed under Rule 525(c). If a defendant who had failed to answer appears at a default judgment hearing, the judge must reset the case or may proceed with trial on the merits, if all parties agree to proceed.

(e) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly.

SECTION 9. PROCEEDINGS TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY RESIDENTIAL RENTAL PROPERTY

RULE 737.1. APPLICABILITY OF RULE

This rule applies to a suit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or

remedy a condition materially affecting the physical health or safety of an ordinary tenant. Rules 500-575 also apply to the extent they are not inconsistent with this rule.

RULE 737.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) *Contents of Petition.* The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone
number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the

government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies.* The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments.* A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

RULE 737.3. CITATION: ISSUANCE; APPEARANCE DATE

(a) *Issuance.* When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) *Answer Date.* The answer date on the citation must not be earlier than the seventh day nor later than the fourteenth day after the date of service of the citation. For purposes of this rule, the answer date on the citation is the trial date.

RULE 737.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 512 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least six days before the answer date. At least three days before the answer date, the person serving the citation must return the citation, with the action written on the citation, to the justice of the peace who issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) *Alternative Service of Citation.*
(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the sheriff, constable, or other, person authorized by Rule 512 is unsuccessful in serving the citation on the landlord under (a), the sheriff, constable, or other person authorized by Rule 512 must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice

of the name and business street address of the landlord's management company; or

(B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the sheriff, constable, or other person authorized by Rule 512 is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the sheriff, constable, or other person authorized by Rule 512 must execute and file in the justice court a sworn statement that the sheriff, constable, or other person authorized by Rule 512 made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the sheriff, constable, or other person authorized by Rule 512 to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of sixteen years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and any attachments to the front door or main entry to the business street address;

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and
(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least six days before the answer date. At least one day before the answer date, the citation, with the action written thereon, must be returned to the judge who issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 737.5. REPRESENTATION OF PARTIES

Parties may represent themselves. A party may also be represented by an authorized agent, but nothing in this rule authorizes a person who is not an attorney licensed to practice law in this state to represent a party before the court if the party is present.

RULE 737.6. DOCKETING AND TRIAL; FAILURE TO APPEAR; CONTINUANCE

(a) *Docketing and Trial.* The case shall be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) *Failure to Appear.*

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge shall render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the suit.

(c) *Continuance.* The judge may continue the trial for good cause shown. Continuances should be limited, and the case should be reset for trial on an expedited basis.

RULE 737.7. DISCOVERY

Reasonable discovery may be permitted. Discovery is limited to that considered appropriate and permitted by the judge and must be expedited. In accordance with Rule 215, the judge may impose any appropriate sanction on any party who fails to respond to a court order for discovery.

RULE 737.8. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) *Amount.* Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $10,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a suit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content.*

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice,

in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 515, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service.* The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 515 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 512 , the sheriff, constable, or other person authorized by Rule 512 who serves the landlord must promptly file a certificate of service in the justice court.

(d) *Failure to Comply.* If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Government Code.

RULE 737.9. COUNTERCLAIMS

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 737.10. POST-JUDGMENT MOTIONS: TIME AND MANNER; DISPOSITION; NUMBER

(a) *Time and Manner.* A party may file a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution. The motion must be in writing and filed within ten days after the date the justice signs the judgment or dismissal order.

(b) *Disposition.*

(1) If the justice grants a motion for new trial or a motion to set aside a default judgment
or a dismissal for want of prosecution, the resulting trial must occur within ten days
after the date the justice signs the order granting the motion.

(2) If the justice grants a motion to amend the judgment, the justice must amend the
judgment within fifteen days after the date the justice signs the original judgment.

(3) If the justice does not rule on a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution with a written, signed order within fifteen days after the justice signs the judgment or dismissal order, the motion is considered overruled by operation of law on expiration of that period.

(c) *Number.* A party may file only one motion for new trial, one motion to amend the judgment, and one motion to set aside a default judgment or a dismissal for want of prosecution.

RULE 737.11. PLENARY POWER

The justice court's plenary power expires when a party perfects an appeal. If a party does not perfect an appeal, the justice court has plenary power to grant a new trial, amend or vacate the judgment, or set aside a default judgment or a dismissal for want of prosecution within fifteen days after the date the judge signs the judgment or dismissal order.

RULE 737.12. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL

(a) *Time and Manner.* Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within twenty days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within twenty days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) *Perfection.* The posting of an appeal bond is not required for an appeal under these rules, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) *Effect.* The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) *Trial on Appeal.* On appeal, the parties are entitled to a trial de novo. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 737.13. EFFECT OF WRIT OF POSSESSION

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

Comment to 2010 change: *The heading of repealed Rule 737, regarding bills of discovery, is deleted. New Rule 737 is promulgated pursuant to Senate Bill 1448 to provide procedures for a tenant's request for relief in a justice court under Section 92.0563(a) of the Property Code. Except when otherwise specifically provided, the terms in Rule 737 are defined consistent with Section 92.001 of the Property Code. All suits must be filed in accordance with the venue provisions of Chapter 15 of the Civil Practice and Remedies Code.*

SECTION 10. EVICTION CASES

RULE 738. COMPUTATION OF TIME FOR EVICTION CASES

All time periods in this section refer to calendar days, including periods of five days or less. The day of an act, event, or default shall not count for any purpose. If a time period ends on a Saturday, Sunday or legal holiday, it shall be extended to the next day that is not a Saturday, Sunday or legal holiday. If the final day of any specified time period falls on a day that the court closed before 5:00 PM, the time period is extended to the court's next business day. A document may be filed by mail, but must be received by the court

on or before the due date. A document may be filed by fax, but must be faxed no later than 5:00 pm on the date that the document is due, and a document filed by fax must also be filed by mail, postmarked on or before the due date, or personally delivered to the court within five days.

RULE 739. PETITION

A petition in an eviction case must be sworn to by the plaintiff, and must contain:

(a) A description of the premises that the plaintiff seeks possession of;
(b) A description of the facts and the grounds for eviction;
(c) A description of when and how notice to vacate was delivered;
(d) The total amount of rent sought by the plaintiff, if any;
(e) Attorneys fees, if applicable, if any.

The petition must be filed in the precinct where the property is located. If it is filed in a precinct other than the precinct where all or part of the property is located, the judge shall dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

A plaintiff must name as defendants in a petition all tenants obligated under a lease residing at the premises who plaintiff seeks to evict. No judgment or writ of possession shall issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and not served with citation pursuant to these rules, except that a writ may be executed against occupants not obligated under a lease but claiming under the tenant or tenants.

RULE 740. MAY SUE FOR RENT

A suit for rent may be joined with an eviction case, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court in rendering judgment in the eviction case, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court.

RULE 741. CITATION

When the plaintiff or his authorized agent shall file his written sworn petition with such justice court, the court shall immediately issue citation directed to the defendant or defendants commanding them to appear before such judge at a time and place named in such citation, such time being not more than fourteen days nor less than seven days from the date of filing of the petition. The citation shall include a copy of the sworn petition and all documents filed by the plaintiff, and shall inform the parties that, upon timely request and payment of a jury fee no later than three days before the date set for trial in the citation, the case shall be heard by a jury, and must contain all warnings provided for in Chapter 24 of the Texas Property Code. Additionally, it should include the following

statement: "For additional assistance, consult Rules of Civil Procedure 500-575 and 738-755. These rules may be viewed at *www.therules.com* and are also available at the court listed on this citation."

Note to Rules Committee RE: RULE 742. ***The Task Force was evenly split on whether we should eliminate this rule and thus eliminate Immediate Possession Bonds, or keep it as revised below. No other ruled generated so much discussion and strong opinion among the Task Force, although all members agreed that current Rule 740 of the TRCP is very problematic. Those who wished to eliminate this remedy felt that it is adverse to tenants rights, and is capable of being abused. Those who felt that we should keep it felt that it was an important remedy for landlords to protect their property in certain situations. In the end, we decided to present both our suggestions for revision and suggestions for removal and allow the Supreme Court to decide. Either solution would require minor changes in the Property Code. If this Rule is eliminated, so must Rule 750c and the clause at the end of Rule 749.***

RULE 742. REQUEST FOR IMMEDIATE POSSESSION

(a) *Request for Immediate Possession.* The plaintiff, at the time of filing the petition, may additionally file a sworn statement requesting immediate possession, alleging specific facts that should entitle the plaintiff to possession of the premises during any appeal. If the plaintiff files this statement it must also post a bond, in cash or surety, in an amount approved by the judge. The surety may be the landlord or its agent.

(b) *Calculation of Bond.* The judge shall determine the amount of the bond. This may be done with an ex parte hearing with the landlord, and should cover defendant's damages if a writ of possession is issued, and then later revoked upon appeal. The amount could include moving expenses, additional rent, loss of use, attorney fees, and court costs.

(c) *Notice to Defendant.* The defendant must be served a notice of the plaintiff's Request for Immediate Possession, including a copy of this statement in 12 point **bold** or underlined print: **"A request for immediate possession has been filed in this case. If judgment is rendered against you, you may only have 24 hours to move from this property after judgment. To preserve your right to remain in the property during an appeal, if any, you must post a counterbond in an amount set by the court. Contact the court IMMEDIATELY if you wish to post a counterbond. If this request has been improperly filed, you may be entitled to recover your damages from the plaintiff."**

(d) *Counterbond.* If the defendant seeks to post a counterbond, the court should set it in an amount that will cover the plaintiff's damages if the defendant maintains possession of the property during appeal. If the defendant posts a counterbond, in cash or in surety approved by the court, the case will proceed in the usual manner for eviction cases.

(e) *Default Judgment.* If the plaintiff is awarded a judgment by default, plaintiff will be awarded a writ of possession at any time after judgment is rendered upon request and payment of applicable fees, unless defendant has posted a counterbond as described in subsection (d).

(f) *Contested Hearing.* If the defendant appears for trial, and plaintiff is awarded judgment for possession, the judge shall proceed to hear evidence and argument from all parties regarding the issue of immediate possession. If it is determined that the plaintiff's interests will not be adequately protected during the normal appeal procedure, the judge may require that a defendant post a bond if the defendant wishes to remain in possession of the premises during appeal, if any. This bond can be a counterbond as described above in subsection (d), or an appeal bond as described by Rule 750. Unless the defendant posts a counterbond or perfects an appeal with a bond as described by Rule 750, the writ of possession shall be issued after the expiration of five days upon request of the plaintiff and payment of the applicable fees.

(g) *Forfeiture of Original Bond.* If the defendant is dispossessed of the property and subsequently is awarded possession at the county court, the defendant will be entitled to recover actual damages resulting from its exclusion, which damages may be awarded from a forfeiture of the plaintiff's original bond. If the defendant posts a counterbond and remains in possession, the county court will make a determination of the plaintiff's damages, if any, which may be awarded from a forfeiture of the defendant's counterbond.

RULE 743. SERVICE OF CITATION

The constable, sheriff, or other person authorized by written court order receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person, other than the plaintiff, over the age of sixteen years, at his usual place of abode, at least six days before the day set for trial; and no later than three days before the day assigned for trial he shall return such citation, with his action written thereon, to the court who issued the same.

RULE 743a. SERVICE BY DELIVERY TO PREMISES

If the sworn complaint lists all home and work addresses of the defendant which are known to the person filing the sworn complaint, and if it states that such person knows of no other home or work addresses of the defendant in the county where the premises are located, service of citation may be by delivery to the premises in question as follows:

If the officer receiving such citation is unsuccessful in serving such citation under Rule 743, the officer shall, no later than five days after receiving such citation, execute a sworn statement that the officer has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located as may be shown on the sworn complaint, stating the times and places of attempted service. Such sworn statement shall be filed by the officer with the judge who shall

promptly consider the sworn statement of the officer. The judge may then authorize service according to the following:

(a) The officer will place the citation, including the petition and all documents filed with the petition, inside the premises by placing it through a door mail chute or by slipping it under the front door; and if neither method is possible or practical, the officer will securely affix the citation to the front door or main entry to the premises.

(b) The officer will that same day or the next day deposit in the mail a true copy of such citation, including the petition and all documents filed with the petition, with a copy of the sworn complaint attached thereto, addressed to defendant at the premises in question and sent by first class mail;

(c) The officer will note on the return of such citation the date of delivery under (a) above and the date of mailing under (b) above; and

(d) Such delivery and mailing to the premises must occur at least six days before the day set for trial; and at least one day before the day assigned for trial he must return such citation with his action written thereon, to the court which issued the same. It shall not be necessary for the aggrieved party or his authorized agent to make request for or motion for alternative service pursuant to this rule.

RULE 744. DOCKETED

The cause will be docketed and tried as other cases. No eviction trial may be held less than six days after service under Rule 743 or 743a has been obtained. If the defendant files an answer but fails to appear for trial, the court will proceed to hear evidence from the plaintiff, and render judgment accordingly. If the defendant fails to appear at trial and fails to file an answer, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly.

RULE 745. DEMANDING JURY

Any party shall have the right of trial by jury, by making a request to the court at least three days before the day set for trial, and by paying a jury fee. Upon such request, a jury shall be summoned as in other cases in justice court.

RULE 746. TRIAL POSTPONED

For good cause shown by either party, the trial may be postponed not exceeding seven days. A continuance may exceed seven days if both parties agree in writing.

RULE 747. ONLY ISSUE

In eviction cases, the only issue shall be the right to actual possession; and the merits of the title shall not be adjudicated.

RULE 748. TRIAL

If no jury is demanded by either party, the judge will try the case. If a jury is demanded by either party, the jury will be empanelled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant as it shall find.

RULE 748a. REPRESENTATION BY AGENTS

In eviction cases for non-payment of rent or holding over beyond the rental term, the parties may represent themselves or be represented by their authorized agents who need not be attorneys. In eviction cases for any other reason, if a party is a corporation, it may be represented by its authorized agent who need not be an attorney. All other parties may either appear in person to represent themselves otherwise they must be represented by their attorney.

RULE 749. JUDGMENT AND WRIT

If the judgment or verdict be in favor of the plaintiff, the judge will give judgment for plaintiff for possession of the premises, costs, attorney's fees, and back rent, if any; and he must award a writ of possession upon demand of the plaintiff and payment of any required fees. If the judgment or verdict be in favor of the defendant, the judge will give judgment for defendant against the plaintiff for costs and attorney's fees, if any. No writ of possession may issue until the expiration of five days from the time the judgment is signed, except as provided by Rule 742.

A writ of possession may not be issued after the 30th day after a judgment for possession is signed, and a writ of possession expires if not executed by the 30th day after the date it is issued. If the 30th day falls on a Saturday, Sunday, or legal holiday, for the purpose of satisfying this rule, it will become the next day that is not a Saturday, Sunday or legal holiday.

RULE 750. MAY APPEAL

In appeals in eviction cases, no motion for new trial may be filed.

Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the judge within five days after the judgment is signed, a bond to be approved by said judge, and payable to the adverse party, conditioned that the appellant will prosecute its appeal with effect, or pay all costs and damages which may be adjudged against it. The judge will set the amount of the bond to include the items enumerated in Rule 753. Within five days following the filing of such bond, the party appealing shall give notice as provided in Rule 515 of the filing of such bond to the adverse party. No judgment shall be taken by default against the adverse

party in the court to which the cause has been appealed without first showing substantial compliance with this rule.

RULE 750a. INABILITY TO PAY APPEAL COSTS IN EVICTION CASES

(a) *Contents of Statement.* If a party wishes to appeal, but is unable to pay the costs of appeal, or secure adequate sureties, it may appeal by filing a sworn statement of its inability to pay the costs of appeal no later than the fifth day after the judgment was rendered. The justice court must make available a form that a person may use to comply with these requirements. Notice of this statement must be given by the court to the other party no later than the next business day. The statement must contain the following information:

(1) the tenant's identity;
(2) the nature and amount of the tenant's employment income;
(3) the income of the tenant's spouse, if applicable and available to the tenant;
(4) the nature and amount of any governmental entitlement income of the tenant;
(5) all other income of the tenant;
(6) the amount of available cash and funds available in savings or checking accounts of the tenant;
(7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;
(8) the tenant's debts and monthly expenses; and
(9) the number and age of the tenant's dependents and where those dependents reside

(b) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.

(c) *Contest.* The sworn statement is presumed to be true and will be accepted to allow the appeal unless the opposing party files a contest within five days after receiving notice of the statement. If the opposing party contests a statement not accompanied by an IOLTA certificate, the judge shall hold a hearing no later than the fifth day after the contest is filed. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge should make a written finding as to the inability of the appellant to pay. If the judge rules that the statement is denied, the party who filed it may appeal that decision by filing, within five days, a written contest with the justice court, which will then forward the matter and related documents to the county court for resolution, or the party may post an appeal bond complying with Rule 750 with the justice court within one day from the date the order denying the pauper's affidavit is signed.

(d) *Appeal of Decision.* If the decision is appealed, the judge shall send all papers to the county court. The county court shall set a day for a hearing, not later than five days after the appeal, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice of the peace to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules. If the county court denies the appeal, the party will have one day to post an appeal bond that satisfies Rule 750 in order to perfect its appeal.

RULE 750b. PAYMENT OF RENT DURING NONPAYMENT OF RENT APPEALS

(a) *Notice to Pay Rent into Registry.* If a tenant files a pauper's affidavit in an eviction for nonpayment of rent, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:

(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;

(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(3) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within five days of the date the tenant files the pauper's affidavit;

(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and

(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(b) *Failure to Pay Rent.* If a tenant fails to do comply with the notice in subsection (a), the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which will issue immediately and without hearing. The appeal will then be sent up to county court in the usual manner for cases with perfected appeals.

(c) *Payment of Rent During Appeal.* If an eviction case is based on nonpayment of rent, and the tenant appeals by paupers affidavit, the tenant must pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal. During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days of the due date under the terms of the rental agreement. If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court to be paid by the tenant during appeal, subject to either party's right to contest that determination under

Subsection (c).

(d) *Contest of Amount Paid by Tenant.* If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.

(e) *Objection to Ruling.* If the tenant objects to the justice court's ruling under Subsection (d) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e) *Contests at Same Hearing.* If either party files a contest under Subsection (d) and the tenant files a pauper's affidavit that is contested by the landlord, the justice court shall hold the hearing on both contests at the same time.

(f) *Remedies in County Court.* Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing. If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of possession. All hearings and motions under this rule shall be entitled to precedence in the county court.

RULE 750c. PAUPER'S AFFIDAVIT IN CASES WITH IMMEDIATE POSSESSION BONDS

If a tenant seeks to appeal a judgment of possession awarded in an eviction case where plaintiff filed a bond for immediate possession under Rule 742, and possession was granted to plaintiff by default, or awarded to the plaintiff following a contested hearing where the judge ordered the defendant to post a bond if the defendant seeks to appeal, the defendant may still perfect an appeal with a pauper's affidavit.

However, the defendant must post a counterbond as provided by Rule 742 if they wish to remain in possession of the premises during the appeal. If the defendant fails to do so, the court shall, upon request and payment of any applicable fee by the landlord, issue a writ of possession before sending the appeal to the county court

RULE 750c. APPEAL PERFECTED

When an appeal bond has been timely filed in conformity with Rule 750, or a pauper's affidavit approved in conformity with Rule 750a or 750b, the appeal shall be perfected.

RULE 751. FORM OF APPEAL BOND

The appeal bond authorized in the preceding article may be substantially as follows:

"The State of Texas,

"County of _____

"Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A.B., and against C.D., tried before , a justice of the peace of county, a judgment was rendered in favor of the said A.B. on the _____ day of _____, A.D. _____, and against the said C.D., from which the said C.D. has appealed to the county court; now, therefore, the said C.D. and his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him, provided the sureties shall not be liable in an amount greater than $_____, said amount being the amount of the bond herein.

"Given under our hands this _____ day of _____, A.D. _____."

RULE 752. TRANSCRIPT

When an appeal has been perfected, the judge must stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on the docket of the proceedings had in the case; and must immediately file the same, together with the original papers and any money in the court registry, including sums tendered pursuant to Rule 750b(a), with the clerk of the court having jurisdiction of such appeal. The clerk must docket the cause, and the trial will be de novo. The clerk must immediately notify both appellant and the adverse party of the date of receipt of the transcript and the docket number of the cause. Such notice must advise the defendant of the necessity for filing a written answer in the county court when the defendant has pleaded orally in the justice court. The trial, as well as all hearings and motions, will be entitled to precedence in the county court.

RULE 753. DAMAGES ON APPEAL

On the trial of the cause in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and reasonable attorney fees in the justice and county courts provided, as to attorney fees, that the

requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed such bond.

RULE 754. JUDGMENT BY DEFAULT ON APPEAL

Said cause will be subject to trial at any time after the expiration of eight full days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, the same shall be taken to constitute his appearance and answer in the county court, and such answer may be amended as in other cases. If the defendant made no answer in writing in the justice court, and if he fails to file a written answer within eight full days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 755. WRIT OF POSSESSION ON APPEAL

The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Texas Property Code 24.007 and Texas Rule of Appellate Procedure 24.

John Steinsiek
P. O. Box 452
Hurst, Texas 76053
817-366-6835

May 11, 2012

Marisa Secco
P.O. Box 12248
Austin, Texas 78711

Ref: Justice Court Rule Changes

Dear Ms Secco

I would like to introduce myself before you review my comments on the rule changes.

I am the current Special Skills Discipline Chair of the Civil Process and Liability Chapter (Eleven) of the Basic Peace Officer Course for the Texas Commission on Law Enforcement Officer Standards and Education. I am author of the LexisNexis publication "Civil Process for Texas" which will be in its Eight edition this year. I currently teach a Forty Hour Civil Process Course for several colleges and academies.

My suggested changes are designed to keep uniform standards for return and service of documents as well as follow the laws passed by the legislature in reference to the issues I am addressing.

My suggested language changes are printed in Red. My justifications are printed in Blue.

If there are any questions about my submission or other issues please contact me by phone or email (johnsteinsiek@yahoo.com).

Respectfully submitted

John Steinsiek

John Steinsiek

Proposed Changes

RULE 503. COMPUTATION OF TIME AND TIMELY FILING

In these rules days mean calendar days. Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules. The day of an act, event, or default shall not count for any purpose. If the last day of any specified time period falls on a Saturday, Sunday or legal holiday, the time period is extended until the next day that is not a Saturday, Sunday or legal holiday. If the last day of any specified time period falls on a day during which the court is closed before 5:00 PM, the time period is extended to the court's next business day. Any document required to be filed or served by a given date is considered timely filed or served if deposited in the U.S. mail on or before that date, and received within ten days of the due date. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.
The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

This would make the computation of time consistent between rule 4 and rule 503.

In proposed rule 743a and current rule 742a, both state the officer shall, no later than five days after receiving such citation, execute a sworn statement that the officer has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located as may be shown on the sworn complaint, stating the times and places of attempted service.

Three judges in the same county have the following requirements before delivery to the premises may be granted. In all three courts the citation has the assigned court date printed on the citation. The officer may receive the citation with the court date that is 6 days away. Therefore the citation is good only for that one day.
Judge #1. The officer shall make two attempts
Judge #2. The officer shall make three attempts on two separate days
Judge #3. The officer shall make four attempts, one before 8am, one after 5 pm and two at any other time and the officer may not submit the request until he has had the citation three days.

An officer receives a citation on Friday. The citation has a court date that only allows service on that day. The service date must be no less than 6 days from the court date (Old Rule 742 – New Rule 743).
Friday is day 1, Saturday is day 2 (court is not open, Sunday is day 3 (court is not open), Monday (a Holiday) is day 4 (court is not open) and the officer has to return the citation to the court for a re date on Tuesday which is day 5. They return the citation to the officer on Wednesday –day 6. Judge 1 may approve the alternate service because 2 attempts were made on Friday.. Judge 2 and 3 would say the 5 day window for delivery to the premises has closed and is no longer available.

RULE 737.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 512 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least six days before the answer date. At least three days before the answer date, the person serving the citation must return the citation, with the action written on the citation, or on a return attached to the citation that complies with rule 575, to the justice of the peace who issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

For many reasons courts are slow to update returns and forms to meet new requirements. To make this rule consistent with other return rules the servers should have the option to attach a return as provided in rule 107, 536a and new rule 575.

RULE 738. COMPUTATION OF TIME FOR EVICTION CASES

All time periods in this section refer to calendar days, Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules The day of an act, event, or default shall not count for any purpose. If a time period ends on a Saturday, Sunday or legal holiday, it shall be extended to the next day that is not a Saturday, Sunday or legal holiday. If the final day of any specified time period falls on a day that the court closed before 5:00 PM, the time period is extended to the court's next business day. A document may be filed by mail, but must be received by the court on or before the due date. A document may be filed by fax, but must be faxed no later than 5:00 pm on the date that the document is due, and a document filed by fax must also be filed by mail, postmarked on or before the due date, or personally delivered to the court within five days.

This change would make a uniform standard for all computations of times within the rules. The same example for rule 503 applies to this rule.

RULE 742. REQUEST FOR IMMEDIATE POSSESSION

(e) *Default Judgment.* If the plaintiff is awarded a judgment by default, plaintiff will be awarded a writ of possession at any time after judgment is rendered upon request and payment of applicable fees, unless defendant has posted a counterbond as described in subsection (d). if the counter bond is not posted The Sheriff or Constable shall execute a Writ of Possession under this section in accordance with Sections 24.0061(d) through (h) of the Texas Property Code. The landlord shall bear the costs of issuing and executing the Writ of Possession.

This statement is taken from the Property code 24.0054 (a-1). The original legislation said the Writ of Possession would be executed immediately. The above language replaced the word immediately in the bill passed by the legislature.

RULE 743a. SERVICE BY DELIVERY TO PREMISES

(c) The officer will note on the return of such citation, or on a return attached to the citation that complies with rule 575 the date of delivery under (a) above and the date of mailing under (b) above; and

For many reasons courts are slow to update returns and forms to meet new requirements. To make this rule consistent with other return rules the servers should have the option to attach a return as provided in rule 107, 536a and new rule 575.

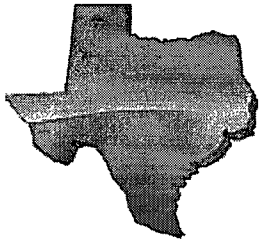
RULE 750c. PAUPER'S AFFIDAVIT IN CASES WITH IMMEDIATE POSSESSION BONDS

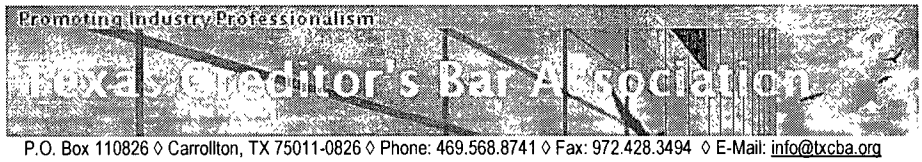
If a tenant seeks to appeal a judgment of possession awarded in an eviction case where plaintiff filed a bond for immediate possession under Rule 742, and possession was granted to plaintiff by default, or awarded to the plaintiff following a contested hearing where the judge ordered the defendant to post a bond if the defendant seeks to appeal, the defendant may still perfect an appeal with a pauper's affidavit.

However, the defendant must post a counterbond as provided by Rule 742 if they wish to remain in possession of the premises during the appeal. If the defendant fails to do so, the court shall, upon request and payment of any applicable fee by the landlord, issue a writ of possession before sending the appeal to the county court.

If the counter bond is not posted The Sheriff or Constable shall execute a Writ of Possession under this section in accordance with Sections 24.0061(d) through (h) of the Texas Property Code. The landlord shall bear the costs of issuing and executing the Writ of Possession.

This would create a consistent procedure through the rules for the execution of the Writ of Possession in accordance with the legislation that went into effect January 1, 2012.





P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

March 14, 2012

The Honourable Russell B. Casey
Chairman, Texas Supreme Court
Justice Court Task Force
Southlake Government Complex
1400 Main St. Suite 220
Southlake, Texas 76092

Re: Texas Creditor's Bar Response to the Proposed Rules Under Consideration by The Supreme Court Task Force

Dear Judge Casey and
Honourable Members of the Supreme Court Justice Court Task Force:

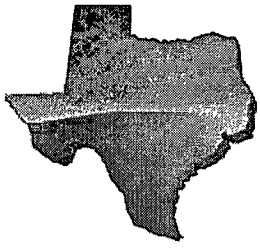
This response is made by the Texas Creditor's Bar Association ("TXCBA") to the Justice Court Rules Task Force appointed by order of the Texas Supreme Court on September 17, 2011 ("Task Force"), and pertains to the proposed rules governing debt collection cases in Justice Courts first circulated on or about February 8, 2012, and as subsequently revised on March 7, 2012 (the "Proposed Rules"). Members of the TXCBA Executive Committee have had an opportunity to review the Proposed Rules and to speak with various members of the Task Force regarding the legal basis and practical effect of these rules.

The TXCBA believes that it is necessary to convey to the Task Force our extreme concern over these rules and their effect, should they be enacted. By separate document, the TXCBA will address the specifics of each rule and provide to the Task Force its recommendations.

The critique which follows is based upon four tenets. It is the position of the TXCBA that the Proposed Rules:

- cannot be implemented by the justice courts;
- do not treat all parties equally;
- run contrary to the clear legislative mandate; and
- are contrary to established Texas law.

The details of our concerns follow:



Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The Proposed Rules Cannot Be Implemented

The Proposed Rules are so unwieldy that they cannot be implemented in a fair or efficient manner. The TXCBA proposed an alternative procedure that conformed to current case law and where creditors could elect to put on a *prima facie* showing in exchange for consistency amongst the hundreds of justice courts in considering the evidence and rendering default judgments. The Proposed Rules have turned that on its head; it has made mandatory a system whereby *justice court clerks* are the arbiters of justice, by denying creditors even an opportunity to have citation issued unless a laundry list of requirements and evidence is met to the clerk's or the judge's satisfaction.

The Proposed Rules also would likely not survive a constitutional challenge. The Proposed Rules prohibit claims from being heard unless a creditor's entire case is proven up front, and effectively require third-party testimony for assignees before a plaintiff may even present its claim. No other state has such a requirement, because it bars a class of claimant access to the courts for no reason. Gone are confessions of judgment, friendly suits, and the typical result of a justice court suit: a settlement beneficial to both creditor and consumer, whereby the creditor takes less than is owed and the consumer cleans up his or her credit.

The practical effect of these rules would be to reduce case filings in the Justice Courts by somewhere between 50,000 and 100,000 cases statewide per year, with the commensurate loss of filing fees to each county and court. This is because the burdens placed upon the claimants by Rule 586, Plaintiff's Pleadings, would exceed either their ability or willingness to comply.

The Proposed Rules Do Not Treat All Parties Equally

Many of the pleading requirements and all of the documentation requirements included in the Rule 586 are not necessary to state a claim. The Proposed Rules shift the plaintiff's burden from that of articulating the legal and factual basis of a claim, to actually proving its case at the time of suit; and yet they go even further, to demand that a plaintiff defeat the defendant's affirmative defenses, verified denials, and possible counterclaims . . . ***all before the defendant is actually served.***

In short, the Proposed Rules scrap the adversarial system of justice that has been present in Texas and in the United States since their founding, in favor of a stacked deck against creditors from the very start. The Proposed Rules represent a "Main Street" versus "Wall Street" bias that is inappropriate in judicial rules, and inaccurately paints all creditors with the same brush. The truth is that creditors would no longer be equal under the law with other parties. While any other party in justice court could allege a fact and, if not denied, rely upon the court to accept the allegation as true (excluding damages), the Proposed Rules would effectively refuse to believe creditors on any fact issue unless evidence is produced.

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

Both the Federal Trade Commission and the Texas Attorney General's Office have each reviewed the issue of pleading requirements in debt collection cases. (See Exhibits 1 and 2, attached). Their conclusions were remarkable similar to the TXCBA's proposal and radically different than the Proposed Rules. Given that these two organizations each exist, in part, to protect the consumer, it is clear that the Task Force has created rules that seek to accomplish something more: to create an environment favorable to a defendant in a creditor lawsuit. While such a scheme may be a politically popular amongst some, it is not justice. The TXCBA believes that justice lies in creating rules that allow for claims to be heard and all parties to settle their claims fairly and equitably if possible.

The Proposed Rules Run Contrary to the Clear Legislative Mandate

As described by Texas Supreme Court Justice Thomas R. Phillips (Ret.), the current efforts by both the legislature and the judiciary seek to make the courts more efficient, more accountable, and the outcome more certain.

Texas Government Code Sec. 27.060 establishes these objectives. The statue mandates that the Texas Supreme Court develop rules of civil procedure ***"to ensure the fair, expeditious, and inexpensive resolution of small claims cases."***[1] And while the statute specifically provides for the creation of a unique set of procedural rules for credit grantor and assigned debt claims ("Debt Collection Cases"), it retains the overall expectation that ***all justice court rules***:

> (1) not require that a party be represented by counsel;
>
> (2) not be so complex that a reasonable person without legal training would have difficulty understanding or applying the rules; or
>
> (3) not require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied. [11]

Many of the Proposed Rules are so complex that a reasonable person, acting on behalf of a plaintiff *or* defendant, could not apply them. Any small plaintiff, whether the original creditor or an assignee, attempting to apply Rule 586 would almost certainly fail, rendering their claim's resolution unfair, not expeditious, and expensive. Additionally, it is absurd that the Proposed Rules essentially enshrines a particular (and incorrect) view of evidentiary law under the guise of doing away with the application of the Texas Rules of Evidence.

The legislative mandate was to make a simple system of justice that anyone could use. The Task Force has done the opposite; it has decided to impose complex and expensive rules upon creditors. Respectfully, the TXCBA submits that a simple system of justice must apply through ***all*** Justice Court Rules, not just through some; and to ***all*** parties, not just to defendants.

---

[1] Sec. 27.060(d).

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The Proposed Rules are Contrary to Established Texas Law

The issues taken up in this section pertain to the requirement in the Proposed Rules that an assignee must file an affidavit from the original issuer before the justice court can issue a citation.

The Proposed Rules seem to be directed at the hearsay nature of an assignee's affidavit. It is, of course, hearsay, just as all business records affidavits, regardless of their source, are technically hearsay. Any affiant testifying to any business records has no personal knowledge of the claim other than that which he gleaned from a review of the company's records. Yet the laws of our country and our state have determined that their reliability is such that an *exception* to hearsay is warranted for such testimony and documentation. The only remaining issue, then, is whether there is something in an assignee's affidavit testimony to justice court that changes this time-honored rule.

First, the Texas Supreme Court has squarely held that in the absence of an objection, a court *must* admit and consider the testimony. In *Texas Commerce Bank v. New*, 3 S.W.3d 515 (Tex. 1999), the Texas Supreme Court held that an affidavit may be offered as evidence at a default judgment hearing and that the testimony therein, though hearsay, is admissible to prove-up a claim. The *New* decision was important for a number of reasons: (1) it confirmed that when proving-up a default judgment, the court may rely upon affidavit testimony, (2) it held that the affiant's affidavit may be based upon a review of the businesses records, and not be solely limited to the affiant's personal knowledge, and (3) it reminded the courts that hearsay testimony is admissible as evidence in Texas, absent an objection, and that it is an abuse of discretion to exclude such evidence in a unopposed prove-up hearing. As noted by the Court,

> "Rule 802 says, 'Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.' Nothing in rule 802 limits its application to contested hearings. The rule is not ambiguous and requires no explication."

Id. at 517. The Court's rather curt treatment of any argument to the contrary is instructive and should be heeded by the Task Force.

Second the information about which the assignee is testifying is derived from information obtained from the predecessor-in-interest as the result of a business transaction wherein the information was material to the transaction. As such, this information qualifies for a hearsay exception under Tex.R.Evid. Rule 803(15). [1] Supporting this is the fact that *eight* Texas District Courts of Appeal have held that the records of a third-party may be adopted and incorporated by a successor-in-interest or assignee, ***thereby becoming the business records of the current claim holder*** and thus qualifying as an exception to hearsay rule under Tex.R.Evid. Rule 803(6). [2, 3] As such,

---

[1] **Tex.R.Evid. 803(15) Statements in Documents Affecting an Interest in Property.**

A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

an affiant's testimony satisfies multiple exceptions to the hearsay rule and would be admissible even over objection.

Third, *Simien* [4] and its brethren opinions from several other appellate courts require the admission of third-party derived business records ***over the defendant's objection, and specifically in the context of collection cases***. Over the past two years, every court considering the *Simien* rule has adopted it, recognizing that due to the high level of federal regulation over major lenders, the documents referenced in a collection case are inherently reliable and admissible, noting the strong possibility of business failure and heavy criminal and civil penalties if it were otherwise.

The Proposed Rules, in short, go against the great weight of Texas jurisprudence in numerous ways: in excluding unobjected-to testimony, regardless of its nature; in singling out one class of plaintiff for heighted evidentiary requirements; and in disregarding the learned opinions of numerous courts who have recently considered these issues. The TXCBA respectfully suggests a reworking of the Proposed Rules to more accurately reflect Texas law.

Conclusion

It is the belief of the TXCBA that the current effort of the Task Force is misguided on the above issues and that there is no substantive basis for several of the rules that are being proposed. The effect of the Proposed Rules are devastating to the clients we represent, will be devastating to the courts we practice in, and are ruinous to the concept of simple and fair justice.

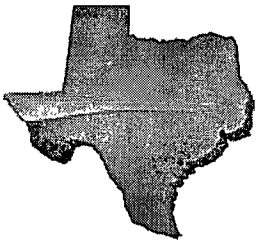
---

document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

[2] **Tex.R.Evid. 803(6) Records of Regularly Conducted Activity.**
A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether conducted for profit or not.

[3] See Exhibit 3 for article regarding business records obtained from third-party.

[4] *Simien v Unifund CCR Partners*, 321 S.W.3d 235 (Tex.App--Houston[1st] 2010).



Promoting Industry Professionalism

Texas Creditor's Bar Association

P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The TXCBA continues to be willing to work with the Task Force in an effort to develop a set of rules which it and its members can support. In addition, there are many other organizations that would be affected by the Proposed Rules, such as the Texas Bankers Association, the Texas Process Servers Association, the National Association of Retail Collection Attorneys, the International Association Credit and Collection Professionals and the Debt Buyers Association International. We are in the process of reaching out to these organizations so that we can, with a common voice, work with the Task Force. But this must be said: if the Proposed Rules stand as they are currently written, then the TXCBA will have no choice but to actively oppose them.

As always, the Texas Creditors Bar Association appreciates the opportunity to work with the Task Force, and eagerly looks forward to a fair set of rules governing our practice.

We remain respectfully yours,

Michael J. Scott, Chair
Executive Committee
Texas Creditor's Bar Association

Locke Lord LLP
Attorneys & Counselors

100 Congress, Suite 300
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Gardner Pate
Direct Telephone: 512-305-4856
Direct Fax: 512-391-4856
gpate@lockelord.com

June 20, 2012

VIA EMAIL AND REGULAR MAIL

Charles "Chip" Babcock
Supreme Court Advisory Committee
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, Texas 77010

Re: Proposed Revision of Rules for Eviction Proceedings

Dear Supreme Court Advisory Committee Members:

I write you on behalf of the Texas Building Owners and Managers Association (Texas BOMA) regarding the draft justice court rules proposed by the Task Force for Rules in Small Claims Cases and Justice Court Proceedings.

Texas BOMA represents the interests of owners and managers of commercial real estate in the State of Texas. Texas BOMA is composed of six local federated associations located in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio. Texas BOMA members manage over 660 million square feet of commercial real estate in Texas, and pay an estimated $1.6 billion in property taxes annually. Texas BOMA represents over 2,000 members statewide, and approximately 3.3 million people conduct business in Texas BOMA members' buildings.

Texas BOMA has a substantial interest in how the Supreme Court Advisory Committee (SCAC) revises any rules related to the eviction process for commercial real estate. Texas BOMA opposes any changes that could slow the eviction process. Slowing the eviction process is detrimental for both the landlord and the tenant. Once a landlord is able to evict a tenant, the landlord can seek a suitable replacement tenant. Finding a replacement tenant both allows the landlord to begin collecting rent on a going-forward basis, and it minimizes the damages (unpaid rent) a tenant owes.

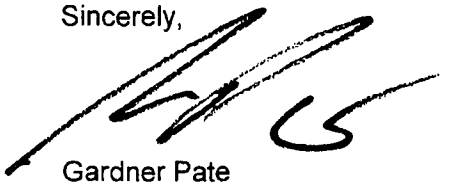
Texas BOMA joins with the Texas Apartment Association and the Texas Association of REALTORS in their comments on the process in justice court cases. Specifically, Texas BOMA opposes the changes in proposed rules 531, 560, 564, 739, 741, 742, 743, 745, 746, 749, 750a, 750b, and 755, which would all increase the costs of an eviction suit by drawing the process out, thereby contributing to additional lost rent, or by increasing out of pocket costs for additional service of process. In addition, Texas BOMA opposes any changes that would stop the use of the Texas Rules of Evidence and Texas Rules of Civil Procedure in eviction suits. Finally,

Texas BOMA opposes proposed rule 531a, which would allow for court-ordered alternative dispute resolution. Texas BOMA believes such a process is unnecessary for eviction suits, where there is usually only one issue to resolve: the amount of rent owed.

In conclusion, we urge the SCAC to recommend the Texas Supreme Court avoid making wholesale changes that would have a serious detrimental impact on the commercial real estate industry in Texas. Making such large changes would exceed the legislative intent of HB 79, which consolidated small claims courts with justice courts and triggered the need for some revisions of the rules applicable to those courts. Texas BOMA does not believe the legislature intended this change to trigger so massive a re-write of the rules applicable to eviction suits.

Thank you for your consideration.

Sincerely,



Gardner Pate

cc: Marisa Secco (via email and regular mail)
Robert Miller (Firm)

DBA
INTERNATIONAL
CREATING ECONOMIC VALUE FOR
CONSUMERS AND BUSINESSES

Texas Supreme Court Advisory Committee
P.O. Box 12248
Austin, Texas 78711-2248

RE: Proposed Rules for debt collection cases recommended by
the Texas Supreme Court Justice Court Task Force

May 11, 2012

Dear Justice Hecht and Honorable Members of the Supreme Court Advisory Committee:

This response is made by DBA International (f/k/a/ Debt Buyers Association, International, "DBA"), to the Supreme Court Advisory Committee, regarding the proposed rules for debt collection cases in Justice Courts, ("Proposed Rules").

DBA International is the national trade association that represents the interests of companies involved in the secondary market who purchase debt asset portfolios. Representing over 550 companies with membership in all 50 states, DBA International strives to ensure that any rules, regulations, or legislation that is considered at either the state or federal levels adopt existing best practices to protect the consumer and debt holder alike.

DBA members are knowledgeable and held to high ethical standards. DBA provides continuing education opportunities at its annual conference, promotes the debt buying industry at major industry conferences, and requires members to accept and abide by a strict code of ethics. Additionally, DBA has created a Task Force to develop a national debt buyer certification program that will contain required examination and education components.

With 31 member companies headquartered in Texas, DBA members employ thousands of Texans who have and continue to comply with Texas Court rules in the filing of claims after they are assigned the debt from the original creditor. We believe several of the Proposed Rules, by limiting access to the courts, will not only negatively impact our Texas-based members and their employees but will have a chilling effect on the credit industry as a whole. By imposing unreasonable restrictions on the secondary market, these Proposed Rules will likely decrease the level and amount of credit extended by originating creditors to Texas consumers.

DBA fully supports the position of the Texas Creditor's Bar Association ("TXCBA") in their letter to the Texas Supreme Court Justice Court Task Force dated March 14, 2012 where TXCBA suggests alternatives to the Proposed Rules. DBA shares the same concern for the rules

as proposed, and in particular, offers the following additional responses regarding the data, documentation, and original creditor affidavit requirements under Proposed Rules 577 and 578.

Proposed Rule 577(a)(1). Plaintiff's Pleadings, subsection (a) (1) would require the original petition to include the defendant's name and address as appearing on the original creditor's records. Unfortunately, many consumers with charged-off debt move frequently and the last known address is truly the pertinent address for service of process and identification. Creditors and debt buyers may not have the original address available due to consumer portability. When a creditor loses contact with a consumer, the creditor will perform skip tracing efforts to find the consumer's new address. Creditors will then label any "prior addresses" of record as a "bad address" and replace it with the current address. The file that is sold on the secondary market by the creditors contains the current address, not the bad address. Debt buyers are obligated to find the consumer at a proper service address in order to file suit and it is the service address that is available for inclusion in the original petition.

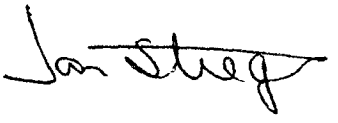
Proposed Rule 577(a)(4). Plaintiff's Pleadings, subsection (a) (4) would require the original petition to include the date of origination / issue of the account. Many accounts have been opened for many years and the date of origination of an account is meaningless to the consumer. Additionally, creditors are required to keep documentation for two years under Truth in Lending Act (Regulation Z); thus some information may no longer be available. The charge-off date and balance are heavily regulated at the federal level which makes them more reliable and pertinent to a consumer in identifying an account.

Proposed Rule 577(a)(5). Plaintiff's Pleadings, subsection (a) (5) would require the original petition to include the date and amount of last payment. Sometimes, consumers default on the first payment ("first payment default") and therefore the date of last payment to the creditor would not be applicable. Further, the consumer may have made payments after charge-off which would be reflected in the current claim amount set forth in the petition.

Proposed Rule 578(a) and (b). Default Judgments, subsections (a) and (b) would require copies of certain account documents of the original creditor along with a business records affidavit from the original creditor. Original creditors are governed by the Truth in Lending Act (TILA) which only requires that documents be retained for two (2) years. Further, an exception to the hearsay rule permits a debt buyer, as the creditor's assignee, to testify regarding business records kept in the ordinary course of business by the assignor. This is a rule embraced by federal circuit courts interpreting the Federal Rules of Evidence, as well as numerous Texas courts of appeal. It is simply unfair to require debt buyer plaintiffs to obtain testimony from each creditor regarding the validity of an account sold along with the business records before a debt may be deemed valid. Finally, any additional expense will ultimately be borne by the consumer by way of increased settlement guidelines to reduce costs associated with a rule that is only imposed by the State of Texas.

DBA, International appreciates this opportunity to provide this response to the Advisory Committee and looks forward to the development of a set of rules that our members can support. Please do not hesitate to contact me at (916) 482-2462 should you have any questions or require any additional information.

Sincerely,



Jan Stieger
Executive Director

cc: Marisa Secco, Supreme Court Rules Attorney

HOOVER SLOVACEK LLP
A REGISTERED LIMITED LIABILITY PARTNERSHIP

HOWARD M. BOOKSTAFF, P.C.
PARTNER
BOARD CERTIFIED-COMMERCIAL REAL ESTATE LAW
BOARD CERTIFIED-RESIDENTIAL REAL ESTATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

bookstaff@hooverslovacek.com

ATTORNEYS AT LAW
SAN FELIPE PLAZA
5847 SAN FELIPE, SUITE 2200
HOUSTON, TEXAS 77057-3198

(713) 977-8686
FAX (713) 977-5395

REPLY TO:
P.O. BOX 4547
HOUSTON, TEXAS 77210

June 12, 2012

Via email and regular mail
Charles ("Chip") Babcock
Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Via email and regular mail
Honorable Nathan Hecht and David Medina
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711 -2248

RE: Proposed changes to Texas Rules of Civil Procedure (Rules 500-578 and 737.1-755)

Dear Supreme Court Advisory Committee Members and Justices Hecht and Medina:

I am the General Counsel for the Houston Apartment Association ("HAA"). I am writing to you on the HAA's behalf concerning the proposed revisions to the Texas Rules of Civil Procedure relating to JP courts and eviction proceedings.

The HAA is an apartment association representing multi-family housing owners, managers and vendors. The members of the HAA own and manage in excess of 500,000 apartment units in and around the Houston metropolitan area.

It is my understanding that the Advisory Committee will consider the rules at its meeting on June 22 and June 23. The HAA has asked me to express concerns about the rules to you and to urge you not to adopt the rules as proposed.

There are a number of proposed changes that raise substantial concerns including the following:

1. ***No apparent reason for many of the proposed changes.*** It is my understanding that the Task Force was directed by the Supreme Court to adopt rules geared towards abolishing small claims courts as intended by the legislature when it adopted HB 79 during the special session last summer. The single reference to eviction proceedings in the bill appears to only relate to the rules, if any, that would have to be modified to accomplish the purpose to abolish small claims courts. There doesn't appear to be any other explanation of why there is a reference to eviction proceedings, since there is no other direction given in the bill with respect to eviction rules.

   The Task Force has gone far beyond the intent of HB 79. Rather than adopting rules to abolish small claims courts, it appears that the Task Force has suggested rules more geared towards changing the procedures associated with JP courts and eviction

proceedings into the "loose" rules that now govern small claims courts. Additionally, a number of the proposed changes revise the rules without an apparent reason.

2. ***Discontinuance of Rules of Procedure.*** Rule 523 currently provides that all rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or the rules. Proposed Rule 502 provides that no other rules apply unless the judge determines they should. If there needs to be separate rules governing the cases that used to be in small claims courts, there should be a rule stating that. However, it is not workable for judges in any justice court case, including eviction cases, to have discretion of which rules of procedure apply. Additionally, this rule needs to be read in conjunction with Rule 501. Read together, the proposed Rules 501 and 502 indicate that if a matter is not covered by the forcible rules (Rules 738 through 755), you only look to the justice court rules (Rules 500 through 578). If a matter is not covered by either the forcible rules or the justice court rules, what other rules, if any, apply are up to the judge. This will result in vague and inconsistent applications of procedural rules.

3. ***Discontinuance of Rules of Evidence.*** Pursuant to the proposed Rule 504, the Texas Rules of Evidence do not apply to justice courts except to the extent the judge determines that a particular rule must be followed to insure fair proceedings. Pursuant to the proposed Rule 501(d), eviction actions are governed by Section 10, Part V (including this Rule). Since Section 10 does not provide for what rules of evidence apply, Rule 504 would mean that we do not know what rules of evidence would apply in any given justice court case, including any given eviction proceeding.

4. ***Motions for Summary Judgment.*** The proposed Rule 526 attempts to reinvent the summary judgment rules that currently exist. Pursuant to subsection (b), parties may respond to the motion orally at the hearing. In other words, the party filing the motion is not entitled to receive a response to the motion (written or oral) prior to the hearing. This will lead to more expensive and complicated hearings. Like many of the proposed rules, there does not appear to be a rational for the change. The reinvention of rules will render old case law meaningless to attempt to interpret the rule. This will lead to inconsistent interpretations and applications by the judge.

5. ***Will a judge impose alternative dispute resolution in eviction proceedings?*** The proposed Rule 531a provides that it is the responsibility of the judge and their court administrators to carry out the state's policy of encouraging alternative dispute resolution. Once again, since there is no specific forcible rule regarding alternative dispute resolutions, could a judge construe this rule as meaning that alternative dispute resolutions should be also encouraged in eviction proceedings? This would obviously be unworkable since the issue of possession is often disputed and cannot be mediated. A request for, or a requirement of, mediation will delay what should be an expedited process.

6. ***Timing of eviction trial.*** The proposed Rule 741 provides that the defendants must appear not more than 14 days nor less than 7 days from the date of filing of the petition. Current Rule 739 provides for the appearance date to be not more than 10 days nor less

than 6 days from the date of service of the citation. While the proposed rule may expedite the eviction proceeding, what if service does not occur in time to allow trial in the 7 to 14 day window after the petition is filed? There is no corresponding rule that guides the judge or the parties as to what happens. Should the judge dismiss the case and require the petition to be refilled? This will in turn cause more delays in the eviction process. I am not aware of a problem with the current rule that would warrant this change.

To summarize, the proposed rules are confusing, unwarranted and will make the justice court and eviction proceedings more time consuming and expensive. Additionally, the unbridled discretion given to judges will cause proceedings to be unprecedented and unpredictable. This will lead to more appeals which will further delay the proceedings and make them more expensive for the parties.

On behalf of the HAA, I urge you not to adopt these rules. If you have any questions, please let me know.

Thank you for your attention and service.

Very truly yours,

HOOVER SLOVACEK LLP

Howard M. Bookstaff, as General Counsel
to the Houston Apartment Association

HMB:dm/

785918_1.DOCX

j. marton

1201 Franklin, Room 7044
Houston, Texas 77002
Telephone: 713-755-7325 Fax: 713-755-8931
E-Mail: Janet_Marton@ccl.hctx.net

June 19, 2012

Hon. Nathan L. Hecht
Justice, Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Mr. Charles Babcock, Chairman
Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Re: Report of Recommendations for Rules of Civil Procedure for Justice Courts Task Force for Rules in Small Claims Cases

Dear Justice Hecht, Chairman Babcock, and Committee Members:

It is with some reservation that I suggest the Advisory Committee reject the Task Force for Rules in Small Claims Cases and Justice Court Proceedings' Report of Recommendations for Rules of Civil Procedure for Justice Courts in its submitted form.

The Task Force did not have sufficient time to give reasoned consideration to this project and did not review small claims court models from other states as background. Instead, the Task Force used the current Justice Court Rules as the framework for the proposed small claims rules. The result was the destruction of the small claims case as we know it today.

At the outset, the members of the Task Force had two conflicting interpretations of Section 5.02 of H.B. 79. One interpretation was that litigants would choose to file their claims either as justice court civil cases governed by the Rules of Practice in Justice Courts, or as small claims cases governed by new rules to be promulgated by the Supreme Court. The other interpretation, the one adopted by the Task Force, was that all cases, with the exception of evictions, would be considered "small claims cases" governed by the Task Force's proposed rules.

The increased jurisdictional limits of the Justice of the Peace Courts brought with it cases involving negligence, subrogation, malpractice, deceptive trade practices, and claims resulting from Internet transactions. These claims do not easily lend themselves to the informality of the Small Claims Court. Plaintiffs choose Justice Court because of the structure of the existing rules, the ability to conduct discovery, the application of the rules of evidence, and the ability to

seek extraordinary remedies. On the other hand, there is also the need to give citizens a venue in which they can seek redress for small claims without formal rules. With the influence of the television judiciary, citizens have become very familiar with the "Small Claims Court" and choose this venue because of its informality, simplicity, and swiftness.

If all cases are to be "small claims cases," these proposed rules fail to present an easily understandable framework for suing or defending a small claims case. In general, the proposed rules are too numerous, too complex, provide for uncertain time limits, and *in particular, allow for inconsistent application of the rules* both among justice courts across the state and in cases within the same court. While the Task Force had good ideas for certain revisions to the current Rules of Practice in Justice Courts, the proposed rules as offered are not informal or simple and do not preserve the small claims concept.

The Small Claims Court as a separate jurisdiction has worked well for over fifty years and citizens are familiar with this jurisdiction. Rather than expanding the Small Claims Court model, the proposed rules governing small claims cases in Justice Court are no longer simple, informal, and designed for speedy justice between the parties. The Legislature or the Committee should provide more definition to the vision of the justice court and the small claims model within that framework and allow the Task Force sufficient time to implement that vision.

Respectfully,

Janet Marton

cc: Hon. Russell B. Casey, Chair
Task Force for Rules in Small Claims Cases

Janet Marton
June 18, 2012

COMMENTS AND SUGGESTIONS TO PROPOSED RULES FOR SMALL CLAIMS CASES

PROPOSED RULE	COMMENTS	SUGGESTIONS
Rule 500. Definitions	*Many of the definitions are unnecessary. If the definitions are to be retained, after reviewing the definitions, consideration should be given to including the definitions in a Glossary at the end of the Rules.*	
Rule 503. Computation of Time and Timely Filing	*The "mailbox rule" creates uncertainty in the finality of the proceedings and operates to delay actions for additional time to accommodate its provisions. The proposed rule for computation should be simplified.*	In these rules, 'days' mean 'calendar days'. If the last day of any specified time period falls on a Saturday, Sunday or legal holiday, the time period is extended to the court's next business day. If the last day of any specified time period falls on a day during which the court is closed before 5:00 PM, the time period is extended to the court's next business day. The following pleadings and documents are required to be filed and received by the court on or before the last day by which such pleading or document must be filed: (a) an original answer, (b) a motion for new trial, (c) a motion to reinstate a claim, (d) a motion to set aside a default judgment, (e) an appeal bond, and (f) an affidavit of inability to pay costs on appeal. Any other pleading or document required to be filed with the court by a given date is considered timely filed if deposited in the United States mail on or before the given date, and received by the court within ten business days of the date the pleading or document is required to be filed.
Rule 504. Rules of Evidence	*Proposed rule 504 results in inconsistent proceedings from court to court, and in cases within the same court. At a minimum, the rules allowing the exclusion of witnesses and the authentication of documents should be included in the proposed rule.* *If any Rule of Evidence is to apply, provision should be*	The Texas rules of Evidence do not apply in small claims cases filed in the justice courts except that: (a) At the request of a party, or on the court's own motion, witnesses shall be excluded so that they cannot hear the testimony of other witnesses. A party who is a natural person or the spouse of that person, an officer or employee of a party designated as its representative or agent, or a person whose presence is shown by a party

	made for notice to all parties, and could be included among the items appropriate for a pre-trial conference.	to be essential to the presentation of the party's claim may not be excluded. (b) Certified copies of public records and business records accompanied by affidavit shall be admissible in evidence. The judge may determine that a rule of evidence must be followed to ensure the proceeding is fair to all parties.
Rule 505. Duty of the Judge to Develop the Case	*Constraints to the judge's authority under this proposed rule should be imposed.*	The judge may develop the facts of the case. The judge shall hear the testimony of the parties and the witnesses that the parties produce. The judge shall consider the evidence offered. If necessary for clarification or to insure a correct judgment, the judge may question a witness or party and may summon any person or party to appear as a witness.
Rule 506. Exclusion of Witnesses	*The provisions of this proposed rule should be included in any rule governing rules of evidence.*	
Rule 507. Pretrial Discovery	*The proposed rule requires that any request for discovery be presented to the court by written motion and then considered by the court* ex parte. *The court is given complete control over the scope and timing of discovery.* *An* ex parte *discussion of the nature of the case to determine allowable discovery is inappropriate.* *Pretrial discovery may be handled more appropriately at a pre-trial conference, but at a minimum, with notice and hearing. Consideration should be given to allowing limited discovery in all cases.*	A party may request disclosure by another party of any or all of the following information as may be applicable to the nature of the case: (a) the correct names of the parties to the lawsuit; (b) the name, address, and telephone number of any potential parties, including any person who may be designated as a responsible third party; (c) the facts made the basis of the responding party's claims or defenses; (d) the amount and method of calculation of damages; (e) the name, address, and telephone number of any person who is expected to be called to testify at trial; (f) all bills that are reasonably related to the injuries or damages claimed; and (h) copies of documents and other tangible items which will be submitted as evidence at trial. Responses to a request for disclosure are due within 20 of date of service of the request for disclosure and shall be served upon the party requesting disclosure. Additional reasonable discovery is limited to that considered appropriate and permitted by the judge, on motion of a party or on the court's own motion, after notice and hearing.

Rule 507.1. Post-Judgment Discovery.	*The proposed rule does little to guide enforcements of judgments.* *Currently, judgment creditors seek turnover orders granting broad powers to receivers and masters in chancery. These types of post judgment collection efforts are inappropriate to the small claims jurisdiction.* *Consideration should be given to amending Sec. 31.002 of the Civil Practice and Remedies Code to provide that a justice court is not a court of appropriate jurisdiction to seek relief under that section.* *Enforcement at the small claims level might include an initial court ordered hearing to decide a payment plan with the requirement that a judgment debtor complete a financial statement.*	
Rule 509. Petition	*Proposed Rule 509 should be separated into several more easily readable rules governing the institution of suit. A rule should be added to clarify that parties must be identified by their legal nature and agents for service of process.* *A rule should be added to clarify who are authorized representatives of a business entity and that individual parties may not engage other individuals to represent them at trial.*	Rule XXX. Petition A small claims case is initiated by filing a petition, in writing, containing the following information: (a) the name, address, daytime telephone number, fax number, if any, and e-mail address (optional) of the party filing the claim; (b) the name and current address of the defendant, and if a defendant is a business, the legal nature of the defendant and the defendant's agent for service of process; (c) a description of the reason the defendant is being sued, with sufficient facts to give the defendant fair notice of the claim; (d) the amount of damages to be recovered; (e) a description of the personal property to be recovered, if any, and the value of the property. The payment of a filing fee is required at the time of filing the petition. Rule XXX. Parties An individual, corporation, partnership, limited liability company, or other business entity may sue or defend a small claims case, and need not be represented by an attorney. A corporation may be represented by an officer or employee of the corporation who has been given authority to act on behalf of the corporation.

		A limited liability company may be represented by a manager or employee who has been given authority to act on behalf of the limited liability company. A partnership may be represented by a partner or an employee who has been given authority to act on behalf of the partnership. Rule XXX. Pleadings and Motions All pleadings and motions, unless presented during a hearing or trial, shall be in writing, filed with the court, with a copy delivered immediately to all other parties to the proceeding.
Rule 510. Venue	*Proposed Rule 510 presents more complicated venue rules. The first sentence of the proposed rule should be deleted and the last sentence of the proposed rule is unnecessary. Otherwise, venue is reasonably limited by the proposed rule.* *Consideration should be given to reviewing and amending the provisions of Chapter 15, Subchapter E, of the Civil Practice and Remedies Code.* *Current Justice Court Rule 528, allowing a venue change on affidavit of two credible citizens has never been a workable rule.* *In Crowder v. Franks, Rule 528 was applied to an eviction case without mention of the jurisdictional limits set out in Sec. 24.004 of the Texas Property Code (only a justice court in the precinct in which the real property is located has jurisdiction in eviction suits). Crowder v. Franks, 870 S.W.2d 568 (Tex.App.-Hous. [1 Dist.] 1993.*	An eviction case may not be transferred except to another justice court within the precinct. Another justice of the peace may preside for a justice who is disqualified.
Rule 522. Motion to Transfer Venue.	*The proposed rule should be simplified with a separate rule to identify procedure. Proposed Rule 524 may be incorporated into a general rule.* *In cases of disqualification or recusal, consider allowing the regional presiding judge to appoint another justice of the peace to hear the motion, and that judge's decision would be final.*	An objection to venue is waived if not made by written motion filed prior to or concurrently with the original answer of the defendant. A written consent of the parties to transfer the case to another county may be filed with the court at any time. A motion objecting to venue shall state the reason for the transfer and request transfer of the suit to a specific precinct within the county, or if transfer is requested to another county, naming that county and the precinct within that county.

		Rule XXX. Procedure for Venue Change The determination of the motion to transfer venue shall be made promptly by the court, after notice and hearing. The party requesting the transfer is required to prove that venue is proper in another precinct within the county, or in another county. With the permission of the court, the hearing may be conducted by telephone or an electronic communication system. The decision of the judge is final. No additional filing fee is required if the case is transferred to another precinct within the county. Additional filing fees are required if the case is transferred to another county. Rule XXX. Venue Change Based on Disqualification or Fair Trial. A party requesting a change of venue based on a disqualification of the justice of the peace, or because the party cannot obtain a fair and impartial trial in the county in which the suit is pending must swear to the facts set out in the motion to support the change of venue. The motion shall be reviewed by the justice of the peace. If the justice of the peace grants the motion, an order transferring the case shall be entered. *If the transfer is denied, the motion shall be heard by a justice of the peace appointed by the Presiding Judge for the Administrative Region in which the Justice Court is located.* The decision of the justice of the peace hearing the case is final.
Rule 511. Issuance of Citation **Rule 512. Service** **Rule 513. Alternative Service** **Rule 514. Service by Publication**	*These proposed rules should be simplified. Consider extending the defendant's answer date to the first Monday after the expiration of 20 days from date of service, allowing for consistency and ease of calculation.* *Consider specifying that only a sheriff or constable may serve a citation in an eviction proceeding, and writs and notices of attachment, garnishment, sequestration, possession, re-entry, and restoration of utility service. A sheriff or constable should also be required to serve a writ of turnover if same is found appropriate in justice court.* *In a large number of cases in justice and small claims*	The clerk, when requested, shall issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation to which a copy of the Statement of Claim shall be attached. Form. The citation shall provide notice of the filing of the Statement of Claim and direct the party to be served to file a written answer with the clerk of the court no later than 10:00 a.m. on the first Monday following the expiration of 20 days from the date of service. The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an

	court, it has become customary to serve citation by affixing the citation to the front door of the residence, much like the provisions of Rule 742a. Consideration should also be given to the propriety of this practice or to specifying prerequisites to finding this method sufficient to give the defendant notice of the suit. *Service by certified mail is an ineffective method of notice. Consideration should be given to allowing more modern methods of effecting service in this jurisdiction.*	attorney. You or your attorney must file an answer with the court clerk. Your answer is due by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served this citation and petition." If you do not file an answer within the time required, a default judgment may be taken against you. Rule 512. Service Citation may be served by (1) any sheriff or constable, (2) a certified process server, or (3) a person who is eighteen (18) years of age or older who is not a party to or interested in the outcome of the suit, and who is authorized by the court. Citation shall be served by: (1) delivering the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; (2) mailing the citation with a copy of the petition attached to the defendant by certified mail, restricted delivery, with return receipt or electronic return receipt requested. A citation in an eviction proceeding and writs and notices of attachment, garnishment, sequestration, possession, re-entry and restoration of utility service, [and turnover] must be served by a sheriff or constable.
Rule 515. Service of Papers	*Consider requiring a party to include a Certificate of Service evidencing delivery of a copy of a pleading or motion to all opposing parties;*	The party or the party's attorney of record shall include on all filings a signed statement describing the manner in which the document was served on the other party or parties and the date of service.
Rule 516. Answer Filed		A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. Any denial of the plaintiff's cause of action is sufficient to constitute an answer or appearance and does not prohibit the defendant from raising specific defenses.

Rule 521. Insufficient Pleadings		A party may request that the court order another party to clarify a pleading or to provide additional information about the claim. The failure a party to comply with the court's order may result in the dismissal of the pleading.
Rule 526. Summary Disposition	*Among the majority of the comments concerning new rules, was the need for a procedure to summarily dispose of a case similar, but simpler than the summary judgment procedure.* *See Rule 531 below.*	A party may file a sworn motion for summary disposition without the necessity of a trial if the party can show that: (1) there are no genuine disputed facts which would prevent a judgment in favor of the plaintiff; or (2) that there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or (3) that the plaintiff has no evidence of one or more essential elements of the plaintiff's claim. A motion for summary disposition must set out all facts supporting grounds of the motion, together with copies of all documents relied on to support the motion. The party opposing the motion may file a sworn written response to the motion. The court shall consider a motion for summary disposition on or after 14 days from the date of filing the motion. If all parties to the motion agree, the court may review the motion and response without the necessity of a hearing The court may enter judgment as to the entire claim if the court finds that the moving party is entitled to judgment. If judgment is not rendered, the judge may specify the facts that are established and direct such further proceedings in the case as are just.
Rule 528. Continuance		A party may request a continuance for good cause, in writing, supported by affidavit. The judge, for good cause, may continue or postpone any suit, for a reasonable time.
Rule 529. Jury Trial Demanded	*In the larger counties, more and more persons are failing to appear for jury service. Courts must summon larger numbers of citizens in order to form a panel. It is impractical to summon citizens with only one or two days notice.*	

	The demand for a jury should be made prior to the first trial setting, and not afterward.	
Rule 530. If No Demand for Jury	*This rule should be deleted as unnecessary.*	
Rule 531. Pretrial Conference	*Consider combining a simple summary procedure to be included among those actions that can be accomplished at a pretrial conference.*	The judge may require the appearance of the parties and their agents or attorneys of record at a pretrial conference. At the pretrial conference, all of the following matters shall be considered: The simplification of issues; The need for amendment or clarification of pleadings; The admission of facts and documents to avoid unnecessary proof; The limitation of the number of witnesses; The need for discovery and the time within such discovery should be completed; The possibility of settlement; The ordering of the parties and their agents and attorneys to mediation; The setting of a trial date; The need for an interpreter; The imposition of a rule of procedure applicable to the district and county courts; The imposition of a rule of evidence; Such other matters as the court in its discretion deems necessary. At the pretrial conference, the judge may examine the pleadings and the evidence on file, and interrogate the parties, their agents, or attorneys of record, to ascertain what material fact issues exist and make an order specifying the facts that are established, and direct such further proceedings in the action as are just. The judge may also determine that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial and either allow for an amendment of the pleadings, or dismiss the proceeding in the interest of justice.
Rule 539 Jury Sworn	*Archaic language should be deleted.*	You and each of you do solemnly swear or affirm that you will render a verdict according to the law and the evidence presented in the case.

Rule 540. Judge Must not Charge the Jury	*Negligence law, in particular, requires that the trier of fact determine the percentage of responsibility of the parties. This requires a jury charge or at least additional questions for the jury to answer. Sec. 33.003, Tex. Civ. Prac. & Rem. Code.* *Sec. 17.50, Tex. Bus. & Comm. Code requires certain fact findings by the trier of fact as a condition to recovering certain damages. This also requires a jury charge.* *Jurors also need the basic instructions, similar to those in Rule 226a, T.R.C.P.*	
Rule 545. Judgment Upon Jury Verdict **Rule 546. Case Tried by Judge**	*These rules should be deleted as unnecessary. A rule governing judgments should be sufficient.*	
Rule 547. Judgment	*Any rule governing judgments should specify that the judgment is effective from date of signing of the judgment.*	
Rule 550. To Enforce Judgment **Rule 551. Enforcement of Judgment**	*See comments to Rule 507.1 above.*	A justice of the peace may not issue a turnover order.
Rule 560. Appeal	*The proposed rules extended the court's jurisdiction to 20 days following the signing of the judgment. It is not always possible to give notice of filing motions for new trial and hold hearings within the 10 day period.* *Consideration should be given to requiring parties to serve a motion for new trial, appeal bond, etc. contemporaneously with the filing of the document with the court.* *Also suggest a rule be crafted that prohibits the appeal of the plaintiff's claim following the failure of the plaintiff to appear for a hearing or trial.*	An appeal must be accomplished within 20 days from the date the judgment is signed. A Certificate certifying that a copy of the appeal bond was served on all parties, and showing the date and manner of service, must be filed with the appeal bond. When the surety bond or affidavit of inability is filed and approved, and the costs to the county clerk have been paid, the appeal shall be held to be perfected. There is no appeal from a dismissal following a party's failure to appear for a hearing or trial.

	Rule 143a poses many problems for the justice courts. Consideration should be given to reviewing and amending the rules to provide that all actions necessary for the perfection of the appeal be accomplished at the justice court level. It is illogical to "perfect the appeal" in the justice court, and then "unperfect" the appeal at the county court level under Rule 143a.	
Rule 561. Inability to Pay Costs	*Rather than specifying the contents of a financial statement, a standard document should be created for use by all litigants to support a claim of inability to pay costs.* *Consideration should be given to clarifying the procedures for contesting a "pauper's affidavit."*	Any other party to the suit may contest the affidavit of inability by requesting a hearing within 5 days after the filing of the affidavit. If the judge sustains the contest, the appellant may, within 5 days from the date of the denial of the right to appeal, bring the matter before the county court for a final decision *by filing with the county clerk a certified copy of the affidavit of inability and the judge's order sustaining the contest.* The county clerk shall set a hearing not later than 7 days from the date of receipt of the request for reconsideration, and the county court shall hear the contest *de novo*. If the appeal is granted, the Justice Court shall transmit the transcript and records and papers of the case to the county clerk. If the contest is sustained, the appellant has 5 days to file an appeal bond.
Rule 565. Trial *de novo*	***Much time is being spent on crafting rules for small claims cases – to be simple, informal, and easily understood by a pro se litigant. But if that litigant chooses to appeal the judge's decision, he or she is now confronted with the Rules of Practice in District and County Courts.*** ***Consideration should be given to crafting provisions requiring that the trial de novo in county court be held on the same pleadings and under the same rules as govern small claims cases.***	

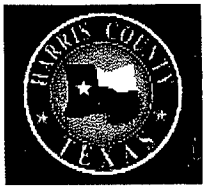
Janet Marton
June 18, 2012

COMMENTS AND SUGGESTIONS TO PROPOSED EVICTION RULES

PROPOSED RULE	COMMENTS	SUGGESTIONS
Rule 738. Computation of Time for Eviction Cases	*This rule needs to be clarified.* *The sentence referring to fax filings should be deleted.* *Allowing documents to be filed by fax should be left to a local rule of the justice courts of a particular county;*	In these rules, 'days' mean 'calendar days'. If the last day of any specified time period falls on a Saturday, Sunday or legal holiday, the time period is extended to the court's next business day. If the last day of any specified time period falls on a day during which the court is closed before 5:00 PM, the time period is extended to the court's next business day.
Rule 739. Petition	*Consideration should be given to requiring that the petition name all parties who signed the lease if the eviction is based on a written lease, and all parties who signed a deed of trust or contract for sale.* *A landlord should be required to present the lease at the time of trial or default judgment.* *The rules refer to "rent," "any rent due," and "back rent" without clarifying the terms, i.e. delinquent rent up to the date of entry of judgment.* *The last paragraph of the proposed rule should be included in a rule providing for the entry of judgment.*	A sworn petition seeking eviction must be filed in the county and precinct in which the premises are located. If the eviction is based on a written lease, all tenants who signed the lease must be joined in the eviction.
Rule 740. May Sue for Rent	*The rules refer to "rent," "any rent due," and "back rent" without clarifying the terms, i.e. delinquent rent up to the date of entry of judgment.* *Rent should be clearly defined, so as not to include late charges, etc.* *Late and other charges "rolled" into delinquent rent by the terms of the lease should not be included in "rent."*	
Rule 742. Request for Immediate Possession	*This rule should be revised. In its current form, the rule contains conflicting provisions.* *The rule should not require the tenant to contact the court for the amount of the counterbond. The court should set this amount within the citation.* *Sureties on the bonds should be joined in the proceeding on appeal.*	A possession bond entitles the landlord to possession of the premises during the pendency of an appeal unless the tenant posts a counterbond within 24 hours of the entry of a judgment, if any, in favor of landlord. If the tenant fails to post a counterbond, the landlord shall be put in possession of the premises on the 3rd day following the entry of the judgment

Rule 743. Service of Citation	*Consideration should be given to the difficulty in large counties of timely serving eviction citations. The courts may need an option to provide for trial, for example, on the same day of the next week following date of service, or some similar calculation.* *Consider allowing the citation to be returned at least one day before trial.*	
Rule 743a. Service by Delivery to Premises	*The timeline in the proposed rule does not work. This rule should be revised.*	
Rule 744. Docketed	*Consider revising or deleting this rule. There is no requirement for an answer. The citation requires the appearance of the tenant for trial.*	
Rule 745. Demanding Jury	*Consider requiring the jury demand within so many days of the date of service, rather than so many days before trial.*	
Rule 748	*Consideration should be given to deleting this rule as it is unnecessary.*	
Rule 748a. Representation by Agents	*This rule should be clarified to define agents as either an officer or employee of the landlord or tenant, unless the intent of this rule to allow lay persons unrelated to the tenants to represent tenants.*	
Rule 749. Judgment and Writ	*The proposed rule alleviates many issues encountered when landlords fail timely to request a writ of possession, usually because they have made a new rental agreement. Suggest the last sentence of the proposed rule be deleted.*	
Rule 750. May Appeal	*Consider requiring notice of the filing of an appeal bond be given to all parties at the time the bond is filed.* ***Rule 143a poses many problems for the justice courts. Consider amending the rules to provide that all actions necessary for the perfection of the appeal be accomplished at the justice court level. It is illogical to "perfect the appeal" in the justice court, and then "unperfect" the appeal at the county court level.***	

State of Texas



County of Harris

JUDGE HILARY H. GREEN

JUSTICE OF THE PEACE
PRECINCT 7, PLACE 1

June 20, 2012

Justice Dale Wainwright
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711

Dear Justice Wainwright:

Please accept this letter as a detailed outline of both my concerns and recommendations regarding the proposed changes to the Texas Rules of Civil Procedure relating to Justice Courts and Forcible Detainer (Eviction) Cases. I am requesting that the Advisory Committee review the proposed changes with extreme caution and seriously consider feedback from those of us who preside over these cases on a daily basis.

It was my understanding that the changes were proposed in part to merge all civil cases, with the exception of Eviction Cases, into Small Claims Cases. In itself, this attempt at simplification and efficiency is well intentioned and overdue. Having two sets of courts (Small Claims Court and Justice Court) with the same jurisdiction, the same power and the same forms appears to be outdated and complicated at best. Notwithstanding good intentions, it seems at least some of the proposed changes allow for unification of jurisdiction for Justice Court/Small Claim Cases while placing the application and/or the misapplication of rules entirely within the respective Judge's discretion. Please understand that the majority of Plaintiffs who seek justice in the Justice of the Peace courts do so for a number of reasons. In some cases the Plaintiffs want the simplicity of Small Claims Court. In other cases, Plaintiffs wish to conduct written discovery, in addition to having a quick trial date without the expense of hiring an attorney.

It has been the experience of this court that the litigants as well as jurors are becoming more sophisticated and knowledgeable. However, even the most knowledgeable litigant (attorney or non-attorney/Plaintiff or

Defendant) would find themselves ill prepared if they have to engage in what amounts to a guessing game on the application of the rules. Enacting rules for Justice Court which allow for inconsistent application of the rules themselves deviates from the intent of H.B. 79 and thwarts the legislature's goal of simplification and unification.

I have taken the time to dissect the proposed changes and compare them with the current law. In doing so, I also made notes of where the proposed change could be conformed in light of the practical application of the law, policies and procedures in most Justice of the Peace Courts. While I did not make note of every proposed rule (there are approximately 45 proposed rules), my goal was to highlight a few examples of the more egregious proposed changes and give an explanation to enlighten the SCAC on the practical aspects of the Justice of the Peace courts. My observations, concerns and suggestions are listed below.

RULES 502, 504 APPLICATION OF RULES IN JUSTICE COURT

Civil cases in the justice courts shall be conducted in accordance with the rules listed in Rule 501 of the Texas Rules of Civil Procedure. Any other rule in the Texas Rules of Civil Procedure shall not govern the justice courts except where otherwise specifically provided by law or these rules.

Applicable rules of civil procedure shall be available for examination during the court's business hours.

[*Observation: Changes which provide for discretionary application of the rules create inconsistencies among the courts and confusion for the parties. It is important for the Advisory Committee to bear in mind that these cases deal with the public's right to possess property and live peaceably. Playing a guessing game on whether the judge will apply a particular rule amounts to a hardship for the litigants and in most cases, would not allow for adequate preparation for trial.*

Having the rules available for review during business hours is a welcomed change and really presents no additional burden for the courts. However, making "the rules" available to the public and then allowing application of the same rules to be wholly within the discretion of the judge seems totally impractical.]

RULE 522 MOTION TO TRANSFER VENUE

(a) Motion. If a defendant wishes to challenge the venue the plaintiff selected, the defendant may file a motion to transfer venue. This motion must be filed BEFORE the case is set for trial and must

contain a sworn statement that the venue chosen by the plaintiff is improper.

[*Observation: The proposed 20th day deadline appears to be arbitrary and does not lend itself to cases filed in Justice Court. Most of the litigants in Small Claims/Justice Court do not learn of venue provisions until long after the defendant's answer is due. More importantly, the majority of defendants in Small Claims/Justice Court DO NOT file answers.]*

RULE 531a. ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution should be required in all Civil cases with the exception of Eviction cases unless the parties agree in writing.

RULE 560 APPEAL

[*Observation: Generally speaking, the proposed Appeal provisions appear to put a great deal of emphasis and the judges' ability to approve or deny a surety bond. In the absence of any guidelines governing surety bonds themselves, (i.e.: qualifications for sureties, procedures for confirming information provided by the parties, etc.) the proposed changes would allow a judge to approve or deny a surety bond arbitrarily. This hardly seems constitutional given the nature of one's right to appeal.*]

RULE 741 CITATION

When the plaintiff or his authorized agent shall file his written sworn petition with such justice court, the court shall immediately issue citation directed to the defendant or defendants commanding them to appear before such judge at a time and place named in such citation, such time being not more than fourteen days and not less than seven days from the date of service of the citation.

[*Observation: The proposed rule allows for appearance before a judge not more than fourteen days and not less than seven days from the date of filing. This particular provision is completely unacceptable in light of the average time period between the date of filing and trial for Eviction cases. As written, the rule does not accurately reflect even a reasonable amount of time for the parties to prepare for trial nor does the rule contemplate the number of substitute/alternative service requests processed on these particular cases. More importantly, the rule as proposed would leave both parties at a severe disadvantage regarding possession and payment issues. Ultimately, a fourteen/seven day trial from the date of filing requirement will compromise service/notice procedures and will result in a majority of Eviction cases being served by posting only.*]

In closing, it is my hope that the SCAC understands and appreciates the time and attention both I and other stakeholders have taken to recommend rejection of the proposed rules. I find it important to mention that to my knowledge, at no time has any attorney, group, representative, association nor alliance ever contacted, nor consulted the Justices of the Peace individually to obtain input regarding the proposed changes. Representations made regarding a "collective" approval of the proposed changes are completely misleading and merely amount to the opinions of a few.

As I understand, the entire basis for H.B. 79 was to make all civil cases filed in the Justice of the Peace Courts, with the exception of Eviction cases, Small Claims Cases. While there is much debate about the true basis for H.B. 79, anyone with a thorough working knowledge of the kinds of cases we see would agree that the proposed rules destroy the Small Claims Model and favor more rules and confusion. This court was specifically designed for the public to seek justice with or without an attorney in an efficient and fair manner. Enacting more rules and/or giving unrestrained discretion to judges will only confuse litigants, delay proceedings, increase costs and facilitate unpredictable results. Finally, I urge you to reject the proposed changes and preserve the simplicity, informality and integrity of Small Claims cases in Justice Court.

If you have any questions or concerns, please do not hesitate to give me a call. I truly appreciate your dedication to resolving the issues surrounding H.B. 79 and I look forward to discussing the proposed changes should you need to contact me in the future.

Very truly yours,

Hilary H. Green
Justice of the Peace
Precinct 7, Place 1
Harris County

cc: Justice Wallace Jefferson
Charles "Chip" Babcock
Levi Benton
Howard Bookstaff
Robert L. Levy
Jim M. Perdue
Kent C. Sullivan

JUDGE TOM LAWRENCE
JUSTICE OF THE PEACE
HARRIS COUNTY
PRECINCT FOUR, POSITION TWO

7900 WILL CLAYTON PARKWAY
HUMBLE, TEXAS 77338-5849

TELEPHONE: (281) 446-7191
CIVIL: (281) 446-9239
CHECKS: (281) 446-8621

June 13, 2012

Justice Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2248

Mr. Charles Babcock
Chairman, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Dear Justice Hecht and SCAC Members,

I am writing to comment on the proposed changes to small claims cases and justice court rules. Rather than offer lengthy comments about each of my concerns with these proposed rules I would like to make several general comments. I was a member of the State Bar of Texas Task Force on Court Reorganization and was involved in the draft of the final report dealing with the proposed changes to Justice Courts. I was also involved with the predecessor legislation to HB 79 in 2009, so I have some background as to the intent of HB 79.

Repeal of Chapter 28 Government Code

This was intended to solve several problems with the existing statutory framework. It is sometimes difficult to amend the small claims rules because real or perceived political considerations interfere in the process and these rules are not always given a priority by the legislature. Also the existing rules allow too much leeway in interpretation so judges interpret the rules differently, sometimes from case to case but certainly from court to court. Lastly, it was felt it would be better to give the rule making power for small claims cases to the Supreme Court so the small claims rules could be amended more easily by a body familiar with trial rules. It was not intended that the existing justice court civil rules be repealed and that we only have one set of trial rules but that we would continue to have both small claims and justice court civil rules just as we do now. The small claims rules would be simpler and designed for the pro se while the justice court civil rules and eviction rules would be governed by more formal rules and the rules of evidence. These proposed rules create one set of trial rules with a one size fits all mentality. I suggest that two distinct sets of trial rules would be better and the Task Force go back to the drawing board.

Eviction Rules

HB 79 requires that the Supreme Court promulgate eviction rules although it was intended that the Supreme Court only review and amend the existing eviction rules where needed. Many of you may remember that the SCAC spent about a year and a half revising the eviction rules and submitted a final version to the Supreme Court in 2002. There has never been any action taken on those proposed rules but that would have been a good place for the Task Force to start. These proposed eviction rules do not solve many of the biggest problem areas identified by the SCAC in 2002 and may create some new problems.

Proposed Rule 502 and Rule 504

Procedural rules should promote certainty and consistency not uncertainty and inconsistency, which is exactly what Rules 502 and 504 will accomplish. Although current Rule 523 is sometimes difficult to apply in practice these two new rules seem to encourage judges to apply whatever rules they think appropriate on a case by case basis. Litigants and attorneys who practice in justice of the peace courts will not find the same interpretation of the rules from court to court and from case to case. Inconsistency and arbitrary interpretations will invariably follow.

Proposed Rule 523

What we need is a good recusal and disqualification rule for justice courts similar to Rules 18a and 18b. This proposed rule is a revision of current Rule 528 but it allows a party to select the precinct to which the case would be transferred. It also ignores procedures for transferring a case that may be established by local rules in a particular county.

Proposed Rule 540

Justices of the peace have been charging the jury in criminal jury trials for a number of years so I am not sure why a civil jury shouldn't be charged. It is difficult for a jury to understand comparative negligence, offsets, and jurisdictional limits without some explanation. There are also some instances where the legislature has provided that a jury be charged in some specific manner in certain cases and this would still conflict with that requirement. Surely we can draft a rule that would allow some type of basic jury charge.

Proposed Rules 576-578 Debt Claim Cases

Normally a case filed in justice court would have somewhat relaxed rules compared to a similar case filed in county and district court but you would not expect an entirely different set of rules. For example a car wreck case would typically have the same pleadings and defenses regardless where it was filed. These proposed rules would establish a different set of procedural rules for debt collection cases filed in justice court. A case valued at $9,500.00 filed in justice court would require different pleadings and default judgment procedures from a case valued at $20,000.00 filed in county or district court.

Appeals in Small Claims cases and Evictions

Rule 560 requires a defendant to appeal by posting a bond in double the amount of the judgment in a small claims case. Rule 750 allows a judge wide discretion to set a bond in an eviction case and there is really no limit to the amount of the bond. Isn't it time to institute a rule for appeals in all justice court cases where a party may appeal by posting a minimal bond and then post a supersedeas bond to prevent the execution of the judgment? This was discussed in great detail in 2002 by the SCAC when it considered the revisions to the eviction rules and it was generally agreed that the principles espoused in *Dillingham v. Putnam* are as applicable in justice court as they are in county and district court.

Proposed Rule 749

In many of the eviction cases filed after a foreclosure a mortgage company will allow a defendant more time to move out after a foreclosure recognizing the difficulty in moving a household after years of living in a home. It is not uncommon for a defendant to be given more than 30 days to move but this proposed rule would essentially require a mortgage company to get the writ of possession and evict the defendant within 30 days so they don't have to file a new eviction action and start over. I am sure the Task Force had a reason why they proposed this rule but there is an unintended consequence.

There are many other comments I could offer on specific proposed rules but I would hope that the SCAC would consider whether or not we are really better off with these proposed rules.

Yours truly,

Tom Lawrence

Tom Lawrence
Judge

TEXAS APARTMENT ASSOCIATION

1011 SAN JACINTO BLVD., STE. 600 • AUSTIN, TEXAS 78701-1951
TELEPHONE 512/479-6252 • FAX 512/479-6291 • www.taa.org

May 31, 2012

via email and regular mail
Charles ("Chip") Babcock
Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

via email and hand delivery
Honorable Nathan Hecht and David Medina
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711 -2248

Dear Supreme Court Advisory Committee Members and Justices Hecht and Medina:

I am writing on behalf of the Texas Apartment Association (TAA) concerning the draft justice court rules proposed by the Task Force for Rules in Small Claims Cases and Justice Court Proceedings (Task Force). TAA is the nation's largest state association representing residential rental housing owners, with more than 10,800 members who own or manage more than 1.8 million rental units in Texas that house more than 4.5 million Texans.

Despite the obvious interest that residential rental housing owners and managers have in this issue, we did not have any direct representation on the Task Force and were only allowed to attend the Task Force's initial meeting. In the past, the Supreme Court of Texas has invited TAA representatives to sit on task forces that have addressed rules affecting landlord-tenant proceedings.[1] We were honored to serve then, and we would be honored to serve in the future. We appreciate the difficulty in drafting statewide rules and would prefer to voice our concerns during, rather than after, the initial drafting process. We have many concerns regarding the Task Force's proposals.

When the Legislature directed the Court to promulgate eviction rules, it was in the context of making changes necessary to incorporate small-claims-court duties into the justice-court system, as set forth in House Bill (HB) 79.[2] TAA appreciates the fact that some additional rules changes are necessary because of the passage of HB 1111.[3]

---

[1] Most recently, former TAA General Counsel Wendy Wilson served on the task force to write the new Texas Rule of Civil Procedure 737, which is part of the current Task Force's package of proposed rules. Previously, former TAA Legal Counsel Larry Niemann served on task forces that considered eviction rules.

[2] Section 5.07 of HB 79 provides: "Not later than May 1, 2013, the Texas Supreme Court shall promulgate: (1) **rules** to define cases that constitute small claims cases; (2) **rules** of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and (3) **rules** for **eviction** proceedings." (Emphasis added.)

[3] HB 1111, passed during the 82nd Regular Session, relates to a tenant's failure to pay rent during an appeal of an eviction for non-payment of rent after filing a pauper's affidavit.

We believe that the Task Force's draft rules go far beyond legislative intent and, if implemented, could slow the eviction process significantly and thereby cost rental housing owners tens of millions of dollars in lost rent. We contacted Representative Tryon Lewis, the author of HB 79, and Senator Robert Duncan, the Senate sponsor of HB 79, to make them aware of our concerns.

While the majority of our concerns relate to those rules specifically impacting the eviction process, we also have significant concerns with some of the proposed general rules. For example, we are concerned with the proposal to make both the Texas Rules of Civil Procedure and the Texas Rules of Evidence inapplicable to justice-court cases, including evictions, unless the judge hearing a case determines those rules should apply or, for the Rules of Civil Procedure, the proposed rules or law specifically provide otherwise. We also are unsure why many rule changes were proposed, as the Task Force provided little to no explanation for most of the changes. In addition, we are concerned about the impact the proposed rules will have on the significant body of case law that is based on the current rules.

The potential for delays and extra costs under the proposed Task Force rules are a major concern for TAA and its members. With rents averaging about $800 a month, each day the eviction process is delayed can cost a rental housing owner more than $25. Thus, by way of example, proposed Rule 741 could result in more than $100 in lost rental income in a case by effectively extending the appearance date by four days. Our reading of the proposed rules also suggests further delays will occur in justice-court cases, including evictions, in which there is a pretrial conference, mediation or a summary proceeding without the requirement of a written response.

With more than 225,000 eviction cases filed in Texas each year, even a one-day delay will collectively cost the rental housing industry nearly $6 million per year. Anecdotally, we believe that more than 95 percent of eviction cases are default judgments, in which the resident fails to pay the rent, has no intention of paying the rent, has already vacated the unit and does not show up for the trial. Extending the timeline for eviction trials will cause even greater harm to the rental housing owner who not only has to deal with the consequences of the lost rental income from the original resident, but must also wait longer to seek a suitable replacement resident.

Proposed Rule 739—requiring each defendant in an eviction suit to be served individually—could also significantly delay the eviction process and increase costs. For example, in Harris County, the cost of having to serve one additional defendant in a unit is $70. Extrapolated across the 225,000 eviction cases filed in Texas each year, this would translate to approximately $15.75 million per year that Texas rental housing owners must spend to recover possession of their property. A single roommate avoiding service could also significantly delay the eviction process.

Beyond the economic impact, we are also concerned about how a longer eviction process will affect attempts by rental housing owners to evict tenants who are a danger to fellow tenants, employees or the property. This is an unfortunately common occurrence in the State of Texas.

We outline our objections to the proposed rules below. We are commenting on only those proposed rules that cause TAA concern. We have also attached a chart (Attachment A)

comparing the proposed rules of concern with the current rules and TAA's recommended language for the rules. Finally, Attachment B contains sections of the Texas Property Code that we cite in this letter.

Section 10. Eviction Cases – Proposed Rules 738-755

Proposed Rule 739 – Petition (page 8 of Attachment A)

TAA opposes proposed Rule 739 and believes current Rule 741 should remain in effect.

Proposed Rule 739 provides that an eviction petition must name as defendants "all tenants obligated under a lease residing at the premises" and that no "writ of possession shall issue or be executed against a tenant . . . who is not named in the petition and not served with citation." This proposed rule is a significant departure from current Rule 741. The Task Force did not explain why it believes such a drastic change is necessary, nor did it address the consequences of the change. Proposed Rule 739 will result in delays in serving citations. Moreover, if current Rule 742 is removed—as proposed by half of the Task Force—rental housing owners will have no choice but to endure delays caused by defendants evading service, as those defendants will no longer be subject to a writ of possession. Delays in service will erode the efficiency of the eviction process and cause the cost of service to increase dramatically for rental housing owners.

In addition, subdivision (d) of proposed Rule 739 requires the petition to contain the "total amount of rent sought by the plaintiff." This pleading requirement fails to account for the possibility that additional unpaid rent will accrue after filing and before trial. A plaintiff should not be required to plead a potential unknown. If any version of this pleading requirement is adopted, it should be revised to state, "(d) the total amount of rent due at the time of the filing."

Proposed Rule 741 – Citation (page 9 of Attachment A)

Under proposed Rule 741, a defendant has up to 14 days "from the date of filing of the petition" to appear before the judge. In contrast, current Rule 741 gives the defendant up to 10 days "from the date of service of the citation" to appear. The Task Force did not explain why the trigger event is changed from the service date to the filing date. This change could increase administrative burdens for justice courts, which will have to amend citations in each case in which defendants are not served within 14 days of the filing date. This change could also be detrimental to defendants who are served near the end of the 14-day window and, as a result, have less time to prepare for their appearance. The proposed rules do not provide a procedure for dealing with situations in which the 7 to 14 day timeline cannot be met. Finally, in some cases, expanding the maximum time period in the rule from 10 days to 14 days could delay the eviction proceedings by as much as four days and thereby increase the income losses that rental housing owners face. As mentioned above, this additional loss could total $100 or more per case.

Proposed Rule 741 would be detrimental to rental housing owners, tenants and justice courts alike. We recommend that proposed Rule 741 be removed and current Rule 739 remains in effect.

Proposed Rule 742 – Request for Immediate Possession (page 10 of Attachment A)

The Task Force was evenly split on whether to remove current Rule 740. Half of the Task Force wanted to remove it; the other half wanted to adopt a modified rule—proposed Rule 742.

TAA strongly opposes the proposal to remove current Rule 740, relating to an immediate bond for possession, as well as any attempt to modify this important remedy. Both of the Task Force's proposals are clear examples of the Task Force going far beyond legislative directives in HB 79.

Under the bond-for-possession rule that has existed for many years under Section 24.0061(b) of the Texas Property Code, the justice of the peace has been empowered to issue a writ of possession immediately only if a defendant fails to appear for trial, a default judgment is taken and no counter bond has been filed by the defendant.[4] In other words, there are procedural protections that guard against the possible abuse that prompted some Task Force members to propose removing current Rule 740, and the remedy therein, altogether. Moreover, while the defendant who fails to appear at the trial in justice court may lose possession of the property, the defendant never loses the right to appeal a default judgment in a trial *de novo* in the county court.

Anecdotally, most rental housing owners who use the possession bond only do so in instances when there are issues with violence or drug crimes by the tenants, occupants or guests. This remedy is very important to protect against the risk of serious bodily harm and ongoing property damage when there is an uncontested complaint alleging such dangers, particularly when the dangers rise to the level of criminal conduct justifying immediate action by the justice system.

Current Rule 740 has been in effect for almost 35 years without any significant problems. We believe its removal is ill-advised and are concerned that the Task Force members urging its removal may not fully appreciate the serious dangers in some evictions that necessitate immediate bonds for possession. We recommend retaining current Rule 740 without modifications.

Proposed Rule 743 – Service of Citation (page 12 of Attachment A)

Under proposed Rule 743, the constable, sheriff or other person ordered by the court to serve the citation must return the citation "no later than three days before the day assigned for the trial." Extending this time from one day before the trial to three days before the trial will result in delays or postponements of eviction trial dates. The Task Force offered no justification for such delays or postponements, which will—once again—be detrimental to rental housing owners.

TAA recommends that the time for returning the citation to the court remain "on or before the day assigned for trial" as provided in the current rule. This will give those serving the citation maximum time to serve the defendant and return documents to the court so that the eviction trial will take place on its originally set trial date. This will also be consistent with the one-day period the Task Force provided in proposed Rule 743a (d).

Proposed Rule 745 – Demanding Jury (page 12 of Attachment A)

[4] Attachment B contains the text of section 24.0061 of the Texas Property Code.

Under proposed Rule 745, the time period for a party to request a jury trial has been changed from "on or before five days from the date the defendant is served with citation" (in current Rule 744) to "at least three days before the day set for trial." This change allows a party to make a last-minute request for a jury trial, resulting in further delays in having an eviction case tried.

TAA recommends that current Rule 744 remain in place, requiring parties seeking a jury trial to make a request within a reasonable time after service so that the eviction trial is not delayed.

Proposed Rule 746 – Trial Postponement (page 12 of Attachment A)

Proposed Rule 746 removes the current requirement for an affidavit supporting a good cause showing to postpone trial. There does not appear to be any justification for this change. TAA recommends retaining the requirement for an affidavit showing a good cause to postpone trial.

Proposed Rule 749 – Judgment and Writ (page 12 of Attachment A)

TAA objects to proposed Rule 749 for two reasons. First, it prevents a writ of possession from being issued more than 30 days after a judgment is signed. This appears to be inconsistent with the law relating to enforceability of judgments. *See*, e.g., Tex. Civ. Prac. & Rem. Code § 34.001 (providing that writs of execution may be issued for up to ten years after judgment is rendered). Limiting the time allowed to issue a writ of possession to 30 days does not take into account circumstances in which a delay in issuing a writ is warranted. Second, this proposed rule requires a justice of the peace to award attorney's fees to a prevailing tenant, a clear departure from Section 24.006 of the Texas Property Code, which allows a justice to award attorney's fees.[5]

TAA recommends retaining current Rule 748. If the Supreme Court Advisory Committee (SCAC) decides to place a limit on enforcing an eviction judgment, TAA would suggest that any limitation on issuing a writ of possession pursuant to an eviction judgment be extended to 90 days. Additionally, TAA recommends that the portion of proposed Rule 749 that awards attorney's fees to a prevailing defendant/tenant be removed as it conflicts with Section 24.006 of the Texas Property Code.[6]

Proposed Rules 750a & 750b – Inability To Pay Appeal Costs in Eviction Cases; Payment of Rent During Nonpayment of Rent Appeals (current Rules 749a & 749b – Pauper's Affidavit) (pages 13-16 of Attachment A)

TAA recognizes that some rule changes are necessary due to the passage of HB 1111 in 2011. This legislation was intended to clarify the pauper's affidavit process for appealing nonpayment in eviction cases and to provide a remedy to rental housing owners when tenants fail to pay the equivalent of one month's rent into the court registry within five days of filing a pauper's affidavit appeal.

[5] Attachment B contains the text of section 24.006 of the Texas Property Code.

[6] Attachment B contains the text of section 24.006 of the Texas Property Code.

TAA is concerned, however, that proposed Rules 750a and 750b essentially repeat portions of Sections 24.0052 and 24.0053 of the Texas Property Code and eliminate portions of current Rules 749a and 749b that remain applicable despite the passage of HB 1111.[7] If current Rules 749a and 749b are eliminated altogether, consistent with the Task Force's proposal, there could be even more confusion about the pauper's affidavit appeal process.

Generally, TAA believes it would be better to take a less specific approach in crafting these rules so that further confusion can be avoided if there are future statutory changes. TAA recommends that proposed Rules 750a and 750b be rewritten to reincorporate aspects of current Rules 749a and 749b. For example, the proposed rules should use a modified version of the language in current Rule 749b(1) that would read: "Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry the amount set forth in the notice delivered to the tenant at the time the tenant filed the pauper's affidavit." TAA's recommended language is on pages 13-16 of Attachment A.

Proposed Rule 755 – Writ of Possession on Appeal (page 18 of Attachment A)

TAA is concerned about the departure of proposed Rule 755 from the current rule and the effect it will have on obtaining a writ of possession when a tenant appeals a county court's judgment. Under the proposed rule, it is not clear whether a pauper's appeal affidavit is intended to constitute a supersedeas bond in an appeal from county court to the court of appeals. The proposed rule states, "The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Texas Property Code 24.007 and the Texas Rule of Appellate Procedure 24." TAA recommends that proposed Rule 755 be revised to state clearly that a pauper's appeal affidavit does not constitute a supersedeas bond when a tenant appeals a county court's judgment.

Section 1. General Rules - Proposed Rules 500-507.1

Proposed Rule 501 – Justice Court Cases

Proposed Rule 501(d) states, "Eviction cases in justice court shall be governed by Section 10 [Rules 738-755], and Part V of these rules of civil procedure. To the extent of any conflict between Part V and Section 10, Section 10 shall apply."

We have strong concerns about the proposed rules in Part V, Section 1, General Rules. These proposed rules appear to apply to *all* justice court cases, unless otherwise specifically provided. TAA is concerned that many general rules are not clear as to whether they apply to eviction proceedings. TAA is also concerned that the Texas Rules of Civil Procedure governing district and county courts will no longer apply generally to justice-court cases, including evictions. Likewise, we are concerned that the Texas Rules of Evidence will no longer apply to justice-court cases, including evictions. Eliminating the general applicability of these rules will very likely cause vague and inconsistent application of procedures in all justice-court cases, including evictions. Thus, we urge the SCAC to retain general applicability of the Rules of Procedure and Evidence and to clarify which general justice-court rules are intended to apply to eviction cases.

---

[7] Attachment B contains the text of sections 24.0052 and 24.0053 of the Texas Property Code.

Proposed Rules 502 and 504 – Application of Rules in Justice Court & Rules of Evidence (page 1 of Attachment A)

Under proposed Rules 502 and 504, neither the Texas Rules of Civil Procedure nor the Texas Rules of Evidence will apply to any justice-court proceeding, including eviction cases, except to the extent the judge hearing the case determines that a particular rule must be followed to ensure fairness in the proceedings or, for the Texas Rules of Civil Procedure, the justice-court rules specifically provide otherwise. The lack of predictability and consistency that will stem from these proposed rules will be bad for all parties involved in eviction cases.

We strongly recommend that the SCAC eliminate both of these proposed rules and retain current Rule 523, which will provide that the Texas Rules of Civil Procedure and Evidence will continue to apply to justice-court cases, particularly evictions.

Proposed Rule 505 – Duty of Judge to Develop Case (page 1 of Attachment A)

While justices of the peace are allowed to develop the facts of the case in small-claims cases, permitting this practice in eviction cases will encourage parties to seek a venue and judge who may be favorable to their position. This activity will threaten judicial fairness and delay the eviction process. By combining proposed Rule 505 with proposed Rule 523, a defendant—including a tenant in an eviction case—will have the ability to change venue and choose the precinct of his or her choice. That sort of forum shopping should not be allowed or encouraged.

Proposed Rule 505 should be amended to specify that it does not apply to eviction cases.

Proposed Rules 507 & 507.1 – Pretrial Discovery and Post-Judgment Discovery (pages 1 & 2 of Attachment A)

TAA strongly objects to proposed Rules 507 and 507.1 to the extent they apply to eviction cases. We also object to the application of these rules to other types of justice-court cases. As proposed, any requests for pretrial discovery must be presented to the court by written motion before being served on the other party. Involving the court in the pretrial discovery process will make justice-court cases more expensive and unnecessarily time-consuming, particularly in cases where both parties agree to exchange information.

Discovery should not be applicable in eviction cases, and any discovery necessitated in justice court should be subject to the Rules of Civil Procedure governing district and county courts.

Section 2. Institution of Suit - Proposed Rules 509-524

Proposed Rules 522 and 523 – Fair Trial Venue Change (pages 2- 4 of Attachment A)

TAA strongly objects to proposed Rules 522 and 523 to the extent these general rules of procedure are intended to apply to eviction cases. TAA recommends that the current justice-court rules relating to venue (Rules 527-531) remain in effect.[8]

These proposed rules constitute a significant departure from the current motion-to-transfer-venue procedure (in Rules 527 and 531) and change-of-venue procedures (in Rules 528 and 529), and will spawn forum shopping by a defendant because the defendant will be able to request an alternative precinct for the case to be heard. Under the current justice-court rules, a change of venue is permitted only by filing an affidavit that must be supported by two credible witnesses, at which time the justice of the peace transfers the case to the nearest available justice court in the county. The Task Force did not provide any explanation—and TAA perceives no good reason—for changing the existing procedures that have worked well for many years.

Proposed Rule 526 – Summary Disposition (page 5 of Attachment A)

Proposed Rule 526 creates a summary-disposition proceeding. Though similar to a motion for summary judgment under the Rules of Civil Procedure, this proposed rule does not require a written response from the respondent. Failure to require a written response to a "summary disposition" will permit and encourage a responding party to wait until the hearing date to disclose facts or raise defenses, without notice, for the first time. This will result in judicial inefficiencies and delays in justice-court cases, including eviction cases.

We strongly support the continued use of Rule of Civil Procedure 166a in justice-court cases.

Section 3. Trial - Proposed Rules 526-541

Proposed Rule 531 – Pretrial Conference (pages 5 & 6 of Attachment A)

We are concerned about the use of this proposed rule in eviction proceedings. While other types of justice-court cases may necessitate a pretrial conference under certain circumstances, utilizing this proceeding in eviction cases is unnecessary and judicially inefficient.

It is important to keep in mind that under *McGlothlin v. Kliebert*, 672 S.W. 2d 231, 232 (Tex. 1984), a forcible-entry-and-detainer (*i.e.* eviction) proceeding is meant to be a summary, speedy and inexpensive remedy for the determination of who is entitled to possession of the premises.

We recommend that proposed Rule 531 be amended so that pretrial conferences are not applicable in eviction cases.

Proposed Rule 531a – Alternative Dispute Resolution (page 6 of Attachment A)

We strongly object to proposed Rule 531a, which allows a judge to order any justice-court case to mediation, particularly as it relates to eviction cases. As with proposed Rule 531, the findings in *McGlothlin* should be considered. A judge should not be able to order mediation in an

[8] Section 24.004 of the Texas Property Code provides that exclusive jurisdiction of an eviction suit is in the justice court of the precinct where all or part of the real property at issue is located. See Attachment B for the text of section 24.004.

eviction case unless it is agreed to by the parties. Any other procedure will create all manner of havoc and delay in eviction cases. Using mediation suggests that there is some middle ground in which the parties may be able to reach agreement with the help of a neutral third party. But nearly all eviction cases are for nonpayment of rent, and the issue is simple: the tenant has not paid the rent according to the contract, and the rental housing owner wants to recover possession of the property. The only other issue involves the amount of unpaid rent owed to the rental housing owner. A rental housing owner generally does not file an eviction except as a last resort, and at that point the remaining issue is recovering lawful possession of the property and recovering any unpaid rent.

Section 6. Appeal - Proposed Rules 560-575

Proposed Rule 560 – Appeal (pages 6 & 7 of Attachment A)

TAA urges the SCAC to retain current Rule 571, or as an alternative modify the Proposed Rule 560 to retain the five-day time period for a party to appeal an eviction case. Under proposed Rule 560, the goal of providing a quick and efficient resolution will simply be stymied if the time to appeal is expanded from 10 days to 20 days after the judgment is signed.

Proposed Rule 564 – New Matter May Be Pleaded (page 8 of Attachment A)

Instead of adopting the proposed rule, TAA recommends that current Rule 574a remain in effect. Although the title of the proposed rule states that new grounds of recovery may be plead, it clearly states that "no new ground of recovery may be plead by the plaintiff." This is contrary to current Rule 574a, which provides that "either party may plead any new matter in the county or district court which was not presented in the court below."

Conclusion

The current eviction process works smoothly and efficiently. We strongly urge the SCAC to recommend to the Court only those changes that are necessary to respond to the abolition of small-claims courts and necessary due to HB 1111, and to avoid making wholesale changes that exceed legislative intent and dramatically change the way eviction cases are handled in Texas.

TAA representatives will attend the June 22-23 SCAC meeting and welcome the opportunity to provide comments or answer any questions the SCAC has about our concerns and proposals.

We will be available at any point to work with the SCAC and the Court's rules attorney to help ensure the eviction process is fair for all parties while maintaining a residential rental housing owner's ability to timely obtain possession of a rental unit from an individual who has failed to pay the rent.

Thank you for your consideration of our concerns.

Respectfully submitted,

George B. Allen, CAE
Executive Vice President

cc: Marisa Secco

JUSTICE COURT RULES OF PROCEDURE SIDE-BY-SIDE

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
SECTION 1. GENERAL RULES		
RULE 502. APPLICATION OF RULES IN JUSTICE COURT Civil cases in the justice courts shall be conducted in accordance with the rules listed in Rule 501 of the Texas Rules of Civil Procedure. Any other rule in the Texas Rules of Civil Procedure shall not govern the justice courts except: (a) to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or, (b) where otherwise specifically provided by law or these rules. Applicable rules of civil procedure shall be available for examination during the court's business hours.	**RULE 523. DISTRICT COURT RULES GOVERN** All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules.	Retain existing Rule 523. Do not adopt proposed Rule 502.
RULE 504. RULES OF EVIDENCE The Texas Rules of Evidence do not apply to justice courts except to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties.		Retain existing Rule 523. Do not adopt proposed Rule 504.
RULE 505. DUTY OF THE JUDGE TO DEVELOP THE CASE The judge may develop the facts of the case, and for that purpose may question a witness or party and may summon any person or party to appear as a witness as the judge considers necessary to ensure a correct judgment and speedy disposition of the case.		Amend proposed Rule 505 to specify that it does not apply to eviction cases.
RULE 507. PRETRIAL DISCOVERY Any requests for pretrial discovery must be presented to the		Do not adopt Rule 507.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
court by written motion before being served on the other party. The discovery request shall not be served upon the other party until the judge issues a signed order approving the discovery request. The court shall permit such pretrial discovery that the judge considers reasonable and necessary for preparation for trial, and may completely control the scope and timing of discovery. Failure to comply with the judge's order can result in sanctions, including sanctions that may prove fatal to a party's claim.		
RULE 507.1. POST-JUDGMENT DISCOVERY Post-judgment discovery need not be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.		Do not adopt Rule 507.1.
SECTION 2. INSTITUTION OF SUIT		
RULE 522. MOTION TO TRANSFER VENUE (a) *Motion.* If a defendant wishes to challenge the venue the plaintiff selected, the defendant may file a motion to transfer venue. This motion must be filed no later than the 20th day after the day the defendant's answer is filed under Rule 516, and must contain a sworn statement that the venue chosen by the plaintiff is improper. The motion must also contain a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to do so, the court must inform the defendant of the defect and allow the defendant 10 days to cure the defect. If	**RULE 527. MOTION TO TRANSFER** A motion to transfer filed in the justice court shall contain the requisites prescribed in Rule 86; and in addition shall set forth the precinct to which transfer is sought. **RULE 531. ORDER OF TRANSFER** The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear	Retain current Rules 527 and 531. Do not adopt proposed Rule 522.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed. (b) *Hearing.* (1) *Procedure.* (A) *Judge to Set Hearing.* In response to a motion to transfer venue, the judge shall set a hearing at which the motion will be considered. (B) *Response.* A plaintiff may file a response to a defendant's motion to transfer venue. (C) *Evidence and Argument.* The parties may present evidence and make legal arguments at the hearing. The defendant presents evidence and argument first. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system. Written documents offered by the parties may also be considered by the judge at the hearing (2) *Judge's Decision.* The judge must either grant or deny the motion to transfer venue. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit. (3) *Further Consideration of Judge's Ruling.* (A) *Motions for Rehearing.* Motions for rehearing of the judge's ruling on venue are not permitted. (B) *Appeal.* No interlocutory appeal of the judge's ruling on venue is permitted. (4) *Time for Trial of the Case.* No trial shall be held until at least the 15th day after the judge's ruling on the motion to transfer venue. (c) *Order.* If the motion to transfer venue is granted, the court must issue an order of transfer stating the reason for the transfer	before such court at its next ensuing term.	

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the cause, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the cause, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and that the plaintiff has 10 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay, as described in Rule 509. Failure to do so will result in the case being dismissed without prejudice.		
RULE 523. FAIR TRIAL VENUE CHANGE If a party believes they cannot get a fair trial in a specific precinct or before a specific judge, they may file a sworn statement stating such, and specifying if they are requesting a change of location or a change of judge. This statement must be filed no less than seven days before trial, unless the sworn statement shows good cause why it was not so filed. If the party seeks a change in presiding judge, the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. If the party seeks a change in location, the case shall be transferred to any other precinct in the county requested by the defendant. If no specific precinct is requested, it shall be transferred to the nearest justice court in the county. If there is only one justice of the peace precinct in the county, then the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. In cases where	**RULE 528. VENUE CHANGED ON AFFIDAVIT** If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification. **RULE 529. "NEAREST JUSTICE" DEFINED** By the term "nearest justice," as used in this section, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.	Retain current Rules 528 and 529. Do not adopt proposed Rule 523.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
exclusive jurisdiction is within a specific precinct, as in Eviction Cases, the only remedy available is a change in presiding judge. A party may apply for relief under this rule only one time in any given lawsuit.		
SECTION 3. TRIAL		
RULE 526. SUMMARY DISPOSITION (a) *Motion.* A party may file a motion with the court requesting judgment in its favor without a need for trial. A plaintiff's motion for summary disposition should state that there is no genuine dispute of any material fact in the case, and that it is therefore entitled to judgment as a matter of law. A defendant's motion for summary disposition should state that the plaintiff has no evidence of one or more essential elements of its claim against the defendant. (b) *Hearing.* If a summary disposition motion is filed, the judge must hold a hearing, unless all parties waive the hearing in writing. Parties may respond to the motion orally at the hearing, unless the court orders them in writing to reduce their responses to writing, which may or may not be sworn, at the discretion of the court. (c) *Order.* The court may enter judgment after the hearing as to an entire claim, or parts of a claim, as the evidence requires. The court should deny the motion if any material factual dispute exists.		Instead of adopting proposed Rule 526, continue to use Rule 166a of the Texas Rules of Civil Procedure to address this issue.
RULE 531. PRETRIAL CONFERENCE If all parties have appeared in a suit, any party may request, or the court may order a pretrial conference. Appropriate issues for this setting include: (a) Discovery issues;		Amend proposed Rule 531 to make clear it does not apply in eviction cases.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
(b) The need for amendment or clarification of pleadings; (c) The admission of facts and documents to streamline the trial process; (d) Limitation on the number of witnesses at trial; (e) Identification of facts, if any, which are not in dispute between the parties. (f) Ordering the parties to mediation or other alternative dispute resolution services; (g) The possibility of settlement; (h) Trial setting dates that are amenable to the court and all parties; (i) Appointment of interpreters, if needed; (j) Any other issue that the court deems appropriate.		
RULE 531a. ALTERNATIVE DISPUTE RESOLUTION It is the policy of this state to encourage the peaceable resolution of disputes thru alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. It is the responsibility of judges and their court administrators to carry out this policy and develop an alternative dispute resolution system to encourage peaceable resolution in all justice court suits. For that purpose the judge may order any justice court case to mediation or another appropriate and generally accepted alternative dispute		Amend proposed Rule 531a to explicitly prohibit the use of ADR in eviction cases, unless all parties agree.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
resolution process.		
RULE 560. APPEAL (a) *Plaintiff's Appeal.* If the plaintiff wishes to appeal the judgment of the court, the plaintiff or its agent or attorney shall file a bond in the amount of $500 with the judge no later than the 20th day after the judgment is signed or the motion for new trial, if any, is denied. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy such costs if judgment or costs be rendered against it on appeal. (b) *Defendant's Appeal.* If the defendant wishes to appeal the judgment of the court, the defendant or its agent or attorney must file a bond with the judge no later than the 20th day after the judgment is rendered or the motion for new trial, if any, is denied. This bond is calculated by doubling the amount of the judgment rendered in justice court. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy the judgment which may be rendered against it on appeal. (c) *Appeal Perfected.* When such bond has been filed with the court, the appeal will be held to be perfected. The appeal will not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same. This notice will be given by the court to which	**RULE 571. APPEAL BOND** The party appealing, his agent or attorney, shall within ten days from the date a judgment or order overruling motion for new trial is signed, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal; or if the appeal is by the plaintiff by reason of judgment denying in whole or in part his claim, he shall file with the justice a bond in the same ten-day period, payable to the appellee, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the costs incurred in the justice court and estimated costs in the county court, less such sums as may have been paid by the plaintiff on the costs, conditioned that he shall prosecute his appeal to effect and shall pay off and satisfy such costs if judgment or costs be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed. Within five days following the filing of such appeal bond, the party appealing shall give notice as provided in Rule 21a of the filing of such bond to all parties to the suit who have not filed such bond. No judgment shall be taken by default against any party in the court to which the cause has been appealed without first	Retain current Rule 571 instead of adopting proposed Rule 560, or modify the proposed rule to retain the current timeframe. It should be made clear that the rule does not apply to eviction cases.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
the cause has been appealed. (d) *Notice Required.* Within five days following the filing of such appeal bond, the party appealing must give notice as provided in Rule 515 of the filing of such bond to all parties to the suit who have not filed such bond. No judgment may be taken by default against any party in the court to which the cause has been appealed without first showing compliance with this rule.	showing that this rule has been complied with. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same.	
RULE 564. NEW MATTER MAY BE PLEADED No new ground of recovery may be set up by the plaintiff, nor may any set-off or counterclaim be set up by the defendant which was not pleaded in the justice court.	**RULE 574a. NEW MATTER MAY BE PLEADED** Either party may plead any new matter in the county or district court which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff, nor shall any set-off or counterclaim be set up by the defendant which was not pleaded in the court below. The pleading thereof shall be in writing and filed in the cause before the parties have announced ready for trial.	Retain current Rule 574a. Do not adopt proposed Rule 564.
SECTION 10. EVICTION CASES	**SECTION 3. FORCIBLE ENTRY AND DETAINER**	
RULE 739. PETITION A petition in an eviction case must be sworn to by the plaintiff, and must contain: (a) A description of the premises that the plaintiff seeks possession of; (b) A description of the facts and the grounds for eviction; (c) A description of when and how notice to vacate was	**RULE 741. REQUISITES OF COMPLAINT** The complaint shall describe the lands, tenements or premises, the possession of which is claimed, with sufficient certainty to identify the same, and it shall also state the facts which entitled the complainant to the possession and authorize the action under Sections 24.001 - 24.004, Texas Property Code.	Retain current Rule 741. Do not adopt proposed Rule 739. If any version of the proposed Rule 739 (d) is adopted, subsection (d) should read: "(d) The total amount of rent due at the time of the filing."

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
delivered; (d) The total amount of rent sought by the plaintiff, if any; (e) Attorney's fees, if applicable, if any. The petition must be filed in the precinct where the property is located. If it is filed in a precinct other than the precinct where all or part of the property is located, the judge shall dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted. A plaintiff must name as defendants in a petition all tenants obligated under a lease residing at the premises who plaintiff seeks to evict. No judgment or writ of possession shall issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and not served with citation pursuant to these rules, except that a writ may be executed against occupants not obligated under a lease but claiming under the tenant or tenants.		
RULE 741. CITATION When the plaintiff or his authorized agent shall file his written sworn petition with such justice court, the court shall immediately issue citation directed to the defendant or defendants commanding them to appear before such judge at a time and place named in such citation, such time being not more than fourteen days nor less than seven days from the date of filing of the petition. The citation shall include a copy of the sworn petition and all documents filed by the plaintiff, and shall inform the parties that, upon timely request and payment of a	**RULE 739. CITATION** When the party aggrieved or his authorized agent shall file his written sworn complaint with such justice, the justice shall immediately issue citation directed to the defendant or defendants commanding him to appear before such justice at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of the citation. The citation shall inform the parties that, upon timely request and payment of a jury fee no later than five days after the	Retain current Rule 739. Do not adopt proposed Rule 741.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
jury fee no later than three days before the date set for trial in the citation, the case shall be heard by a jury, and must contain all warnings provided for in Chapter 24 of the Texas Property Code. Additionally, it should include the following statement: "For additional assistance, consult Rules of Civil Procedure 500-575 and 738-755. These rules may be viewed at ***www.therules.com*** and are also available at the court listed on this citation."	defendant is served with citation, the case shall be heard by a jury.	
RULE 742. REQUEST FOR IMMEDIATE POSSESSION (a) *Request for Immediate Possession.* The plaintiff, at the time of filing the petition, may additionally file a sworn statement requesting immediate possession, alleging specific facts that should entitle the plaintiff to possession of the premises during any appeal. If the plaintiff files this statement it must also post a bond, in cash or surety, in an amount approved by the judge. The surety may be the landlord or its agent. (b) *Calculation of Bond.* The judge shall determine the amount of the bond. This may be done with an ex parte hearing with the landlord, and should cover defendant's damages if a writ of possession is issued, and then later revoked upon appeal. The amount could include moving expenses, additional rent, loss of use, attorney fees, and court costs. (c) *Notice to Defendant.* The defendant must be served a notice of the plaintiff's Request for Immediate Possession, including a copy of this statement in 12 point **bold** or underlined print: "**A request for immediate possession has been filed in this case. If judgment is rendered against you, you may only have 24 hours to move from this property after judgment. To preserve your right to remain in the property during an appeal, if any, you must post a counterbond in an amount set by the court. Contact the court IMMEDIATELY if you wish to post a**	**RULE 740. COMPLAINANT MAY HAVE POSSESSION** The party aggrieved may, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute and file a possession bond to be approved by the justice in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against plaintiff. The defendant shall be notified by the justice court that plaintiff has filed a possession bond. Such notice shall be served in the same manner as service of citation and shall inform the defendant of all of the following rules and procedures: (a) Defendant may remain in possession if defendant executes and files a counterbond prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's bond. Said counterbond shall be approved by the justice and shall be in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to plaintiff in the event possession has been improperly withheld by defendant;	Retain current Rule 740 to allow a bond for immediate possession in accordance with Texas Property Code Sec. 24.061 (b).

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
counterbond. If this request has been improperly filed, you may be entitled to recover your damages from the plaintiff." (d) *Counterbond.* If the defendant seeks to post a counterbond, the court should set it in an amount that will cover the plaintiff's damages if the defendant maintains possession of the property during appeal. If the defendant posts a counterbond, in cash or in surety approved by the court, the case will proceed in the usual manner for eviction cases. (e) *Default Judgment.* If the plaintiff is awarded a judgment by default, plaintiff will be awarded a writ of possession at any time after judgment is rendered upon request and payment of applicable fees, unless defendant has posted a counterbond as described in subsection (d). (f) *Contested Hearing.* If the defendant appears for trial, and plaintiff is awarded judgment for possession, the judge shall proceed to hear evidence and argument from all parties regarding the issue of immediate possession. If it is determined that the plaintiff's interests will not be adequately protected during the normal appeal procedure, the judge may require that a defendant post a bond if the defendant wishes to remain in possession of the premises during appeal, if any. This bond can be a counterbond as described above in subsection (d), or an appeal bond as described by Rule 750. Unless the defendant posts a counterbond or perfects an appeal with a bond as described by Rule 750, the writ of possession shall be issued after the expiration of five days upon request of the plaintiff and payment of the applicable fees. (g) *Forfeiture of Original Bond.* If the defendant is dispossessed of the property and subsequently is awarded possession at the county court, the defendant will be entitled to recover	(b) Defendant is entitled to demand and he shall be granted a trial to be held prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond; (c) If defendant does not file a counterbond and if defendant does not demand that trial be held prior to the expiration of said six-day period, the constable of the precinct or the sheriff of the county where the property is situated, shall place the plaintiff in possession of the property promptly after the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond; and (d) If, in lieu of a counterbond, defendant demands trial within said six-day period, and if the justice of the peace rules after trial that plaintiff is entitled to possession of the property, the constable or sheriff shall place the plaintiff in possession of the property five days after such determination by the justice of the peace.	

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
actual damages resulting from its exclusion, which damages may be awarded from a forfeiture of the plaintiff's original bond. If the defendant posts a counterbond and remains in possession, the county court will make a determination of the plaintiff's damages, if any, which may be awarded from a forfeiture of the defendant's counterbond.		
RULE 743. SERVICE OF CITATION The constable, sheriff, or other person authorized by written court order receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person, other than the plaintiff, over the age of sixteen years, at his usual place of abode, at least six days before the day set for trial; and no later than three days before the day assigned for trial he shall return such citation, with his action written thereon, to the court who issued the same.	**RULE 742. SERVICE OF CITATION** The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same.	Change the term "no later than three days before the day assigned for the trial" to "on or before the day assigned for trial," similar to the timeframe in current Rule 742.
RULE 745. DEMANDING JURY Any party shall have the right of trial by jury, by making a request to the court at least three days before the day set for trial, and by paying a jury fee. Upon such request, a jury shall be summoned as in other cases in justice court.	**RULE 744. DEMANDING JURY** Any party shall have the right of trial by jury, by making a request to the court on or before five days from the date the defendant is served with citation, and by paying a jury fee of five dollars. Upon such request, a jury shall be summoned as in other cases in justice court.	Retain current Rule 744. Do not adopt proposed Rule 745.
RULE 746. TRIAL POSTPONED For good cause shown by either party, the trial may be postponed not exceeding seven days. A continuance may exceed seven days if both parties agree in writing.	**RULE 745. TRIAL POSTPONED** For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days.	Amend proposed Rule 746 to require a trial postponement to be "supported by an affidavit of either party."
RULE 749. JUDGMENT AND WRIT If the judgment or verdict be in favor of the plaintiff, the judge will give judgment for plaintiff for possession of the premises,	**RULE 748. JUDGMENT AND WRIT** If the judgment or verdict be in favor of the plaintiff, the justice shall give judgment for plaintiff for possession of the	Retain current Rule 748. Do not adopt proposed Rule 749. As an alternative, extend the timeframe for issuing a writ of possession to 90 days and remove the proposed rule

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
costs, attorney's fees, and back rent, if any; and he must award a writ of possession upon demand of the plaintiff and payment of any required fees. If the judgment or verdict be in favor of the defendant, the judge will give judgment for defendant against the plaintiff for costs and attorney's fees, if any. No writ of possession may issue until the expiration of five days from the time the judgment is signed, except as provided by Rule 742. A writ of possession may not be issued after the 30th day after a judgment for possession is signed, and a writ of possession expires if not executed by the 30th day after the date it is issued. If the 30th day falls on a Saturday, Sunday, or legal holiday, for the purpose of satisfying this rule, it will become the next day that is not a Saturday, Sunday or legal holiday.	premises, costs, and damages; and he shall award his writ of possession. If the judgment or verdict be in favor of the defendant, the justice shall give judgment for defendant against the plaintiff for costs and any damages. No writ of possession shall issue until the expiration of five days from the time the judgment is signed.	language that reads "and attorney's fees, if any."
RULE 750a. INABILITY TO PAY APPEAL COSTS IN EVICTION CASES (a) *Contents of Statement.* If a party wishes to appeal, but is unable to pay the costs of appeal, or secure adequate sureties, it may appeal by filing a sworn statement of its inability to pay the costs of appeal no later than the fifth day after the judgment was rendered. The justice court must make available a form that a person may use to comply with these requirements. Notice of this statement must be given by the court to the other party no later than the next business day. The statement must contain the following information: (1) the tenant's identity; (2) the nature and amount of the tenant's employment income; (3) the income of the tenant's spouse, if applicable and	**RULE 749a. PAUPER'S AFFIDAVIT** If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of the court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. Upon the filing of a pauper's affidavit the justice of the peace or clerk of the court shall notice the opposing party of the filing of the affidavit of inability within one working day of its filing by written notification accomplished through first	TAA suggests that the Court not adopt proposed Rule 750a and instead amend current Rule 749a to read as follows: **RULE 749A PAUPER'S AFFIDAVIT** If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of the court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. Upon the filing of a pauper's affidavit the justice of

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
available to the tenant; (4) the nature and amount of any governmental entitlement income of the tenant; (5) all other income of the tenant; (6) the amount of available cash and funds available in savings or checking accounts of the tenant; (7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects; (8) the tenant's debts and monthly expenses; and (9) the number and age of the tenant's dependents and where those dependents reside (b) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested. (c) *Contest.* The sworn statement is presumed to be true and will be accepted to allow the appeal unless the opposing party files a contest within five days after receiving notice of the statement. If the opposing party contests a statement not	class mail. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. When a pauper's affidavit is timely contested by the appellee, the justice shall hold a hearing and rule on the matter within five days. If the justice of the peace disapproves the pauper's affidavit, appellant may, within five days thereafter bring the matter before the county judge for a final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county judge shall set a day for hearing, not later than five days, and shall hear the contest de novo. If the pauper's affidavit is approved by the county judge, he shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case. A pauper's affidavit will be considered approved upon one of the following occurrences: (1) the pauper's affidavit is not contested by the other party; (2) the pauper's affidavit is contested by the other party and upon a hearing the justice determines that the pauper's affidavit is approved; or (3) upon a hearing by the justice disapproving of the pauper's affidavit the appellant appeals to the county judge who then, after a hearing, approves the pauper's affidavit. No writ of possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in	the peace or clerk of the court must: (1) deliver notice the opposing party of the filing of the affidavit of inability within one working day of its filing by written notification accomplished through first class mail, and (2) provide the tenant any notice required under Chapter 24 of the Texas Property Code. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. When a pauper's affidavit is timely contested by the appellee, the justice shall hold a hearing and rule on the matter within five days. If the justice of the peace disapproves the pauper's affidavit, appellant may, within five days thereafter bring the matter before the county judge for a final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county judge shall set a day for hearing, not later than five days, and shall hear the contest de novo. If the pauper's affidavit is approved by the county judge, he shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case. A pauper's affidavit will be considered approved upon one of the following occurrences: (1) the pauper's affidavit is not contested by the other party; (2) the pauper's affidavit is contested by the other party and upon a hearing the justice determines that the pauper's affidavit is approved; or (3) upon

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
accompanied by an IOLTA certificate, the judge shall hold a hearing no later than the fifth day after the contest is filed. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge should make a written finding as to the inability of the appellant to pay. If the judge rules that the statement is denied, the party who filed it may appeal that decision by filing, within five days, a written contest with the justice court, which will then forward the matter and related documents to the county court for resolution, or the party may post an appeal bond complying with Rule 750 with the justice court within one day from the date the order denying the pauper's affidavit is signed. *(d) Appeal of Decision.* If the decision is appealed, the judge shall send all papers to the county court. The county court shall set a day for a hearing, not later than five days after the appeal, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice of the peace to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules. If the county court denies the appeal, the party will have one day to post an appeal bond that satisfies Rule 750 in order to perfect its appeal.	the amount as required by Rule 749 within five days thereafter. If no appeal bond is filed within five days, a writ of possession may issue.	a hearing by the justice disapproving of the pauper's affidavit the appellant appeals to the county judge who then, after a hearing, approves the pauper's affidavit. No writ of possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in the amount as required by Rule 749 within five days thereafter. If no appeal bond is filed within five days, a writ of possession may issue.
RULE 750b. PAYMENT OF RENT DURING NONPAYMENT OF RENT APPEALS (a) *Notice to Pay Rent into Registry.* If a tenant files a pauper's affidavit in an eviction for nonpayment of rent, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:	**RULE 749b. PAUPER'S AFFIDAVIT IN NONPAYMENT OF RENT APPEALS** In a nonpayment of rent forcible detainer case a tenant/appellant who has appealed by filing a pauper's affidavit under these rules shall be entitled to stay in possession of the premises during the pendency of the appeal, by complying with the following procedure: (1) Within five days of the date that the tenant/appellant files	TAA suggests that the Court not adopt proposed Rule 750b and instead amend current Rule 749b to read as follows: **RULE 749b. PAUPER'S AFFIDAVIT IN NONPAYMENT OF RENT APPEALS** In a nonpayment of rent forcible detainer case a tenant/appellant who has appealed by filing a pauper's

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry; (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable; (3) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within five days of the date the tenant files the pauper's affidavit; (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and (5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing. (b) *Failure to Pay Rent.* If a tenant fails to do comply with the notice in subsection (a), the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which will issue immediately and without hearing. The appeal will then be sent up to county court in the usual manner for cases with perfected appeals. (c) *Payment of Rent During Appeal.* If an eviction case is based on nonpayment of rent, and the tenant appeals by pauper's affidavit, the tenant must pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal. During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days	his pauper's affidavit, he must pay into the justice court registry one rental period's rent under the terms of the rental agreement. (2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days of the due date under the terms of the rental agreement. (3) If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of restitution. (4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing. (5) All hearings and motions under this rule shall be entitled to precedence in the county court.	affidavit under these rules shall be entitled to stay in possession of the premises during the pendency of the appeal, by complying with the following procedure: (1) Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry the amount set forth in the notice delivered to the tenant at the time the tenant filed the pauper's affidavit. If the tenant/appellant fails to pay the designated amount into the justice court registry within five days and the transcript has not been transmitted to the county clerk, the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court will issue immediately and without hearing. (2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the designated amount into the county court registry within five days of the rental due date under the terms of the rental agreement. (3) If the tenant/appellant fails to pay the designated amount into the court registry within the time limits prescribed by these rules the landlord may file a notice of default in county court. Upon sworn motion by the landlord and a showing of default to the judge, the court shall issue a writ of possession. (4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing. (5) All hearings and motions under this rule shall be entitled to precedence in the county court.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
of the due date under the terms of the rental agreement. If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c). (d) *Contest of Amount Paid by Tenant.* If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section. (e) *Objection to Ruling.* If the tenant objects to the justice court's ruling under Subsection (d) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court. (e) *Contests at Same Hearing.* If either party files a contest under Subsection (d) and the tenant files a pauper's		

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
affidavit that is contested by the landlord, the justice court shall hold the hearing on both contests at the same time. (f) *Remedies in County Court.* Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing. If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules. the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of possession. All hearings and motions under this rule shall be entitled to precedence in the county court.		
RULE 755. WRIT OF POSSESSION ON APPEAL The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Texas Property Code 24.007 and Texas Rule of Appellate Procedure 24.	**RULE 755. WRIT OF POSSESSION** The writ of possession, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered. and the same shall be executed by the sheriff or constable, as in other cases; and such writ of possession shall not be suspended or superseded in any case by appeal from such final judgment in the county court, unless the premises in question are being used as the principal residence of a party.	Clarify proposed Rule 755 to state that the pauper's affidavit appeal does not constitute a supersedeas bond.

Attachment B

Statutes Referenced in TAA's Letter to the Supreme Court Advisory Committee

V.T.C.A., Property Code § 24.004

§ 24.004. Jurisdiction; Dismissal

(a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

V.T.C.A., Property Code § 24.0052

§ 24.0052. Tenant Appeal on Pauper's Affidavit

(a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

(1) the tenant's identity;
(2) the nature and amount of the tenant's employment income;
(3) the income of the tenant's spouse, if applicable and available to the tenant;
(4) the nature and amount of any governmental entitlement income of the tenant;
(5) all other income of the tenant;
(6) the amount of available cash and funds available in savings or checking accounts of the tenant;
(7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;
(8) the tenant's debts and monthly expenses; and
(9) the number and age of the tenant's dependents and where those dependents reside.
(b) The justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c) The justice court shall promptly notify the landlord if a pauper's affidavit is filed by the tenant.

(d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the

parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e) If the justice court approves the pauper's affidavit of a tenant, the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a).

V.T.C.A., Property Code § 24.0053
§ 24.0053. Payment of Rent During Appeal of Eviction

(a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

(a-1) If a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 appeal an eviction for nonpayment of rent, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:

(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
(3) the calendar date by which the initial deposit must be paid into the justice court registry;
(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and
(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure.

(b) If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).

(c) If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.

(d) If the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e) If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the landlord under Section 24.0052(d), the justice court shall hold the hearing on both contests at the same time.

V.T.C.A., Property Code § 24.006
§ 24.006. Attorney's Fees and Costs of Suit

(a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

(b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

(c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

(d) The prevailing party is entitled to recover all costs of court.

V.T.C.A., Property Code § 24.0061
§ 24.0061. Writ of Possession

(a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8 ½ by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and
(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;
(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;
(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and
(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(e) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to

applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

TEXAS ASSOCIATION OF REALTORS®

June 13, 2012

Supreme Court Advisory Committee
Charles Babcock, Chair
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Honorable Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Dear Supreme Court Advisory Committee and Justice Hecht:

I am writing on behalf of the Texas Association of REALTORS®. In response to the proposed justice court rules drafted by the Task Force for Rules in Small Claims Cases and Justice Court Proceedings, the Texas Association of REALTORS® has prepared a statement, which is included below.

If any member of the committee has questions or concerns, please feel free to contact Texas Association of REALTORS® General Counsel & Vice President of Legal Affairs, Lori Levy.

Introduction

With the passage of House Bill 79, the Texas Legislature directed the Texas Supreme Court to promulgate rules for eviction proceedings.[1] Indeed, the current rules needed to be altered to accommodate the consolidation of the small claims courts with the justice courts and to comply with other legislative changes. To that end, the Task Force for Rules in Small Claims Cases and Justice Court Proceedings ("Task Force") was assembled to adjust the rules as needed.

The Texas Association of REALTORS® (Association) believes the result of many of these alterations goes far beyond what the legislature initially intended and believes many of these proposed rules pose a significant threat to residential and commercial property owners across Texas.

The Texas Association of REALTORS® Position

[1] Tex. H.B. 79, 82nd Leg., C.S. (2011), § 5.07(3).

1115 SAN JACINTO BLVD., STE. 200
AUSTIN, TEXAS 78701-1906
TOLL FREE: 800.873.9155
TEXASREALTORS.COM

P.O. BOX 2246
AUSTIN, TEXAS 78768-2246
512.480.8200
FAX: 512.370.2390

The Texas Association of REALTORS® is a state-level, membership-driven trade association that represents and advocates on the behalf of more than 80,000 members. Representing members from all facets of real estate, the Association is one of the largest professional membership organizations in the state.

The Texas Association of REALTORS® believes many of the changes to the eviction rules would unfairly disadvantage Texas property owners. Because the rules the Task Force seeks to change apply to both residential *and* commercial property owners, the proposed rules effect on evictions could be profound.

The Texas Association of REALTORS® staunchly opposes certain proposed rules put forth by the Task Force. The Association strongly opposes the proposed rules which seek to: 1) extend the amount of time a tenant could remain in possession of the owner's property after an eviction suit has been filed; 2) remove the immediate bond for possession from the eviction rules; 3) require parties in an eviction proceeding to mediate if a justice so orders; or 4) remove the rules of evidence and civil procedure entirely from the justice courts.

The Extension of the Amount of Time a Tenant Remains in Possession of Owner's Property Increases Costs to Property Owners

Many of the proposed rules, if adopted, would extend the amount of time a tenant remains in possession of the owner's property. For many property owners, this means increased costs—costs not only associated with the legal process and lost rent, but also costs to the property's integrity. Specifically, the following proposed rules have the potential to increase costs to the property owner by keeping the tenant in possession for a longer period:

1. Proposed Rule 739: Petition

Proposed Rule 739 would require a plaintiff to name all tenants in the petition: "No judgment or writ of possession shall issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and not served with citation..." Because additional defendants would be required to be served, service costs would increase dramatically for property owners and unpredictable delays would be endured.

2. Proposed Rule 741: Citation

Proposed Rule 741 requires that the appearance date be "not more than fourteen days nor less than seven days from the date of the filing of the petition..." This is different from the current rule which states the appearance date be not more than ten days nor less than six days from the date of service of the citation. While ostensibly it appears this might decrease the time currently allotted, the Association believes this will have the opposite effect in some cases. By increasing the total amount of days from 10 to 14, this could

add as much as four days to the process, regardless of the fact that the language was altered from date of service to date of filing because service might be achieved quickly.

3. Proposed Rule 743: Service of Citation & Proposed Rule 743a: Service by Delivery to Premises

Proposed Rule 743 requires that the "constable, sheriff, or other person authorized by written court order receiving such citation...no later than three days before the day assigned for trial shall return such citation..." This is different from the current rules which simply require the citation be returned *on or before* the day assigned for trial.

Similarly, proposed Rule 743a requires that the citation be returned at least one day before the day assigned for trial. The current rules require that the citation be returned on or before the day assigned for trial.

Removal of the Immediate Bond for Possession from Rules

In a note provided in the proposed rules, the Task Force stated that they were evenly split on whether they should eliminate or retain current rule 740 relating to the immediate bond for possession. Task Force members who oppose the current scheme cite concerns over tenants' due process rights and misuse or misunderstanding by the justice courts. The Texas Association of REALTORS® believes these concerns are ill-founded. With an immediate bond for possession, the owner is only able to obtain a writ of possession if the defendant fails to file a counterbond and a default judgment is granted against the tenant.[2] In addition, the tenant always has the right to appeal. Clearly, the procedural safeguards currently in place are sufficient to allay such concerns.

Additionally, this tool is of immense value in situations where serious property damage has occurred or another calamitous issue has arisen and the property owner needs possession at once. The Texas Association of REALTORS® is strongly opposed to any alteration or deletion of this invaluable provision.

Justice-Ordered Alternative Dispute Resolution in Eviction Suits

Proposed Rule 531a states that the court may order any justice court case, including eviction suits, to mediation. While the Texas Association of REALTORS® recognizes the many beneficial aspects of alternative dispute resolution, eviction proceedings are simply not an arena in which mediation could yield itself helpful. Eviction proceedings typically center around one issue: the tenant has defaulted on the lease and the landlord wants possession. The only effect this provision might have would be to further delay eviction proceedings.

[2] Tex. Prop. Code § 24.0061(b); Tex. R. Civ. P. 740

Removal of the Texas Rules of Evidence and Rules of Civil Procedure from Eviction Suits

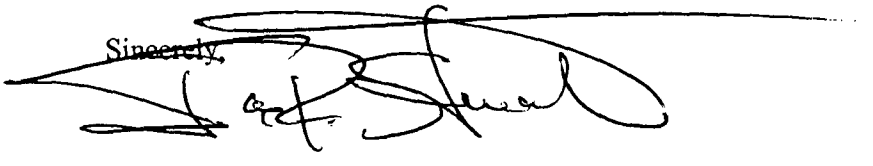
Currently, Rule 523 states that "all rules governing the district and county courts shall also govern the justice courts..." This means that both Texas Rules of Civil Procedure and Rules of Evidence currently apply to justice court proceedings, including evictions. The Task Force seeks to remove the applicability of these rules unless they are specifically found within the proposed rules created, or to the extent the court determines the rule should be followed to ensure fairness to all parties. These rules exist to ensure fairness to all parties. While justice court proceedings may sometimes be more informal than district court proceedings, to completely abolish such rules from a court setting unless a justice decides otherwise, is the antithesis of the result the Task Force is seeking. To ensure consistency and fairness for all parties, the current rule should be retained.

Conclusion

The Texas Association of REALTORS® opposes many of the Task Force's proposed rules, because they far exceed the intent of the legislature. The legislature did not intend to completely alter the very nature of eviction proceedings in Texas. While certainly changes did need to be made to bring the rules in compliance with recent changes in the law, the proposed rules far exceed this necessity. These proposed rules pose a significant threat to residential and commercial property owners across Texas and the Texas Association of REALTORS® implores the Supreme Court Advisory Committee to recommend the Supreme Court of Texas only make adjustments to the rules as required by law.

Thank you for your time and consideration.

Sincerely,



Joe Stewart
2012 Chairman of the Board
Texas Association of REALTORS®

cc: Marisa Secco, Rules Attorney

WHITE
and Associates
Real Estate Services

June 18, 2012

To All Members of the Supreme Court Advisry Committee, and Honorable Nathan Hecht and David Medina:

I am writing on behalf of the Fort Worth/Mid-Cities Chapter of the National Association of Residential Property Managers. We are all Realtor members of the largest national association representing landlords, and of its largest state affiliate (Texas). Our chapter has approximately 50 Realtor members and we manage in the neighborhood of 11,000-12,000 rental units in the Fort Worth and Mid-Cities area.

Our members are in shock at many of the proposals your task force proposes affecting landlord-tenant proceedings. **Justice Courts serve the people in ways not always understood by attorneys who specialize in other legal matters, and should be conducted with rules as user-friendly and inexpensive to the public as possible. Under McGlothlin v. Kliebert, 672 S.W. 2d 231.232 (Tex. 1984), a forcible-entry-and-detainer (eviction) proceeding is meant to be a summary, speedy, and inexpensive remedy for the determination of who is entitled to possession of the premises. Your proposals in general are in direct opposition to that reality.** As representatives of several thousand landlords who own rental properties in Texas, we offer the following comments:

(1) Please remember that when a tenant defaults, the landlord is the injured party, not the tenant. The purpose of a court hearing is to see that the injured party is given relief and protection from further injury. Most of your proposals would further injure the owner, in both time and money lost. The tenant in default is draining the owner's resources and money every day he remains in the property; to delay an already long process by even one day would cost our owners collectively thousands of additional dollars. Please do NOT propose any procedure that would or could lengthen the eviction process (see Section 741).

(2) Many landlords are barely making it! Any proposal that would impose additional expense or lost rent on our landlords will encourage more properties going to foreclosure -- owners just can't go any further. We encourage owners daily them to hang on, ensuring them that things will get better. When we see proposals such as the ones you are considering, we ourselves question whether that is true. More and more, we are hearing current and potential investors suggest that real estate investment in Texas may just not be worth the effort.

(3) Proposed Rule 739 - Petition. Obviously, no one supporting this owns rental properties! The basic cost to file for eviction in Tarrant County is $106; in Dallas County it is $121. In each county, each additional person named in the suit costs $75. A writ of possession in Dallas County is $155, and in Tarrant County $165. Your proposal appears to require individual filings that will significantly multiply landlord costs for both filing and writs.

Even worse, every obligated resident would be served individually, and not under "all occupants". This assures a longer time for the service process, and opportunity to avoid service by one or more individuals. In a case where one or more parties cannot be served, we assume no court hearing would be permitted. Whatever the means of one or more parties avoiding service, this could be disastrous for owners! At the very least, additional time would be added to the process, increasing injury to the landlord significantly. At the worst, it could potentially negate the filing altogether. **We recommend that Current Rule 741 remain in effect.**

(4) Changing Rule 740 to proposed Rule 742 (Immediate Possession Bond). This rule is not used often by landlords, but is valuable in decreasing losses in cases where there is ongoing property damage or illegal activity, or where an obstinate tenant obviously has no intention of moving under the terms of the judgment and will force additional legal action and expense. It works well as it stands, and the current Rule 740 has ample safeguards to insure that the tenant is protected from unfair action. **We request that you retain Current Rule 740, and keep this important tool.**

(5) Proposed Rule 743: This unnecessary change, whose purpose has not been explained, would again cause delays and postponements of trial dates, and should remain as stated in the existing rule. **We recommend that the time frame remain "on or before the day assigned for trial" and consistent with the one-day period in Proposed Rule 743a(d).**

(6) Proposed Rule 745 - Demanding a jury trial time frame. Why would this be changed, except as another delaying tactic for the defendant? We have very few requests for a jury trial, and the current notification time has worked. If defendants are permitted to file a request at the last minute, it will once again result in shortened court preparation time and hearing delays, which are costly to the injured plaintiff. **We recommend that current Rule 744 remain in place.**

(7) Proposed Rule 749 - Judgment and Writs. Most owners file a writ of possession when required within a week or two at most. However, there are circumstances (illness, relative of the owner as a tenant, family difficulties, etc.) where a landlord will try to work with the tenant to mitigate the difficulty of a move-out, by allowing longer to move before filing the writ. This limit to 30 days would force us to move them out regardless of their situation. We see no reason for this change. **If you proceed with this proposal, it should be for a longer period, such as 90 days. We object to the requirement that the judge award attorney's fees to the prevailing tenant, and recommend that Section 24.006 of the Texas Property Code be followed in "allowing" the judge to do so.**

(8) Proposed Rules 750a and 750b - To avoid confusion, **any modification of these sections should be consistent with current rules 749a and 749b, which remain in effect.**

(9) Proposed Rule 501 - Justice Court Cases - We are concerned that under this proposal neither the Texas Rules of Civil Procedure nor the Rules of Procedure and Evidence would apply to justice-court cases, including evictions. This would cause inconsistent application in justice-court cases. **We encourage the SCAC to retain general applicability of the Rules of Procedure and Evidence, and to clarify which general justice-court rules are intended to apply to eviction cases.**

(10) Proposed Rules 502 and 504 - **We recommend that the SCAC eliminate both of these proposals and retain current Rule 523,** which provides that the Texas Rules of Civil Procedure and Evidence will continue to apply to justice-court cases, particularly evictions.

(11) Proposed Rule 505 - Duty of a Judge to Develop Case: Both the tenant's lease and the law state that failure to pay rent is cause for eviction and landlord possession of the property. **In an eviction case, the single issue for consideration is whether the tenant has paid the rent as agreed.** Permitting a judge to consider mitigating circumstances and other outside issues will impact judicial fairness and will delay the eviction process. In combination with Proposed Rule 253, it will also foster "forum shopping," with tenants seeking out precincts and judges they perceive to be favorable to tenant issues over the landlord. **Proposed Rule 505 should be amended to specify that it does not apply to eviction cases.**

(12) Proposed Rules 522 and 523 - Fair Trial Venue Change: In any court case, the judge is presumed to be fair and unbiased toward both the plaintiff and defendant. In some courts, however, it is reality that judges are more sympathetic to a tenant's circumstances, and will rule on those considerations over the law. With only one issue before the court in evictions, non-payment of rent under the lease, that should not happen, but it does. Any rules need to require that non-payment of rent be the only issue before the eviction court, as it has been in the past. With Proposed Rule 505, tenants would be permitted to "shop" their case to courts where they perceive sympathy to their case. This would absolutely delay court procedures, causing further injury to plaintiffs, and would crowd the dockets in those specific courts. **We recommend that Proposed Rules 505, 507, 507.1 522 and 523, if approved, specify that they do not apply to eviction cases.**

(13) Proposed Rule 531 - Pretrial Conference: Under McGlothlin v. Kliebert, 672 S.W. 2d 231.232 (Tex. 1984), a forcible-entry-and-detainer (eviction) proceeding is meant to be a summary, speedy and inexpensive remedy for the determination of who is entitled to possession of the premises. To require a pre-trial conference in addition to the existing period of time required for an eviction hearing is a totally unnecessary and inefficient use of the courts. There is a single issue of non-payment for consideration in eviction cases, and nothing to be determined in a pre-trial conference. **We recommend that Proposed Rule 531, if approved, specify that it does not apply to eviction cases.**

(14) Proposed Rule 531a - Alternative Dispute Resolution. **We strongly object to this proposal,** which permits a judge to order any justice-court case to mediation, particularly in the case of evictions. (See findings in McGLothlin v. Kliebert, 672 S.W. 2d 231.232 Tex. 1984) Mediation suggests a middle ground where parties may be able to agree with the help of a third party. In eviction cases, there is one issue: the tenant has not paid rent under the lease, and the owner wants possession of the property. The only other issue involves the amount of unpaid rent owed to the owner, which is determined by the judge at the hearing. There is nothing to cover in mediation. This would provide no improvement to the process, but would be another detriment to the injured landlord in postponing the recovery of his property.

(15) Proposed Rule 560 - Appeal. The Existing Rule 571 adequately provides for an appeal in eviction cases. We strongly object to any extension of time permitted for appeal, which would once again increase the loss to the injured landlord. The goal of providing a "quick and efficient resolution" is not met by extending the process an additional 10 days. **We recommend that Rule 571 be retained without change, or that Proposed 560 be modified to retain the five-day time period for appeal in an eviction case.**

(16) Proposed Rule 564 - New Matter May Be Pleaded. **We recommend that Rule 574a remain in effect in lieu of this proposal.** The new proposal is clearly designed to favor the defendant over the rights of the injured party, the plaintiff, by not allowing the same provision for pleading new grounds of recovery to each.

OUR CONCLUSION: Our current eviction system works well. Owners, property managers, even many tenants know the current laws. It is swift, efficient, leaves little room for debate, and is fair to all parties. Many of these proposals are drastic, they are very punitive to investors and owners in eviction cases, and would greatly increase the time and cost of eviction hearings across the state. With many owners already suffering from the economy and some nearing the loss of their housing investments, increasing their costs and losses would make Texas real estate investment considerably less appealing.

We have many good, long-standing, reputable property managers across this state who would be happy to give their input if you wish, and I'd be happy to provide their contact information. They have years of experience with the issues you are addressing, and can provide insight not available to those who do not routinely work within the justice court system, and specifically with evictions. To my knowledge, input from the property management community has not been solicited to this point.

I know this is lengthy, but we feel it is extremely important that you have our feedback. Thank you for your consideration.

Buddy White, President
Ft. Worth/Mid-Cities Chapter, NARPM
Realtor, GRI, 40 year Property Manager
1963 BBA, Baylor University
Owner/Broker, White and Associates Real Estate Services
P.O. Box 541829, Grand Prairie, TX 75054
972-262-1200, Fax 972-264-0861, Buddy@BuddyWhite.com

MEMORANDUM

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS

FROM: NELSON H. MOCK—MEMBER OF TASKFORCE FOR RULES IN SMALL CLAIMS CASES AND JUSTICE COURT PROCEEDINGS

SUBJECT: Proposed Immediate Possession Bond Rule and Texas Rule of Civil Procedure 740

DATE: MARCH 27, 2012

Problem:

Texas Rule of Civil Procedure 740 is an unusual and little used rule in eviction cases. It has been regularly misinterpreted to authorize a writ of possession to be issued immediately after a trial is conducted in justice court, whether an appeal is timely perfected or not. It is a source of confusion for judges, landlords, and tenants alike. Because Texas already has a much expedited eviction process, and alternatives to the current rule require a legislative fix or have due process concerns, a divided Taskforce voted during a teleconference call in favor of deleting Rule 740. Other members of the Taskforce propose in the alternative a new immediate possession bond rule, but that rule is contrary to the Texas Property Code and by design will further reduce an opportunity of an appeal by a tenant.[1] It is possible to clarify the current rule without raising all of these concerns, but the reasons behind the decision of the Taskforce to delete Rule 740 should be given weight.

Solution:

Either delete Rule 740 as recommended by some members of the Taskforce, which would not require any statutory change, or modify Rule 740 for clarity, which also would not require statutory change. (See proposed language at end of this memo.)

Background

Both a landlord and a tenant in an eviction case have a strong due process right to appeal the judgment of a justice of the peace court, where proceedings are not of record and where

[1] Less than two percent of eviction cases are appealed to county court from justice of the peace courts. For example, according to the Texas Office of Court Administration (OCA), between September 1, 2011, and February 28, 2012, there were 72,371 cases eviction cases disposed by the Justice Courts. During that time, there were only 1,236 forcible detainer appeals statewide, which is 1.7 percent of cases disposed. (Report run on March 26, 2012, from the OCA, Court Activity Reporting and Directory System website, http://card.txcourts.gov/ReportSelection.aspx.)

the new proposed Justice Court rules remove most requirements of the Texas Rules of Evidence and many Texas Rules of Civil Procedure. When a party perfects an appeal, the eviction judgment of the justice of the peace is vacated and annulled (*see, e.g., Mullins v. Coussons*, 745 S.W. 2d 50 (Tex. App.—Houston [14th Dist.] 1987, no writ), and there is a trial de novo in county court. This right of all parties to a de novo trial on appeal in county court must be safeguarded.

The current Texas Rule of Civil Procedure 740 allows for immediate possession bonds in some circumstances in eviction cases. The terms of immediate possession bonds are created by this rule, not by statute. The only reference to "possession bond" in the Texas Property Code is in the prohibition of the issuance of writs of possession "before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default." Tex. Prop. Code § 24.0061(b). Despite this provision of the Texas Property Code, Rule 740 is misinterpreted by some justice courts to allow for the immediate issuance of a writ of possession within five days after a judgment is rendered, even if the tenant/defendant appears for trial. This is contrary to the Texas Property Code Section 24.0061(b), and a tenant who appears at trial should be allowed to perfect an appeal within five days and pursue a trial de novo in county court.

The rule proposed by some members of the Taskforce as an alternative to Rule 740 is contrary to the Texas Property Code and creates problems regarding access to the courts by tenants. It will also require legislation to amend the Texas Property Code. For these reasons, the Court should not include the proposed rule in the Justice Court rules.

Why the Proposed Possession Bond Rule Should Not Be Part of the Final Rules

The proposed rule allows a landlord to post a bond, in cash or surety, that is set by a justice of the peace after considering only the testimony of the landlord about whether such a bond will cover the tenant's damages if the tenant is illegally removed from the property. Then, if the tenant appears for trial, and if there is a judgment against the tenant, the tenant can only appeal and keep possession of the unit if the same judge who tried the case determines that the tenant does not have to file a counterbond. The rule provides no guidelines for how the judge is to set the counterbond. There are no exceptions made if the tenant cannot afford such a counterbond. A hearing is held on this matter immediately after the eviction trial, and no warning is given to the tenant of the hearing.

This rule creates the untenable situation where some judges will make it impossible for an indigent tenant to remain in possession of the unit, while the case is on appeal, by setting a counterbond that the tenant cannot afford. (There is no requirement in the proposed rule that the judge take into consideration the tenant's ability to pay when setting the counterbond.) Since the reason for an eviction lawsuit is possession of the unit, and a tenant is not allowed to file a counterclaim, the result is that the case is over for the tenant before the tenant is even able to pursue an appeal.

This Court said it best:

> [A] law which denies to any individual, whether acting in his own right or in a fiduciary capacity, or to a corporation, the right to appeal unless a supersedeas bond is executed, is violative of the Constitution in that it deprives this court, if given effect, of jurisdiction conferred on it by the Constitution, and deprives the party seeking revision of the judgment here of remedy by due course of law.

Dillingham v. Putnam, 109 Tex. 1, 5-6 (Tex. 1890). The only matter at issue in an eviction lawsuit is possession, so to deprive a tenant of possession on appeal simply because the tenant does not have the money to post a counterbond violates due process of law.[2]

The proposed rule also creates a potential loophole through which a landlord can attempt to deprive a tenant of a forum to hear an appeal. Once a tenant appeals, but is removed from the property by a writ of possession for failure to post a counterbond, the landlord, at the county court, can simply nonsuit the eviction lawsuit. If this happens, the dispossessed tenant may be left without a forum in which to argue the issue of possession and may be left with only the option of an affirmative lawsuit for wrongful eviction.

Finally, the proposed rule places no limitations on the reasons for immediate possession bonds or on the reasons for requiring a counterbond. The rule has the effect of simply shortening the eviction process and therefore works only in favor of one party, the landlord. This is not necessary. The Texas eviction process is already an expedited one. Tenants in Texas do not have rights found in other states, such as a statutory right to cure a breach of the lease, a longer time period for a notice to vacate, or the right to include a counterclaim in an eviction case. Indeed, in the most recent legislative session, the right of Justices of the Peace to issue writs of possession after judgment was expanded, giving landlords an additional tool to recover possession of property even sooner. *See* Tex. H.B. 1111, 82nd Leg., R.S. (2011).

Conclusion:

This Court should not include in the new Justice of the Peace Court rules the immediate possession bond rule that has been proposed by some of the Taskforce members. If the current Texas Rule of Civil Procedure 740 is not deleted, it can be clarified. This can be accomplished by simply replacing paragraph (d) of Rule 740 with the following:

---

[2] If a tenant appeals a nonpayment of rent eviction case by filing a pauper's affidavit, the tenant is required to pay rent into the court registry within five days of appealing and as it becomes due. *See* Texas Property Code §§ 24.0053, 24.0054. However, this is an obligation already borne by the tenant under a lease and is easily distinguished from the additional burden of a counterbond in the proposed rule, a burden not related to any current financial obligation of the tenant or the financial circumstances of the tenant.

> If the defendant requests a counterbond, demands a trial within six days, or appears at trial, plaintiff is only entitled to request a writ of possession after the expiration of five days from the time a judgment is signed and only if the defendant does not appeal the judgment pursuant to these rules.

Adding this sentence to Rule 740 above avoids confusion in the current rule and is consistent with the Texas Property Code.

However, Rule 740 is still problematic and unnecessary, even with this clarification. Eviction trials usually happen within a week or so of service, and some tenants, served with alternative service, may not even know of the case until after judgment is rendered. There is no motion for new trial allowed in evictions, so if immediate possession is granted by Rule 740 (for example for failure to immediately demand a trial), the tenant is simply out of the unit, regardless of the merits of defenses the tenant may have. The current Rule 740 also creates a dual track for eviction cases, generating additional paperwork for the courts. Considering that justices of the peace now have expanded rights through Tex. H.B. 1111 to issue writs of possession in nonpayment of rent cases, which comprise most eviction cases filed, the decision to remove Rule 740 is a valid one.

Thank you for your consideration of this matter. Taskforce members have devoted a great deal of work and time into developing these rules, and I thank you for including my voice in this Taskforce. It has been an honor and privilege to participate in this process with the other members of the Taskforce for Rules in Small Claims Cases and Justice Court Proceedings.

MATT HAYES
JUSTICE OF THE PEACE
PRECINCT SEVEN

1100 E. Broad Street
Suite 202
MANSFIELD, TEXAS 76063
817-473-5101
FAX 817-473-5100

TARRANT COUNTY

June 14, 2012

The Honorable Justice Nathan L. Hecht
The Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Dear Justice Hecht,

We wish to express our thanks and support to the sub-committee for their efforts and hard work in drafting the rules proposed. We recognize the enormity of the task before them and appreciate how much they achieved in a short period of time. As an overview, we approve and endorse the direction they have headed with the new Justice Court rules.

With any monumental task, there is always room for discussion in the details. Attached are a handful of areas of concern and proposed solutions for each. We are asking the Rules Committee to incorporate these ideas into the final rules approved by the Supreme Court of Texas. These suggestions should improve upon the solid foundation built by the sub-committee and allow for clarity and efficiency in the Justice Courts across the State of Texas.

Thank you for your consideration of our suggestions. Any questions may be directed to Judge Matt Hayes, Justice of the Peace, Precinct 7, at 817-473-5101.

Sincerely,

Matt Hayes

Signing for: Linda Davis, JP Pct 2
Jacquelyn Wright, JP Pct 4
Manuel Valdez, JP Pct 5
Gary Ritchie, JP Pct 6
Lisa Woodard, JP Pct 8

Cc: Marisa Secco, Rules Attorney, Supreme Court of Texas
Mark Mendez, Governmental Affairs, Tarrant County

Proposed Justice Court Rules Changes

CONCERNS

Rule 502 – The rules shall be available for examination during the court's business hours. What form is acceptable. Who will pay for it? How do we safeguard from being taken when we have 50 or more customers at the windows? How many copies shall be made available?

Suggestion – a sign will be placed conspicuously in the court's office area announcing the availability of the Rules at (post website).

Rule 503 – the 5 o'clock rule automatically gives an additional day to those conducting business in many courts. This will create confusion for litigants over different computations in different courts. This same time computation is found in multiple rules.

Suggestion – the end of the regular business day is acceptable. If a court closes before the end of their normal business day, then litigants will have until the end of the next regular business day.

Rule 507 – this rule implies that the judge will review and approve all discovery. Some courts have hundreds and even thousands of filings that currently include discovery. It will be impractical if not impossible for the judge to accomplish this.

Suggestion – the judges of a county may give blanket authorization and/or limits, by majority vote, to certain classes of cases for discovery in the Administrative Rules.

Rule 509(b)(3) – the rule does not state whether a plaintiff who loses an inability to pay costs hearing is entitled to an appeal of the judgment.

Suggestion – state specifically whether the judgment is appealable and if so, how it is accomplished.

Rule 510 – the reference website, www.therules.com, is not currently working. This reference is found in multiple places throughout the rules.

Suggestion – ensure the website is fully functional by the effective date of the rules.

Rule 522, 523, 524 – these rules are out of order

Suggestion – reset the order.

Rule 515(d) – this rule allows service by the sending of emails. This is problematic in that email service is not fully reliable in it's delivery, a mistyped address will prevent delivery and there is no means for a defendant to prove that he did not receive an email.

Suggestion – accept email service only if a "receipt" is returned by the receiving party.

No Rule – no provision is made for a Bill of Review.

Suggestion – incorporate a reference to or the language from Rule 329b. Also include a time-frame, such as 4 years.

Rule 737.4(B)(2) – if multiple bad addresses for a management company are given, the sheriff or constable could be required to make an unreasonable number of attempts.

Suggestion – add language limiting the total number of attempts necessary to no more than 4.

Rule 737.11 – plenary power in Section 9 (Tenant's Remedies) is limited to 15 days. This is shorter than the appeal time in Rule 737.12(A).

Suggestion – modify the plenary power time to 20 days, consistent with Rule 570.

Rule 743 – this rule could be interpreted to allow private process servers authorized by the Texas Supreme Court to serve citations in eviction cases.

Suggestion – specifically limit service in eviction cases to officers of the state.

Rule 744 – if there is no answer and the defendant does not appear, a judgment in an eviction case may be granted based on the filing. Often pro se plaintiffs do not use a notice to vacate that meets the requirements of the statute and case law. A lack of sworn testimony leaves the door open for abuse and/or error.

Suggestion – require sworn testimony in all evictions, as well as production of a copy of the notice to vacate (except where not required, as in forcible entry and detainer).

31 No. 6 Banking & Fin. Services Pol'y Rep. 1

Banking & Financial Services Policy Report
June, 2012

Feature

LITIGATING CONSUMER DEBT COLLECTION: A STUDY

Mary Spector[a1]

Recent press reports have focused attention on some of the weaknesses in the collection of credit card debt. [1] However, relatively little empirical data exists regarding these deficiencies. The project described in this Article was designed to increase our understanding of how debt buyers and their attorneys conduct litigation to collect consumer debts and the effect of such litigation on consumers and the courts.

Much of modern collection litigation begins with portfolios of consumer debt that are packaged and sold as assets for entities whose primary business is collecting those debts. [2] The debt buyer purchases--for pennies on the dollar--debts that have been deemed uncollectable by the original creditor, and then attempts to collect the full face value of those debts through lawsuits against consumers that often result in default judgments. [3]

At the time of the sale, the debt buyer rarely receives more than a computer record summarizing the original creditor's records. Although the summaries generally contain the consumers' names, addresses and account numbers, as well as the total amount each owes at the time of sale, [4] some sellers do not vouch for the accuracy of the information they provide leaving the debt buyer without the means to verify it. [5] Nevertheless, in some cases, information may be sufficient to support an agreement between the debt buyer and an individual consumer to settle or repay the debt. Consumer advocates claim that attorneys representing debt buyers in court rarely produce more than summary information and yet still obtain judgments that are enforceable by garnishing wages, bank accounts, and other nonexempt property. [6] In some cases, debt buyers initiate suits to collect debts previously discharged in bankruptcy or debts that were repaid years before. In other cases, the person sued is not the real debtor but is the victim of mistaken identity or identity theft. [7]

Reportedly, debt buyers regularly obtain judgments on the basis of form pleadings that, on their face, fail to comply with applicable procedural, substantive, or evidentiary rules. [8] For example, suits may fail to sufficiently identify the parties to the suit, [9] fail to allege facts giving fair notice of the claims asserted, [10] or fail to allege facts giving fair notice of whether the claims might be subject to limitations or other defenses. [11] Conclusory allegations regarding the amount of debt with little, if any, information about its calculation and "robo-signed" affidavits also make it difficult for the consumer to effectively prepare a defense, especially without representation by an attorney. [12]

In most states, laws and rules of procedure that govern all litigation also govern consumer debt litigation. Such rules place the burden of raising deficiencies in pleading and the burden of proof on the opposing party, who waives such an objection if not raised in timely manner. [13] Many defendants, if they appear at all, often appear without counsel. Unfortunately, this frequently

results in the entry of default judgments solely on the basis of unchallenged defective pleadings without any evidence of debt presented to the court. [14]

In early 2008, virtually no empirical data existed to substantiate the growing concerns of consumer advocates. [15] This project was a first step to collect and analyze data regarding collection litigation. Litigation files containing petitions, answers, evidence of service, motions, and dispositive orders were reviewed. Information was collected and analyzed and, in the end, the data confirmed some of the more troubling reports regarding the failure of collectors to provide information regarding the debt to consumers in litigation. [16] ***2** However, before discussing the methodology and findings of the project, the Article will discuss the context in which consumer debt litigation arises.

Consumer Debt and Its Collection: A Broken System [17]

Scope of Debt

The Fair Debt Collection Practices Act (FDCPA) [18] was enacted in 1977 to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." [19] Since then, total revolving consumer debt has grown exponentially. The modern debt industry is a by-product of the massive expansion of consumer lending by banks and other major financial institutions. In 2003, Americans had 1.46 billion credit cards, an average of five credit cards per person. [20] In 2009, outstanding consumer loans exceeded $2.5 trillion--double the amount one decade earlier--of which debt from credit cards and other revolving credit debt was nearly $1 trillion. [21] Although the amount of outstanding debt has decreased since 2008, as of March 2012, American consumers still held nearly $801 billion of revolving, unsecured debt. [22] Additionally, the delinquency rates for all consumer loans and consumer credit cards remained steady through 2011. [23] Similarly the charge-off rates for all consumer loans and credit cards remained steady through 2011. [24]

The debt collection industry has grown and changed to keep up with the increasing amount of delinquent consumer debt. By 2007 the debt-collection industry employed 217,000 people and reported annual revenue of $58 billion from consumer collections. [25] This growth also parallels increases in the number of new collection cases filed each year. For example, in one jurisdiction, a judge was forced to limit one law firm's filings to no more than 500 new debt-collection cases every two weeks. [26] It also created an environment in which the debt buying could emerge and subsequently thrive.

The Debt Buying Industry

The debt buying industry, a subset of the larger collection industry, experienced tremendous growth over the last 15 years, with analysts estimating that approximately 450 entities acquired more than $100 billion in distressed debt in 2009. [27] Debt buyers do not originate delinquent accounts, they purchase portfolios of delinquent debt after the original lender or intermediate debt buyer ceases collection efforts or otherwise charges-off an account. [28] Debts may be bundled into portfolios with other debts having similar characteristics, such as age, type of debt, and location of the debtor, and then put out for competitive bids, often amounting to only a fraction of the face value of the debt. [29]

Industry trade associations encourage debt buyers to employ due diligence to avoid the purchasing of debts that were previously discharged in bankruptcy or barred by limitations, and debt buyers may take steps to avoid debt that was incurred fraudulently through identity theft or otherwise. [30] Admittedly, however, these efforts do not prevent attempted collection of stale or discharged accounts, known as "zombie debt," which, instead of disappearing, rises from the dead and is resold at bargain

prices.[31] Likewise, industry efforts have not prevented purchase of debts the seller cannot verify which may be the subject of future litigation and the source of concern for consumers and their advocates.[32]

Collecting Debt: The Legal Framework

The FDCPA, designed to prevent consumer deception and abuse during the collection process, is the primary federal statute governing the behavior of collectors. It regulates the time and place at which collectors may communicate with consumers and the appropriate method and content of such communications.[33] Enforced by the Federal Trade Commission (FTC), the Act also provides consumers with a private right of action for violations. In addition to the FDCPA, other federal laws regulate creditor's conduct. They include the Equal Credit Opportunity Act, which prohibits discrimination in connection with a credit transaction, and the Fair Credit Reporting Act, which limits collectors' ability to report accounts in collections that pre-date the report by more than seven years.[34]

In addition, forty-two states supplement the FDCPA with legislation governing debt collection.[35] Of those, a majority permit a private right of action for consumers harmed by debt collectors' unlawful conduct and some provide private remedies for unfair or deceptive acts and practices. A majority of states also require debt collection entities to obtain a license, post a bond, or ***3** register with the state. For example, in Texas, although a license is not required, an entity that fails to post the required bond may be enjoined from collecting debts, liable for civil penalties to consumers harmed by its conduct, and subject to criminal penalties.[36]

Within this framework, collection agencies usually begin with informal collection efforts such as contacting the consumer by phone or mail to encourage payment.[37] Under the FDCPA, the limited information acquired by the debt buyer when it purchases a consumer's debt portfolio may be sufficient to satisfy the collector's obligations to validate the consumer's debt.[38] It may also be the starting point for the debtor and debt buyer to negotiate a payment schedule or a reduced lump sum payment.

When informal collection methods do not result in settlement of the account, debt buyers increasingly turn to litigation or arbitration, which generally results in a judgment against the consumer.[39] Once collectors obtain a judgment, they have additional, powerful tools at their disposal, such as wage garnishment and property garnishment, to collect on the judgment.

Because most of the litigation occurs in state courts, FDCPA imposes no obligations on collectors' conduct in litigation other than requiring that suits be filed in the venue in which the consumer signed the contract or in which the consumer resides at the commencement of litigation.[40] Instead, state procedures and law almost exclusively govern the litigation of debts.

Due process requires that the defendant be given an opportunity to be heard before the plaintiff can establish his or her right to judgment in any type of litigation.[41] While modern pleading rules do not require that plaintiffs provide detailed allegations of fact, the defendant generally must receive notice sufficient to prepare a defense, generally who is bringing the claim and the subject matter of the suit are sufficient.[42] In all jurisdictions, rules of procedure, evidence, and professional responsibility govern the commencement and conduct of litigation. Such rules place the burden or raising deficiencies in pleading and proof on the opposing party, and that party's objections may be waived if not raised within a timely manner. While the rules vary by state, and even within the states, one thing is clear: the rate of default judgments in consumer debt collection cases is reported to have reached 95 percent in some jurisdictions and may be double the default judgment rate in debt cases generally.[43]

The high default judgment rate is especially troubling because debt buyers usually take the debt subject to all the consumer's potential defenses to payment, such as deceptive practices surrounding the extension of credit, limitations, unconscionability, or claims about insufficient quality of the goods or services.[44] Some, if not all, of those defenses may be available to at least

some defaulting consumers. However, by failing to appear, the consumer waives valid counterclaims or offsets arising from the underlying transaction as well as affirmative claims arising out of attempts to collect the debt. Indeed, one study dating back more than 20 years found that more than half of the consumers against whom default judgments were entered had good faith defenses to collection and more than 70 percent "may have had defenses" to the litigation.[45]

Federal Trade Commission Recommendations

In July 2010, based on the information collected at a series of roundtables and from the FTC's extensive experience in debt collection matters, it issued a report of findings and conclusions regarding debt collection litigation and arbitration and their effect on consumers.[46] In general, the FTC reported a broad consensus among roundtable participants regarding low rates of consumer participation in collection litigation, while it noted a wide divergence regarding the reasons for default. Representatives of the collection industry generally asserted that consumers choose not to defend collection litigation because they know they owe the debts and do not have any viable defenses. Some also conceded that consumers' trepidation about the legal process and inability to retain counsel may also be factors. Consumer advocates, on the other hand, generally attributed the low participation rate to inadequate notice of the action or procedural and economic hurdles that make it difficult for debtors to defend themselves.[47] Judges who participated in the roundtables expressed concern that consumer defendants were often puzzled by allegations that they owe debt to an entity that they do not recognize as well as the timing and amount of the alleged debt.

Acknowledging that no empirical data were presented, the FTC nevertheless urged the states to take *4 steps to increase protections available to consumers in debt collection litigation by adopting measures insuring that collectors' complaints contain, at a minimum, the following information: 1) the identity of the original creditor; 2) the date of default or charge-off and amount due at that time; 3) the name of the current owner of the debt; 4) the amount currently due on the debt; and 5) a breakdown of the amount due, showing principal, interest, and fees.[48] The study described in this Article is a first step in collecting such data.

Methodology: Collecting the Data

This project examined litigation files of the Dallas County Courts at Law. The Texas Office of Court Administration reported that in 2007 suits on debt accounted for more than 78 percent of the civil cases filed in county-level courts in Dallas County, but only 43.8 percent of civil cases filed in county courts statewide.[49] Suits on debt are one of the seven categories of civil cases and are defined as "[s]uits based on enforcing the terms of a certain and express agreement, usually for the purpose of recovering a specific sum of money."[50] In addition to consumer debt cases, this category also includes suits to recover wages or sums of money allegedly due under a variety of contracts. These figures for Dallas courts were also consistent with reports from other jurisdictions finding that civil litigation is concentrated in cities and counties with significant minority populations, lower median income, and lower home ownership rates.[51]

Although debt buyers seeking between $500 and $10,000 may file their cases in justice courts, county courts-at-law, or district courts in Dallas County,[52] only the case files from the county courts-at-law were examined. Statutory county courts were selected for three primary reasons. First, the five county courts-at-law are contained in a single building and use a centralized filing system that enabled researchers to work in a single location, thus providing efficiencies for the research. In contrast, the justice courts serve five geographically diverse precincts and are contained in ten different buildings spread throughout the county. Moreover, each justice court maintains its own files--meaning records for one precinct may be located almost twenty-five miles from the records for another. Secondly, because the justice courts serve a smaller geographic area within the county, it could be expected that data from courts with countywide jurisdiction would reflect a broader picture than data collected from a single geographic precinct within a county because each individual justice court precinct is significantly less diverse than the county as a whole. For example, within Justice Court Precinct 1, individual voting tracts may be as much as 95 percent

non-Hispanic Whites, while non-Hispanic Whites may comprise less than two percent of the population in an individual voting precinct for Justice Court Precinct 3.[53] The third--and in some ways most important--reason for selecting the county courts-at-law is that corporate parties must retain counsel to enter an appearance in the county courts; only individuals can appear *pro se*.[54] Because one goal of the project was to examine the conduct of debt buyers and their attorneys in litigation, it was necessary to select a court in which debt buyers who were not individuals could appear in court only through an attorney.[55]

After the court was selected, it was necessary to create a random sample of cases to analyze. In 2007, a total of 16,819 civil cases were filed in the jurisdiction. Each file generally contains a petition, summons, record of service, and dispositive order. While docket information may be reviewed remotely over the Internet, the cases are not electronically searchable by type of case. Because individually reviewing all 16,819 cases was not feasible, a random sample was generated using cluster sampling. Researchers using cluster sampling divide an entire population into clusters or blocks. After the blocks are randomly selected, researchers gather data from all of the elements within the selected block.[56]

After reviewing an experimental sample of approximately 150 cases, a final sample of 21 clusters containing 2,019 cases was generated providing a margin of error of approximately four percent.[57] Researchers then examined the files contained in each cluster and eliminated all cases not involving debt-buyer plaintiffs seeking to collect individual consumer credit card debt. This process produced a set of 507 cases. For each case, researchers recorded and coded information in thirty different categories. Inconsistent data triggered reexamination of the relevant original case file.

Coded information was divided into four general categories. The first category included identifying information, such as the case number, date of filing, date of closing, name of plaintiff/assignee and its attorney, name of original creditor, and name and, if possible, ***5** gender of defendant. The second category contained defensive information--for example, whether there was service on the defendant, whether there was an answer or evidence of appearance, and whether an attorney appeared on behalf of the defendant and, if so, his or her identity. Where there was evidence that an attorney appeared, researchers also reviewed the answer to determine the nature of any defenses and counterclaims. The third category included information about the claims alleged in the petition: the amount sought, including the amount of principal and interest if separately alleged; amounts of attorneys fees sought and the method of calculating them; and details of any other charges or fees, such as late payments or over-the-limit fees. Researchers also noted whether the file contained an affidavit or other documentary evidence supporting the petition. When files contained affidavits, researchers recorded the identity and business affiliation of the affiant and noted whether the plaintiff filed any supporting documents, such as a credit agreement or records of payment history identifying the date of last payment or other date of default; they also noted whether plaintiff served discovery on the defendant. Finally, researchers collected data about the outcome of the case; whether it resulted in a default judgment, dismissal without prejudice, agreed judgment, dismissal with prejudice, or affirmative recovery for the defendant.[58]

Findings

The data indicated that approximately 25.11 percent of the total cases filed in Dallas County Courts-at-Law during 2007 were debt-buyer suits to collect consumer debt. When measured against the total number of suits on debt, simple calculations suggest that one-third of all debt cases filed in Dallas County in 2007 were suits seeking recovery of a delinquent credit card account by someone other than the original creditor.[59]

These figures are consistent with reports from other jurisdictions. For example, 72.8 percent of all civil cases filed in Kansas in 2007 were "seller plaintiff (debt collection)" cases, a number that is very close to the 75.3 percent reported in Dallas County.[60] Nevertheless, perfect comparison with other jurisdictions is difficult. Aside from differences in substantive law that may influence the decision to file a suit to collect debt, there are a number of practical considerations that contribute to the levels of concentration of such cases in certain jurisdictions. Perhaps the most obvious is the range of courts available to a

plaintiff seeking to file a lawsuit to collect debt. Because the Dallas debt buyer can choose between three jurisdictions for filing, one might expect cases in any one of the jurisdictions to occupy a smaller portion of the docket than in a jurisdiction where a plaintiff's choice of forum is far more limited. In New York City, for example, a debt buyer seeking to recover less than $25,000 *must* file in the New York City Civil Court, where debt buyers filed more than 200,000 cases in 2009. [61]

Economic and other non-legal factors may also explain differences among jurisdictions. For example, experts reported that during 2007, economic conditions were slightly better in the geographic region of the country that includes Dallas than in other parts of the country. Thus, even if these percentages are lower than figures reported in other jurisdictions, the debt-buyer cases still make up a sizeable portion of the Dallas County docket.

The Parties: Plaintiffs, Original Creditors, and Plaintiffs' Attorneys

Plaintiff Debt-buyers

Although hundreds of debt buyers operate nationwide, just thirty-five different debt buyers appeared in the 507 cases; an even smaller number were responsible for the majority of cases filed. The two most frequently named plaintiffs initiated 182 cases, or slightly more than 35.9 percent of the total filed, and the top five plaintiffs accounted for 326 cases, or nearly 64.3 percent of the total filed. The identities and frequency of filings of the five most active plaintiffs are set out below.

Of the thirty-five different debt buyers represented in the sample, nine, or about 25 percent, failed to comply with the Texas law requiring debt collectors to file a ***6** bond, and did not have active bonds on file with the Secretary of State for the calendar year of 2007. Their failure to do so amounts to a *per se* violation of the Texas law. [62] These unbonded plaintiffs accounted for thirty-eight cases, or 7.49 percent of cases examined in the study. While those numbers may seem insignificant at first glance, when that percentage is applied to the total number of cases filed in the county, it can be estimated that unbonded debt buyers filed approximately 1,200 cases during 2007. Had any of the defendant consumers in those cases been aware of the unbonded status of the plaintiff, they might have been able to avoid the lawsuits altogether and even obtain injunctive relief and statutory damages for the debt collectors' illegal conduct. Yet, none of the thirty-five defendants sued by unbonded debt buyers raised those claims or defenses. Indeed only two defendants sued by unbonded plaintiffs even appeared and their cases were concluded with agreed judgments requiring a monthly payout. The remaining cases resulted in a default judgment..

Identity and Frequency of Plaintiff

Plaintiff	Number of Cases	Percentage
Dodeka LLC	107	21.10%
LVNV Funding LLC	75	14.79%
CACV of Colorado LLC	52	10.26%
CACH LLC	52	10.26%
Resurgence Financial LLC	40	7.89%
Total	326	64.30%

Original Creditors

Researchers could not always determine the identity of the original creditor from the plaintiff debt buyer's allegations. In many of the cases in which plaintiffs did not formally allege the original creditor's identity, the identity was indicated in the caption or style of the case. When it was not, and the petition did not contain any allegations or hints of any kind regarding the original creditor's identity, careful review of affidavits or exhibits to affidavits submitted in support of the petition provided the only clues to the original creditor's identity. In eight cases, however, researchers were not able to locate any information in the case file regarding the identity of the original creditor.

Including the identity of the original creditor in an allegation can be critical to ensure due process, to establish that the plaintiff actually owns the account, and to give notice to a defendant of the availability of defenses and counterclaims. Proper identification of the original creditor may also be necessary to comply with FDCPA's obligation to validate the debt.[63] Additionally, slight differences in corporate names of creditors can carry legal significance. For example, Texas law contains numerous regulations regarding the reservation, registration, and use of corporate names. Among them is the requirement that out-of-state financial institutions must file an application with the Secretary of State before operating a branch within the state.[64] State law also requires that an entity doing business under a name other than its legal name file an assumed name certificate with the Secretary of State and in each county in which it maintains business premises.[65] An entity that fails to do so may be liable to an opposing party for the "expenses incurred, including attorney's fees, in locating and effecting service of process on the defendant."[66] Subtle differences in entity names can also signify independent corporate entities with independent legal rights and responsibilities. Significantly, however, these differences often go unnoticed by individual consumers who, without attorney representation, may not fully appreciate the legal significance of proper identification.

Even when the plaintiff debt buyer provided some information with which to identify the original creditor, the data contained substantial variations. For example, 133 cases identified original creditors whose names contained some variation of the word "Citi."

Many variations were also found with "Chase" as part of the original creditor's name.

None of the nine "Citi" entities that plaintiffs identified as original creditors were actually registered--as required by law--with Texas' Office of the Secretary of State during the period in which the cases were filed or pending. A search of the online business service, which is provided by the Office of the Secretary of State, for the term "Citibank" revealed nine filings; however, only one of them--an entity identified as "Citibank Texas N.A."--was in existence for any length of time prior to and during the year in which the collection cases were filed. Yet, that entity was never identified as an original creditor in the cases examined. The charter for a second entity, "Citibank, N.A.," was cancelled in October of 2007, and charters for another five were either "cancelled," "dissolved," or "forfeited" prior to 2007; the remaining entities did not appear to be related.[67]

Likewise, a search for the term "Chase Manhattan Bank," identified as an original creditor in thirty-nine cases, revealed a total of twenty-four filings with the Secretary of State. Only one of those filings was an exact match, but that entity was identified as a "foreign corporate fiduciary" whose charter was cancelled in *7 2002. The same search revealed a close match with another entity identified as "*The* Chase Manhattan Bank" (emphasis added) that had a valid charter pre-dating and post-dating 2007. However, that entity was also not identified as an original creditor in any of the eighty-five "Chase" cases. Further research revealed no other matches to the remaining "Chase" entities identified.[68]

Name of Original Creditor	Number of Cases
Citibank	77
Citibank (South Dakota)	39
Citi-Sears	9
Citibank (South Dakota) N.A.	3
Citibank South Dakota	1
Citibank/Home Depot	1
Sears-Citi-Sears	1
Sears or Citibank	1
Citibank Credit Services, Inc. (USA)	1
Total	133

Number of Original Creditors with "Citi" in the Name

Number of Original Creditors with "Chase" in the name

Name of Original Creditor	Number of Cases
Chase Manhattan Bank	39
Chase	24
Chase Manhattan	5
Chase Visa/Master Card	5
Chase/Bank One	3
Bank One (subs. merged w/Chase Bank)	2
Chase Bank	1
Chase Bank NA	1
Chase Bank USA	1
Chase Bank USA NA	1
Chase Manhattan Bank USA	1
Chase Manhattan Bank USA, NA	1
JP Morgan/Chase	1
Total	85

Improper identification of an original creditor has at least two consequences. First, it can easily frustrate a consumer's third-party claim by making it difficult--if not impossible--to locate and serve the creditor, much less enforce any judgment obtained against it. Secondly, it can serve as the basis for a valid counterclaim against the debt buyer in its collection case. Had the defendants in any of the "Citi" or "Chase" cases established that the plaintiff debt buyer improperly identified the original creditor, they may have been entitled to statutory damages for a violation of the FDCPA's requirement to accurately validate the debt. [69]

Plaintiffs' Attorneys & Law Firms

Similar results to those found among plaintiffs and creditors also existed among the law firms they represented. In fact, six law firms were responsible for filing 356--or 69.5 percent--of the 509 cases in the sample. Although the economics of the debt collection practice was beyond the scope of the project, the volume of cases handled by individual lawyers and their firms must be considered as a factor in the conduct of the collection litigation and should be the subject of further research.

Service and Appearance

Somewhat surprisingly, plaintiffs did not accomplish service in more than 12 percent of the cases filed; all of those cases were dismissed without prejudice. Large numbers of filings that are not fully litigated suggest, at a minimum, an unnecessary burden on the courts. In certain circumstances they may also represent the use of false or unfair collection practices. [70]

Far more insidious than a dismissal after non-service, however, is the entry of a default judgment after the filing of a false affidavit of service, a phenomenon known colloquially as "sewer service." In California, it is unlawful for a collector to engage in judicial proceedings to collect a debt when it knows that service of process has "not been legally effected." [71] Recent efforts to curb this practice in New York City resulted in the arrest of at least one process servicer for filing fraudulent affidavits in connection with non-service of defendants and led to stricter requirements for process servers doing business in the city. [72] However, the rate of dismissals following non-service--12 percent--in Dallas County cases suggests that sewer service may not be as prevalent as it is in California, New York City, and elsewhere.

When evidence in the file indicated that the defendant had been served, researchers recorded any indication that the defendant attempted to respond to the suit as ***8** an "appearance" even if the communications did not technically comply with the procedural requirements for an "answer." [73] Under these criteria, defendants appeared in 102 cases or 20.12 percent of the time. However, because a defendant cannot "appear" if the plaintiff did not accomplish service, a more accurate measure of the

appearance rate considers only the cases in which the defendant was served. Under this measurement, the defendants appeared in 22.87 percent of the cases in which they were served. Under each measure, the appearance rate is nearly twice what the Urban Justice Center reported in New York City courts and may be partially attributable to the higher rate of sewer service there. [74] The broad definition of "appearance" used in the Dallas study may explain some of the difference between the two rates of appearance; the number may also suggest that Dallas plaintiffs did a better job of actually accomplishing service than their counterparts elsewhere.

The data does not provide sufficient information to determine why defendants did or did not appear, it neverthless suggests at least one factor that may influence defendants' decisions regarding appearance: the amount in controversy. Of the 102 defendants who appeared, fifty-three, or slightly more than half, did so in cases in which the plaintiff sought $5,000 to $10,000, twenty-nine appeared in cases seeking over $10,000, and twenty appeared in cases seeking less than $5,000. The data shows higher appearance rates in cases seeking between $5,000 and $10,000 and lower rates above and below those values.

Substance of the Pleadings

As previously discussed, the FTC advised that collectors' petitions should allege five categories of information: "(1) the identity of the original creditor; (2) the date of default or charge-off and amount due at that time; (3) the name of the current owner of the debt; (4) the amount currently due on the debt; and (5) a breakdown of the amount due, showing principal, interest, and fees." [75] Of those five categories, only two were routinely included in the cases examined. Indeed, all of the cases contained some allegation regarding the identity of the plaintiff or current owner of the debt and most contained allegations regarding the original creditor. Plaintiffs' petitions otherwise failed to allege any of the remaining kinds of information the FTC recommended.

Likewise, in all of the cases reviewed, plaintiffs also specifically alleged the dollar amount sought. Somewhat surprisingly, more than half of the cases sought less than $10,000, an amount over which the justice court has concurrent jurisdiction. [76] Additionally, more than 30 percent of the cases contained allegations regarding the calculation and amount of attorneys' fees sought. Less than five percent of the cases, however, contained any allegations breaking down the total amount sought into component parts of principal, interest, and fees. Likewise, less than five percent of cases contained allegations regarding payment history, such as date of default or date of the last payment. In other words, in more than 95 percent of the cases, plaintiffs failed to provide defendants with *any* information in at least two of the categories the FTC identified as being critical to providing due process. The following table illustrates the type and frequency of allegations found in the 507 case files.

While the absence of certain allegations is troublesome, the data also revealed significant problems with many of the allegations that *were* present, particularly with regard to supporting affidavits. Problems with supporting affidavits fall into two general categories. The first involves misuse of the sworn account procedure designed to facilitate proof of a debt in circumstances where a merchant or tradesman sells goods or services "on account" and keeps only a record of the items sold. The second involves sufficiency of the evidence submitted to prove the existence and amount of the debts.

Regarding the first category, Texas law permits proof of an account through the use of a report or summary of the account accompanied by an affidavit. [77] There must be testimony that the report or summary was "made at or near the time by, or from information transmitted ***9** by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the report, record, or data compilation." [78] Evidence of compliance can be offered through the testimony of the custodian of records "or other qualified witness," either through live testimony or in the form of an affidavit. Compliance with these pleading requirements creates a presumption, only challengeable by a sworn statement of the defendant that the account stated is correct. This procedure was designed to permit the merchant who sold goods or services on "account," keeping a record of items and services sold, to submit the account records in court as proof of the debt.

Types and Frequency of Allegations

	Number of Cases	Percent
Calculation of Attorney's Fees	191	30.20%
Date of Last payment or Date of Default	30	4.70%
Identification of Fees (e.g., late payment, over-the-limit, etc.)	29	4.60%
Calculation of Interest	3	.50%
Signed Credit Agreement Attached to Petition or Affidavit	1	.20%

Although courts have held this procedure inapplicable to suits seeking to recover a credit card debt,[79] plaintiffs' submission of affidavits in almost 400 cases suggests intent to trigger the presumption. Any misuse of the sworn account procedures by plaintiffs and their attorneys may result from harmless mistake or unfamiliarity with a rule that may not be consistently applied; however, it may also indicate their desire to gain an unfair advantage in litigation and may even amount to an unfair or deceptive collection practice to the extent that it falsely represents "the character" of a consumer debt.[80]

Regardless of how the affidavits may be used procedurally, they still must comply with evidentiary rules requiring that a summary be compiled by "a person with knowledge" regarding either the underlying data or "the method or circumstances of preparation" of the summary.[81] However, because debt buyers purchase their accounts after default, it would be highly unlikely that any of their employees would possess sufficient "personal knowledge" to testify under oath about the creation of the underlying account or any other details regarding the account. Yet, in 397 of the 400 cases in which affidavits were filed, affidavits were made by employees of the *plaintiff* who purported to have actual knowledge that the plaintiff owned the debt and that an amount contained in the summary or data compilation represented an overdue account of the defendant. Only fourteen files contained affidavits made by an agent or employee of the original creditor. Yet, in 97.22 percent of the cases in which an affidavit was filed, the affidavit constituted the *only* evidence of the validity of the account.

As described above, people signing and swearing to affidavits with little or no personal knowledge of the facts recited in them are the heart of civil and criminal investigations into banks' foreclosure practices across the country. The data in this study suggest that robosigning may not be limited to a particular jurisdiction or to an individual entity engaged in credit card collection. Indeed, a Tennessee appeals court recently held that affidavits of the type described above were insufficient to support a judgment in the plaintiff's favor.[82] Further research is necessary to understand the extent of the practice. Likewise, additional research may also shed some light on attorneys' roles in obtaining, submitting, and relying upon such "evidence" as well as the extent to which their conduct is consistent with their professional responsibilities to the courts and the public.

Outcomes

Dispositions without Prejudice to Refiling

Researchers recorded outcomes by placing the title of the order disposing of the case into one of eight categories: default judgments, dismissals without prejudice, nonsuits, agreed judgments, dismissals with prejudice, closed or bankruptcy, affirmative recovery for defendant and other. By far the most common outcome was not--as some suggest--a default judgment, but rather was a dismissal without prejudice to refiling. Dismissals without prejudice occurred in 51.25 percent of cases in which the defendant was served and 61.77 percent in which the defendant appeared. That number increased even more--to 75 percent--when an attorney entered and appeared on behalf of the defendant.

There are a number of possible reasons for this surprisingly high rate of dismissals without prejudice. One is simple error. Another is the possibility that cases settled. It is common practice in the jurisdiction for the parties to file a dismissal *with* prejudice following the settlement or resolution of the parties' dispute; the files of six of the cases in which the disposition

occurred without prejudice revealed that the parties reached an agreement. Hence despite the apparent existence of an agreement to settle the case, the plaintiff maintained the right to sue on the same underlying claims. Another five cases contained dispositive orders with titles indicating dismissals without prejudice even though the orders stated that the disposition occurred with prejudice.

***10** Just as surprising as the number of dismissals was the number of defaults. In contrast to reports from other jurisdictions, defaults occurred in just 39.46 percent of cases. The following tables illustrate the outcomes of all cases in which the defendant was served.

The data suggest that by merely appearing, the defendant will likely avoid a default judgment and liability. In some cases, the defendant's appearance resulted in the permanent avoidance of liability. In two of the three cases in which an affirmative judgment for the defendant occurred, the defendant's appearance, without more, resulted in a final judgment in his favor. In one case, the defendant appeared for trial but the plaintiff did not, and the court entered judgment for the defendant. In the second, both parties proceeded to trial after the court denied the plaintiff's request for a continuance. Despite the plaintiff's presentation of two witnesses, the court ruled that the plaintiff failed to carry its burden and entered judgment for the defendant. The defendant's level of participation in that case clearly made a difference in the outcome. What is surprising, however, is how minimal a defendant's participation need be to alter the outcome of the case dramatically. Simply showing up can be the key to success.

Outcomes in Served Cases

Outcomes	All Cases Served	Percentage
Dismissal without Prejudice by Court or Plaintiff	229	51.35%
Default Judgment	176	39.46%
Agreed Judgment	22	4.93%
Dismissed with Prejudice	9	2.02%
Closed for Bankruptcy	4	.90%
Affirmative Recovery for Defendant	3	.67%
Other	3	.67%
Total	446	100%

Outcomes and Appearance in Served Cases

Type of Appearance	None	Pro Se	Attorney	All Cases
Dismissal without Prejudice by Court or Plaintiff/ Nonsuit	170	27	32	229
Default Judgment	166	9	1	179
Agreed Judgment	7	13	2	22
Dismissal with Prejudice	1	4	4	9
Closed for Bankruptcy	0	2	2	4
Affirmative Recovery for Defendant	0	1	2	3
Other	0	2	0	3
Total	344	58	44	446

Conclusion

This study is a first step in the collection of empirical data regarding litigation initiated by debt buyers to collect consumer debts. The results are largely consistent with many anecdotal reports regarding collection litigation and provide empirical support for some of the more serious concerns expressed by the Federal Trade Commission in its July 2010 report. Specifically, the study confirmed that many consumers do not participate in the litigation and that debt buyers provide consumers with very little information concerning the debt. For example, of the 507 cases examined:

• More than 95 percent of the complaints failed to provide any information regarding date of default or calculation of the amount allegedly owed, allegations the FTC suggests are necessary to insuring due process.

• More than 78 percent of cases contained affidavits having characteristics of robo-signing.

• Nearly 40 percent of all cases resulted in default judgment.

• More than 25 percent of the collectors failed to file state-mandated bonds and, therefore, were operating outside the law at the time they filed their suits.

• Fewer than 10 percent of defendants retained counsel.

The data provided little evidence, however, that faulty service played a role in the entry of judgments. Indeed, slightly more than 12 percent of the cases were dismissed before the defendants were served. Of those that remained, more than half resulted in a dismissal without prejudice. While the high rate of dismissal may indicate that "sewer service" was not a problem in the ***11** jurisdiction, it may raise other questions regarding debt collectors' use of the courts as a tool in the collection process.

Despite the many aspects of the litigation that remain to be explored, this study nevertheless provides an important starting point for understanding the impact consumer collection litigation has on consumers and the courts. It also provides rule makers, legislators, and the courts with important tools to insure that the justice system functions to protect the interests of all the parties it serves.

Footnotes

a1 **Mary Spector** is an associate professor of law at SMU Dedman School of Law where she teaches consumer law and co-directs the SMU Civil Clinic. The complete version of this article, including all tables appearing here, was first published in Volume 6 of the Virginia Law and Business Review, *Debts, Details and Defaults: Exploring the Impact of Debt Collection Litigation on Consumers and the Courts*, 6 Va. L. & Bus. Rev. 257 (2011). The author would like to thank Lauren Maluso for her assistance in adapting it for this article. Initial support for the project was provided by the American Bar Association Section of Litigation, Litigation Research Fund.

1 *E.g.*, Joe Nocera, *Why People Hate the Banks*, N.Y. TIMES, (Apr. 2, 2012), http://www nytimes.com/2012/04/03/ opinion/noc-era-why-people-hate-the-banks.html Jeff Horwitz, *OCC Probing JPMorgan Chase Credit Card Collections*, AMERICAN BANKER (Mar. 12, 2012), http://www.americanbanker.com/issues/177_ 49/chase-credit-cards-collections-occ-probe-linda-almonte-1047437-1.html? zkPrintable=1&nopagination=1; Jeff Horwitz, *'Robo' Credit Card Suits Menace Banks*, AMERICAN BANKER (Jan. 31, 2012).

2 Federal Trade Commission, Collecting Consumer Debts: The Challenges of Change, A Workshop Report 13 (Feb. 2009) [hereinafter Workshop Report].

3 Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AMERICAN BANKER (Mar. 29, 2012), http:// www.americanbanker.com/issues/177_62/bofa-credit-cards-collections-debts-faulty-records-1047992-1 html? zkPrintable=1&nopagination=1.

4 WORKSHOP REPORT, *supra* note 2, at 22.

5 *See* Horwitz, *supra* note 3.

6 *See* Jon Leibowitz et al., Federal Trade Comm'n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration 6, 15-16 (July 2010) [hereinafter Broken System].

7 The National Consumer Law Center has estimated that one out of ten lawsuits filed by debt buyers are premised on bad or incorrect information.

8 BROKEN SYSTEM, *supra* note 6, at 14, 17.

9 *See, e.g.*, WILLIAM V. DORSANEO III, TEXAS LITIGATION GUIDE §§ 11.51(d) (noting that the "defendant is entitled to know character of legal entity that brings him or her into court"), 11.51(f), 12.100 (2006).

10 *See* TEX. R. CIV. P. ANN. 45(b) (West 2003) (stating that conclusory allegations are objectionable unless fair notice is given).

11 *See* United States Government Accountability Office, Credit Cards: Fair Debt Collection Practices Could Better Reflect Evolving Debt Collection Marketplace and Use of Technology 43 (Sept. 2009) [hereinafter GAO Report].

12 Robo-signing is the practice of filing mass-produced, computer-generated legal documents--so-called "sworn" statements--without reading or verifying the accuracy of the contents in order to speed up the collection process. *See* Press Release, Office of the Minnesota Attorney General (Mar. 28, 2011), *available at* http:// www.ag.state mn.us/consumer/pressrelease/110328debtbuyers.asp.

13 Texas law, for example, states that a party challenging the sufficiency of a pleading must "point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations." TEX. R. CIV. P. 91. Unless such deficiencies are "pointed out ... in a writing ... [they] shall be deemed to have been waived." TEX. R. CIV. P. 90.

14 National Consumer Law Center, Comments to the Federal Trade Commission Regarding the Fair Debt Collection Practices Act, Protecting Consumers in Debt Collection Litigation and Arbitration: A Roundtable Discussion 4 (Aug. 2009), *available at* http:// www.nclc.org/images/pdf/debt_ collection/comments_ftc_09.pdf; *see* Horwitz, *supra* note 2.

15 A significant exception is the Urban Justice Center's 2007 report regarding 600 cases filed in New York City during a one-month period of 2006. COMMUNITY DEVELOPMENT PROJECT, URBAN JUSTICE CTR., DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR, 1, 18 (Oct. 2007), http:// www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf.

16 See BROKEN SYSTEM, supra note 6, at ii; Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259. 264-73 (2011).

17 *See* BROKEN SYSTEM, *supra* note 6.

18 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (2009).

19 15 U.S.C. §§ 1692, 802(e).

20 Holland, *supra* note 15, at 264-73.

21 Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., The Debt Machine, How the Collection Industry Hounds Consumers and Overwhelms Courts, (July 2010), *available at www.nclc.org/images/pdf/pr-reports/debt-machine.pdf* [hereinafter The Debt Machine].

22 Federal Reserve, Federal Reserve Statistical Release: Consumer Credit, http://www federalreserve.gov/releases/g19/Current/ (last updated Mar. 7, 2012) [hereinafter Federal Reserve Statistical Release].

23 Federal Reserve, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks: Delinquency Rates for All Banks, http:// www.federalreserve.gov/releases/chargeoff/delallsa htm (last updated Aug. 22, 2011) [hereinafter Delinquency Rates].

24 Federal Reserve, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks: Delinquency Rates for All Banks, http:// www.federalreserve.gov/releases/chargeoff/delallsa htm (last updated Aug. 22, 2011).

25 *See* THE DEBT MACHINE, *supra* note 21, at 1.

26 Jessica Silver-Greenberg, *Boom in Debt Buying Fuels another Boom--in Lawsuits*, WALL ST. J. (Nov. 28, 2010), *available at* http://online.wsj.com/article/SB10001424052702304510704575562212919179.

27 Workshop Report, *supra* note 2, at 13-14; Barbara Sinsley, Fed. Trade Comm'n, DBA International's Comments Related to Debt Collection for the FTC Debt Collection Workshop, 2-3 (June 2, 2007), *available at* www.ftc.gov/.../ comments/debtcollectionworkshop/529233-00010.pdf *[hereinafter DBA* COMMENTS*]*

28 DBA COMMENTS, *supra* note 27, at 1-2.

29 Silver-Greenberg, *supra* note 26 (describing one company's practice of buying "distressed debt" for a "few pennies on the dollar.").

30 Andrew M. Beato & Rozanne M. Anderson, Fed. Trade Comm'n, Comments of ACA International to FTC Regarding the Debt Collection Workshop 1, 6-11, 42, 53 (June 6, 2007), http:// www ftc.gov/os/comments/debtcollectionworkshop/529233-00016.pdf [hereinafter ACA Comments].

31 *See* Richard Dalton, *'Zombie Debt': When collectors haunt you*, NEWSDAY (Feb. 10, 2008), *available at* http://www kaulkin.com/files/2008-02-08_ Newsday.com.pdf

32 *See* Horwitz, *supra* note 3.

33 FDCPA is codified at 15 U.S.C. §§ 1692-1692p. It prevents communication at "any unusual time or place," before 8:00 AM, or after 9:00 PM. 15 U.S.C. § 1692c. Debt collectors are prevented from using postcards when communicating with persons other than the consumer to acquire location information. 15 U.S.C. § 1692b(4). In collector contact with consumers, they are required to give notice of the amount of the debt, the name of the creditor to whom it is owed, and a statement that the debtor can request verification of the debt. 15 U.S.C. § 1692g.

34 The Equal Credit Opportunity Act is codified at 15. U.S.C. § 1691 and the Fair Credit Reporting act at 15 U.S.C. § 1681c(a)(4).

35 Carolyn L. Carter et al., Nat'l Consumer Law Ctr., The Consumer Credit and Sales Legal Practice Series: Fair Debt Collection, Appendix E, 731-41 (2008).

36 TEX. FIN. CODE § 392.101 (2006) (requiring $10,000 bond to be filed with Secretary of State; *see also* Marauder v. Beall, 301 S.W.3d 817, 821 (Tex. App.--Dallas 2009, no pet.).

37 *See* Debt Buyers' Ass'n v. Snow, 481 F. Supp. 2d 1, 4 (D.D.C. 2006). At times, such efforts may be extremely creative, as in the use of mailing sent to consumer debtors offering a "pre-approved" credit card with a limit set just above the amount owed on the previous card. *See* Notice sent by Resurgent Capital Services, L.P. to Past-Due Debtor (on file with the author) ("Take Advantage of $178.58 of DEBT REDUCTION and get Immediate Available Credit of $50.00 ... Pay your $3378.58 debt in full by balance transferring $3200 of your debt to a new Visa credit card, and when your credit card is issued, the remaining $178.58 will be forgiven. You will have $50.00 available credit when you receive your credit card .... Collection activity on your old debt will stop if you accept this offer[.]").

38 Failure to completely and accurately identify the original creditor in the informal stage of collection may subject collectors to liability for consumer statutory damages. *See* Schneider v. TSYS Total Debt Mgmt., Inc., No. 06-C-345, 2006 WL 1982499, at *3 (E.D. Wis. 2006) (refusing to dismiss § 1692g claim where it was "impossible ... to decide whether the collector's identification of Target" as original creditor satisfied its obligations under the statute).

39 *See* Horwitz, *supra* note 3.

40 The FDCPA solely governs debt collectors' conduct through the various phases of the collection process. *See* 15 U.S.C. § 1691i(a).

41 *See* Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (stating that plaintiff's complaint should contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation"); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 n.3 (2007) (stating that a plaintiff must include some factual allegation in a complaint to "provid[e] not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests").

42 *See e.g.*, FED. R. CIV. P. 7.1(a) (requiring corporate parties to disclose certain corporate affiliations); FED. R. CIV. P. 8(a)(2) (requiring a "short and plain statement of the claim showing that the pleader is entitled to relief"); *see also* 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 8.04 [2] (3d ed. 2008).

43 BROKEN SYSTEM, *supra* note 6, at 7.

44 DBA COMMENTS, *supra* note 27, at 1-2.

45 Hilliard M. Sterling & Philip G. Schrag, *Default Judgments Against Consumers: Has the System Failed?* 67 DENV. U. L. REV. 357, 357-59 (1990).

46 *See* BROKEN SYSTEM, *supra* note 5.

47 BROKEN SYSTEM, *supra* note 6, at 12.

48 BROKEN SYSTEM, *supra* note 6, at iii.

49 Texas Office of Court Administration, Trial Court Judicial Data Management System, *County-Level Courts: Reported Activity by County from January 1, 2007 to December 31, 2007*, *available at* http:// dm.courts.state.tx.us/oca/oca_ReportViewer.aspx?ReportName=CC_Reported_ Activity_New rpt&ddlFromMonth=1&ddlFromYear=2007&txtFromMonthField= @FromMonth&txtFromYearField= @FromYear&ddlToMonth=12&ddlToYear=2007&txtToMonthField=@ToMonth&txtToYearField= @ToYear&ddlCountyPostBack=57&txtCountyPostBackField=@CountyID&export=1706 [hereinafter *County-Level Reports: Reported Activity 2007*].

50 Office of Court Administration, Texas Judicial Counsel, *Official County Court Monthly Report Instructions* 10 (July 2009), http:// www.courts.state.tx.us/oca/pdf/Cnty_Inst.pdf (emphasis added).

51 See Richard M. Hynes, *Broke but not Bankrupt: Consumer Debt Collection in State Courts*, 60 FLA. L. REV. 1, 5-6 (2008).

52 The justice courts have jurisdiction over civil cases involving not more than $10,000. TEX. GOV'T CODE § 27.031(a)(1). County courts at law and district courts in Dallas County have concurrent jurisdiction over all matters. TEX. GOV'T. CODE § 25.0592. Debt buyers may not bring their claims in a small claims court, because it is not available to collection agencies or other assignees of claims seeking to recover on the assigned claims. TEX. GOV'T. CODE § 28.003(b).

53 *Compare* 2000 Census of Population and Housing Summary File 1 Characteristics for Dallas County Voting Precinct 1148, North Central Texas Council of Governments, http://www nctcog.org/ris/census/sf1.asp? geo=DALCO&area=1148, *with* 2000 Census of Population and Housing Summary File 1 Characteristics for Dallas County Voting Precinct 3517, North Central Texas Council of Governments, http://www nctcog.org/ris/census/sf1.asp? geo=DALCO&area=3517.

54 Although TEX. R. CIV. P. 7 provides that parties may appear "either in person or by an attorney," Texas courts interpret the provision to mean that only individuals can appear pro se. *See* Kunstoplast of Am., Inc. v. Formosa Plastics Corp., 937 S.W.2d 455, 456 (Tex. 1996) (finding only limited exception to the general Texas rule that corporate parties may be represented only by licensed attorney); *see also* Paul Stanley Leasing Corp. v. Hoffman, 651 S.W.2d 440 (Tex. App.--Dallas 1983, no writ) (holding that although plaintiff corporation was unable to proceed to trial without an attorney, trial court abused discretion in failing to give plaintiff opportunity to obtain licensed counsel).

55 TEX. GOV'T CODE § 27.031(d) ("A corporation need not be represented by an attorney in justice court.").

56 Richard D. De Veaux, Paul F. Velleman & David E. Bock, Intro Stats 311-12 (3d ed. 2009).

57 E-mail from Lynne Stokes, Professor, SMU Dept. of Statistical Science to Mary Spector, Associate Professor of Law, SMU Dedman School of Law (July 16, 2008, 1:15 PM CST) (on file with the author).

58 Default Judgment occurs when one party fails to appear or plead at the time appointed. A Dismissal *without* prejudice is a final judgment disposing of a case without a trial on the merits that does not bar the complainant from suing again on the same cause of action. An agreed judgment is a dismissal entered by agreement of the parties, amounting to an adjudication of the matters in dispute or to a renunciation by the complainant of the claims asserted in his pleadings. Dismissal *with* prejudice is a final judgment disposing of a case without a trial on the merits that bars relitigation of the underlying cause of action. An affirmative recovery for the defendant occurs when the defendant asserts counterclaims against the complainant and wins. *See* BLACK'S LAW DICTIONARY (9th ed. 2009), *available at* http:// blackslawdictionary.org (emphasis added).

59 In this calculation, the dividend is the percentage of "suits on debt" added in Dallas County as reported by the Texas Office of Court Administration--75.3%. *See County-Level Reports: Reported Activity 2007*, *supra* note 46. The divisor is the percentage of cases that the study shows were initiated by debt buyers to collect credit card debt. Stated in numerical form, the equation becomes: 25.11% ÷ 75.3% = 33.35%.

60 R. LA FOUNTAIN ET AL., THE WORK OF STATE COURTS: AN ANALYSIS OF 2007 STATE COURT CASELOADS 10 (2009) (reporting the results of a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts).

61 NY City Civ. Ct. Act §§ 201-02, Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York 16 (Nov. 2010); New York City Bar, Report by the Civil Court and Consumer Affairs Committee in Support of Intro. 0660-2007, (Jan. 21, 2009), *available at* http://www nycbar.org/pdf/report/Consumer_Debt.pdf.

62 TEX. FINE. CODE ANN. § 392.101 (West 1997); *see Marauder*, 301 S.W.3d at 821.

63 *See* 15 U.S.C. § 1692g. Although the collector's initial pleading is not treated as a communication which must contain the required validation, improper identification in the pleading might nevertheless amount to deceptive or misleading conduct in violation of 15 U.S.C. § 1692e(10).

64 Tex. Fin. Code § 201.102.

65 *See* TEX. BUS. & COM. CODE § 71.101 (2009).

66 TEX. BUS. & COM. CODE § 71.201(b); *cf.* TEX. BUS. & COM. CODE § 17.46(b) (establishing that in some circumstances, a corporate entity's failure to identify itself properly can amount to a deceptive trade practice).

67 This information is available with a password at http:// direct.sos.state.tx.us/home/home-corp.asp (follow "Find Entity" hyperlink and search "Citibank." Similar results were achieved searching more broadly with the term "Citi").

68 This information is available with a password at http:// direct.sos.state.tx.us/home/home-corp.asp (follow "Find Entity" hyperlink and search "Chase Manhattan Bank."). A similar search using the term "Chase Bank" reported twelve filings. One of them, an entity identified as JPMorgan Chase Bank, National Association, appears to be a close match to "JPMorgan/Chase," which was identified as an original creditor in one case.

69 *See* 15 USC 1692g(a) (requiring collector to identify original creditor upon consumer's request).

70 *See* 15 USC 1692e, 1692f. *See also* Delawder v. Platinum Financial Services Corp. 443 F.Supp. 2d 942 (S.D. Ohio 2005) (holding that debtor stated claim for violation of section 1692e against debt buyer who voluntarily dismissed prior collection case after debtor answered and sought discovery).

71 CAL. CIV. CODE § 1788.15(a).

72 Ray Rivera, *Counsel Seeks to Crack Down on Process Servers Who Lie*, N.Y. TIMES, Feb. 26, 2010, at A18. In early 2011, a Dallas County auditor found evidence that deputy constables had lied about obtaining service of process in a range of civil matters. Reports focused on the widespread nature of such conduct--allegedly involving over half of the deputies who serve civil papers--and the role it may have played in evictions, which are filed exclusively in the justice courts. Editorial, *Time to Unplug the Entire*

Constable Operation?, DALLAS MORNING NEWS, May 19, 2011, http:// www.dallasnews.com/opinion/editorials/20110519-editorial-time-to-unplug-the-entire-constable-operation.ece. Little is known, however, about the extent to which alleged wrongdoing by the constables played a role in collection cases filed outside of the justice courts.

73 *See* TEX. R. CIV. P. 83 (Answer; Original and Supplemental; Endorsement), 84 (Answer May Include Several Matters), 85 (Original Answer, Contents), 92 (General Denial), and 93 (Certain Pleas to be Verified).

74 The Legal Aid Society, Neighborhood Economic Development Advocacy Project, MFY Legal Services, and Community Development Project, Urban Justice Ctr., Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers, Urban Justice Ctr. 1, 9 (May 2010), http:// www.urbanjustice.org/pdf/publications/cdp_24may10.pdf [hereinafter Debt Deception].

75 Broken System, *supra* note 6, at 17.

76 Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355 (2012).

77 *See* Tex. R. Civ. P. 185.

78 Tex. R. Evid. 803(6).

79 *See* Williams v. Unifund CCR Partners Assignee of Citibank, 264 S.W.3d 231 (Tex. App.--Houston [1st Dist.] 2008, no pet.); Bird v. First Dep. Nat'l Bank, 994 S.W.2d 280 (Tex. App.--El Paso 1999, pet. denied).

80 *See e.g.*, 15 U.S.C. § 1692e(2)(A).

81 TEX. R. EVID. 803(6), 902(10).

82 *See* LVNV Funding, LLC v. Mastaw, No. M 2011-00990-COAR3-CV (Tenn. Ct. App. Apr. 30, 2012).

End of Document

SMU
DEDMAN SCHOOL OF LAW

June 21, 2012

The Honorable Nathan L. Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711-2248

Mr. Charles L. Babcock
Chairman, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Rules of Practice in Justice Court

Dear Justice Hecht and Mr. Babcock,

I write to express general support for the work of the Justice Court Rules Task Force and its proposed Rules of Practice in Justice Court – in particular those rules in Section 8 that apply to Debt Claim Cases.[1]

There are a number of reports regarding problems in the litigation of consumer debt cases.[2] Supported by a grant from the American Bar Association Section of Litigation, Litigation Research Fund, I conducted a study of collection litigation initiated by debt-buyers in Dallas County. The results of the project were published late last year.[3] Attached is an abridged version of my report, which appears in the June 2012 *Banking and Financial Policy Reporter*.

The project examined the litigation of consumer collection cases in the county courts-at-law. Although the practice in those courts differs from the historical practice in the justice courts, I believe the project's primary findings are relevant to the work of the

---

[1] The opinions expressed in this letter are my own and do not necessarily reflect the opinions of Southern Methodist University, the Dedman School of Law or any of its faculty or administrators.

[2] *See, e.g.*, Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AMERICAN BANKER (Mar. 29, 2012) Jeff Horwitz, *OCC Probing JPMorgan Chase Credit Card Collections*, AMERICAN BANKER (Mar. 12 , 2012), Jeff Horwitz, *'Robo' Credit Card Suits Menace Banks*, AMERICAN BANKER (Jan. 31 , 2012). *See also* Joe Nocera, *Why People Hate the Banks*, N.Y. TIMES, (Apr. 2, 2012).

[3] *See* Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257 (2011).

Justice Court Task Force. For example, the data collected in a random sample of debt-buyer collection cases filed in Dallas County Courts-at-Law established the following:

- More than 95% of the petitions failed to provide any information regarding date of default or calculation of the amount allegedly owed.
- More than 78% of cases contained affidavits having characteristics of "robo-signing."[4]
- Nearly 40% of all cases resulted in default judgment.
- More than 25% of the collectors failed to file state-mandated bonds and, therefore, were operating outside the law at the time they filed their suits.

The data also showed that while attorneys represented 100% of the plaintiffs, less than 10% of defendants appeared through counsel. Indeed, only 20% of defendants entered any form of appearance. Nearly 80% failed to appear at all.

These findings are consistent with findings of the Federal Trade Commission in a July 2010 report on consumer collection litigation and arbitration.[5] The Commission urged states to adopt measures to make it more likely for consumers to defend collection cases. Such measures would include heightened pleading requirements providing sufficient information about the debt to permit the consumer to identify the original creditor; the date of default or charge-off and amount due at that time; the name of the current owner of the debt; the amount currently due on the debt; and a breakdown of the amount due, showing principal, interest, and fees.

The Proposed Rules do just that. The pleading requirements contained in Proposed Rule 577 provide consumers with fair notice of the claims on which they are being sued. They also provide minimum notice to assist the consumer in determining whether affirmative defenses such as discharge in bankruptcy, fraud, limitations or payment, may exist. This is particularly important in cases where the vast majority of defendants are not represented by counsel. Additionally, by requiring an affirmative statement in appropriate cases that the debt collector has complied with the state's bonding requirements, Proposed

---

[4] "Robo-signing" or "robo-signed" is a term used to describe so-called sworn statements made without personal knowledge of the facts or records they are attempting to prove. *See* David Segal, *Debt Collectors Face a Hazard: Writer's Cramp*, N.Y. TIMES (Oct. 31, 2010).

[5] Federal Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010).

Rule 577 encourages compliance with existing Texas law.[6]

The requirements contained in Proposed Rule 578 in connection with default judgments provide consumers with important safeguards against the use of robo-signing. They also help to insure the legitimacy of any judgments entered in the defendant's absence.

The Proposed Rules are consistent with rule changes implemented in other states.[7] Some jurisdictions have also implemented rules requiring a disclosure on the citation, similar to the one proposed in Proposed Rule 511, that the failure to respond could result in the loss of property and damage to credit history.[8]

I believe the Proposed Rules provide an important step in insuring the protection of all Texans. Thank you for the opportunity to submit these comments. If you or members of the Advisory Committee or Task Force have any questions, please do not hesitate to contact me at 214-768-2578 or by email at mspector@smu.edu.

Sincerely,

Mary Spector

Mary Spector
Associate Professor of Law
Co-Director SMU Civil Clinic

Enclosure

cc: Ms. Marisa Secco, Rules Attorney

---

[6] *See* TEX. FIN. CODE § 392.101 (2006).

[7] *See, e.g.*, Maryland Judiciary, Press Release, *Court of Appeals Changes Rules: Debt Collectors Need to Show More Proof in Cases Against Consumers* (Sept. 28, 2011) *available at* http://www.courts.state.md.us/press/2011/pr20110928a.html; MASS. UNIF. SMALL CLAIMS (2009). *See also* N.C. GEN. STAT. §§ 58-70-145, 58-70-155 (2011) (statutory requirements for filing debt collection cases). Similar provisions are currently under consideration in Oklahoma, Illinois, Oregon, California and New Jersey.

[8] *See, e.g.*, N.Y. CITY CT. RULES § 208.6(d)(1) (McKinney 2009).

RULE DERIVATION TABLE
~For Use When Comparing Current and Proposed Justice Court Rules~

Current Texas Rule of Civil Procedure	Proposed Texas Rule of Civil Procedure
	500
	501
523	502, 504
4, 5	503
	505[1]
267	506
176	506.1
	507[2]
	507.1
524	572
525	508
526	
145	509
	510[3]
527	522
528	523
529	523
530	524
531	522(c)
532	522(c)
533	573
534	511
535	516
536	512, 513, 514, 574
21a	515
536a	575
537	516
92	517
97	518
97	519
38	520
91	521
538	525
166a	526

[1] Proposed Rule 505 stems from new section 27.060(b)(6) of the Government Code, relating to small claims cases. New section 27.060(b)(6) takes effect May 1, 2013 and stems from current section 28.034 of the Government Code.

[2] Proposed Rule 507 stems from new section 27.060(b)(5) of the Government Code, relating to small claims cases, effective May 1, 2013. New section 27.060(b)(5) stems from current section 28.033(e) of the Government Code.

[3] Proposed Rule 510 stems from subchapter E of chapter 15 of the Civil Practice & Remedies Code.

Current Texas Rule of Civil Procedure	Proposed Texas Rule of Civil Procedure
539	527
540	530
541	528
166	531
	531a[4]
542	
543	532
544	529
545	
546	
547	
548	533
	534
549	535
550	536
551	537
552	538
553	539
554	540
555	541
556	545
557	546
558	547
559	548
560	549
561	550
562	575(i)
563	
564	
565	551
566	555
567	556
568 (repealed)	
569	555, 556
570	557
329b(c)	558
143a,[5] 571	560
572	561
573	560

[4] Proposed Rule 531a stems from subchapters A and B of chapter 154 of the Civil Practice & Remedies Code.

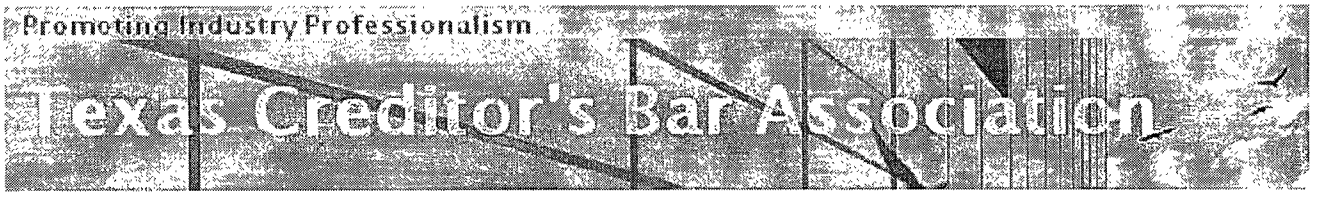
[5] The text of current Rule 143a, relating to costs on appeal to county court, is not in the proposed rules. Considering proposed Rule 502, it appears the Task Force's intent was to repeal current Rule 143a. This should be confirmed.

Current Texas Rule of Civil Procedure	Proposed Texas Rule of Civil Procedure
574	563
574a	564
574b	565
	570
	571
575	
576	
577	
578	
579	
580	
581	
582	
583	
584	
585	
586	
587	
588	
589	
590	
591	
	576
	577
	578
737.1	737.1
737.2	737.2
737.3	737.3
737.4	737.4
737.5	737.5
737.6	737.6
737.7	737.7
737.8	737.8
737.9	737.9
737.10	737.10
737.11	737.11
737.12	737.12
737.13	737.13
4	738
738	740
739	741
740	742
741	739

Current Texas Rule of Civil Procedure	Proposed Texas Rule of Civil Procedure
742	743
742a	743a
743	744
744	745
745	746
746	747
747	748
747a	748a
748	749
749	750
749a	750a[6]
749b	750b[7]
	750c
749c	750c (duplicate number)
750	751
751	752
752	753
753	754
754 (omitted)	
755	755

[6] Proposed Rule 750a repeats several provisions of section 24.0052 of the Property Code.

[7] Proposed Rule 750b repeats several provisions of section 24.0053 of the Property Code.



Presentation By

The Texas Creditor's Bar Association

To

The Supreme Court Advisory Committee

Austin, Texas
June 22, 2012

Texas Creditor's Bar Association

P.O. Box 110826
Ph: (469) 568-8741 Carrollton, Texas 75006 email: admin@txcba.org

June 18, 2012

Supreme Court Advisory Committee
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711-2248

Re: Proposed Changes to the Rules of Civil Procedure for Justice Courts

Members of the Advisory Committee:

The Texas Creditor's Bar Association ("TXCBA") is an association of member attorneys from approximately twenty Texas law firms, the majority of whom practice in the area of debt collection. TXCBA member attorneys are responsible for filing more than 100,000 collection cases per year in Texas courts; the majority of which deal with consumer debt and most of which are filed in the justice courts. As such, TXCBA attorneys are uniquely aware of the handling of debt collection cases in these courts and of both the opportunity for improvement, as well as the potential for calamity that a modification of the rules of civil procedure may occasion.

The TXCBA's Executive Committee has reviewed the rule proposal put forward by the Justice Court Rules Task Force. While the TXCBA appreciates the significant effort undertaken, it has grave concerns regarding Rule 578 which pertains to default judgments in debt collection cases. It is the position of the TXCBA that the enactment of Rule 578, as proposed, could result in the decision by debt purchasers to forgo the filing of debt collection cases in Texas; resulting in as many as 50,000 cases being driven from the courts simply by operation of this rule. The TXCBA does not believe this was the legislature's intent when it mandated the current rule making process.

The enclosed document details the TXCBA's response to the rule proposal and sets forth areas of opportunity, as well as suggestions for improvement which it would urge the Supreme Court to consider.

Finally, the TXCBA wishes to express its appreciation for your consideration of these issues and to convey to the Supreme Court and to the members of the Supreme Court Advisory Committee its willingness to contribute to the preparation of a set of rules which meet the goal of the legislation and the needs of the court.

Sincerely,

Michael J. Scott
Texas Creditor's Bar Association
Chairman, Justice Court Rules Executive Committee

EXECUTIVE SUMMARY

The Texas Creditor's Bar Association ("TXCBA"), is an association of attorneys which practice in the area of debt collections. TXCBA attorneys file more than 100,000 collection cases per year in Texas courts; the majority of which concern consumer debts, such as credit cards and auto loans. Most of these cases are filed in the justice courts.

The TXCBA has grave concerns regarding the adoption of Rule 578, pertaining to the default judgment process in justice courts. This rule severely limits the justice court's ability to enter judgments on submission and goes far beyond what is required in courts of record for the granting of a similar judgment. Specifically, Rule 578 requires:

- The providing of numerous account documents, none of which pertain to damages (the only element at issue in a default case);
- The filing of a business records affidavit in every case; and
- The filing of an affidavit by the original credit grantor in every assigned debt case.

Rule 578's requirement for the filing of numerous account related documents has no bearing on the issue of damages. These documents only serve to establish liability; which, as a matter of law, has been confessed by defendant's default. As such, the proposed rule seeks to completely overturn a rational rule that has been applied throughout the entire history of Texas (and American) jurisprudence; dispensing with the full burden of proof upon default by the opposing party is one of the key efficiencies in an adversarial system of justice. Creditors do not seek to evade their duty to prove their damages, but are entitled to the same status as any other litigant with respect to the effect of a default.

Rule 578's requirement for the filing of a business records affidavit apparently seeks to overcome a hearsay objection that has not been raised. The rule ignores the expressed language of Texas Rule of Evidence 802 and contravenes the Supreme Court's decision in *Texas Commerce Bank v. New*, 3 S.W.3d 515 (Tex. 1999). In so doing, the rule attempts to create new law.

Further, the additional requirement for the filing of an affidavit from the original credit grantor in assigned debt cases ignores Texas Rule of Evidence 803(15) and contravenes Texas case law, much of which was authored or adopted by members of the Supreme Court Advisory Committee. As a practical matter, many original lenders no longer exist, having merged with other lenders, thereby prejudicing such claims.

Finally, proposed Rule 578 falls short of the legislative mandate that the rules "may not be so complex that a reasonable person without legal training would have difficulty understanding or applying" the rules. In so doing, it attempts to incorporate (incorrectly) rules of evidence when the statute plainly mandates dispensing with them.

The TXCBA offers recommendations for improvement of Rule 578, as well as for other rules of the justice courts, so as to ensure the fair, expeditious, and inexpensive resolution of justice court cases.

INTRODUCTION

The Texas Creditor's Bar Association ("TXCBA") is an association of member attorneys from approximately twenty Texas law firms, all of whom practice in the area of debt collections. TXCBA member attorneys are responsible for filing more than 100,000 collection cases per year in Texas courts; the majority of which are filed in the justice courts. As such, the TXCBA and its members have a significant interest in the Texas civil court rule making process, especially as it affects its member's practice and the claims of its member's clients. It is from this perspective that the TXCBA wishes to contribute to the rule making process.

Before addressing the specifics of the proposed rules themselves, the TXCBA wishes to express its appreciation for the hard work and Herculean task undertaken by the Justice Court Rules Task Force appointed by Order of the Supreme Court, September 1, 2011 (hereinafter, the "Task Force"). While the TXCBA has significant disagreement as it relates to the issue of default judgments (Rule 578), it does not wish for those concerns to be construed as a lack of recognition for the scope of work effort and the overall accomplishment of the Task Force. Further, the TXCBA wishes to express its appreciation to the Task Force for inviting the TXCBA to make recommendations regarding the proposed rules and in accepting and adopting many of the TXCBA's suggestions.

SUMMARY OF PRESENTATION

The TXCBA strongly believes that Rule 578, pertaining to default judgments, is seriously flawed. As such, much of this presentation will be directed at that rule. However, the TXCBA also believes there are additional opportunities to improve and clarifying the rules advanced by the Task Force. These too will be addressed, though not at a level of detail as will Rule 578.

These materials are organized into three sections,

Section A The Default Judgment Rule - a review of the errors contained in Rule 578 as proposed

Section B A Different Approach - TXCBA's Proposed Debt Collection Rules

Section C Other Opportunities for Improvement - a limited number of suggested rule revisions which would aid in the administration of the rules and simplify the handling of cases

RESOURCE INFORMATION

TXCBA Proposal to the Justice Court Rules Task Force
TXCBA Correspondence to the Justice Court Rules Task Force
TXCBA Response to the Draft Rules by the Justice Court Rules Task Force
TXCBA Lay Article on Admissibility of Records Obtained from Third-Parties

SECTION A

RULE 578 - THE DEFAULT JUDGMENT RULE

While the TXCBA recognizes the many challenges faced by the Task Force, it wishes to convey to the Supreme Court Advisory Committee its grave concerns regarding Rule 578.

As described by Texas Supreme Court Justice Thomas R. Phillips (Ret.), the current efforts by both the legislature and the judiciary seek to make the courts more efficient, more accountable, and the outcome more certain. [1] It is fair to say that Texas Government Code Sec. 27.060 codifies these objectives. The statue mandates that the Texas Supreme Court develop rules of civil procedure ***"to ensure the fair, expeditious, and inexpensive resolution of small claims cases."*** [2] And while the statute specifically provides for the creation of a unique set of procedural rules for credit grantor and assigned debt claims ("Debt Collection Cases"), it retains the overall expectation that ***all justice court rules***:

(1) not require that a party be represented by counsel

(2) not be so complex that a reasonable person without legal training would have difficulty understanding or applying the rules; or

(3) not require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied

Rule 578, along with its tie-in provision to Rule 525, is wholly inconsistent with the legislative mandate. Not only does it seek to create a complicated set of rules which enshrine various aspects of the Texas Rules of Evidence, but in so doing, it represents a substantial departure from Texas law. Specifically, Rule 578:

1) Ignores the confession of liability inherent in a defendant's default;
2) Ignores the legislative mandate regarding development of the rules;
3) Is inconsistent with the Texas Attorney General's damage affidavit standards;
4) Imposes an evidentiary standard which does not exist in Texas law; and
5) Attempts to suppress developing case law.

It is the position of the TXCBA that Rule 578, as proposed, would have two major affects. The first would be to unnecessarily increase the operational burden on collection attorneys with no demonstrable benefit to the defendant, the courts or the justice process. The second would be the likely departure of many of these collection cases from the courts. If, in fact, this is the ultimate goal -- to eliminate debt collection cases in Texas -- then Rule 578 is a good start.

---

[1] Paraphrase of statement made by Justice Phillips, chair the Supreme Court Task Force for Rules in Expedited Actions, in a presentation on "Rules Affecting Practice from the 82nd Legislature," February 28, 2011, webinar, CLE #901239468.

[2] Sec. 27.060(a).

Rule 578 Ignores the Confession of Liability Inherent in Defendant's Default

Rule 578 contains numerous evidentiary requirements, ***all of which*** go to the issue of liability and ***none of which*** bear on the issue of damages. Specifically, Rule 578 requires that the plaintiff provide the following information in order to obtain a default judgment on submission:

> "(b) Required Documents. To support a default judgment, these documents ***must include***:
>
> (1) A document signed by the defendant evidencing the debt or the opening of the account; or
>
> (2) a bill or other record reflecting purchases, payments, or other actual use of the credit card or account by the defendant; or
>
> (3) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant."

[***emphasis added***]

While these documents comprise clear evidence of liability; liability is established as a consequence of the defendant's default and the amount of unliquidated damages remains the only matter to be determined by the court. [3] As such, these documents simply become onerous requirements placed upon plaintiffs for no purpose other than to satisfy the skepticism of the court.

Rule 578 Ignores the Legislative Mandate

Rule 578 creates an evidentiary burden which is inconsistent with Texas law. Specifically, Rule 578 states:

> "(c) Requirements of Affidavit. Any affidavit from the original creditor ***must state***:
>
> (1) that they were kept in the regular course of business,
>
> (2) that it was the regular course of business for an employee or representative of the creditor with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information to be included in such record;
>
> (3) the record was made at or near the time or reasonably soon thereafter; and
>
> (4) the records attached are the original or exact duplicates of the original.

[***emphasis added***]

---

[3] *Dolgencorp v. Lerma*, 288 S.W.3d 922, 930 (Tex. 2009); *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 86 (Tex.1992); see also TEX.R. CIV. P. 243.

While the required affidavit would seemingly satisfy the requirements of a hearsay exception under Texas Rule of Evidence 803(6) and constitute substantial conformity with Rule 902(10), there remains a central issue: ***the legislative mandate required that the new justice court rules not reference the Texas Rules of Evidence.*** Technically speaking, Rule 578 does reference the Texas Rules of Evidence, it simply attempts to restate them. It is doubtful that the legislature intended for the Supreme Court to simply circumvent its mandate in this way.

Rule 578 is Inconsistent with the Texas Attorney General's Damage Affidavit Standards

In 2011, the Consumer Protection Division of the Texas Attorney General's Office brought a civil action against Midland Funding, LLC and related entities ("Midland") alleging, in part, that Midland failed to employ sufficient controls in the preparation of account affidavits utilized by Midland to establish damages in debt collection cases.[4] The case was ultimately settled. In addition to a final judgment in the case, the State of Texas and Midland entered into an *Agreed Assurance of Voluntary Compliance* ("Compliance Agreement").

The Compliance Agreement directly addressed Midland's process for preparing and executing such affidavits. Specifically, paragraph 3(a)(i)-(iii) of the Compliance Agreement requires:

> "a) In connection with the use of affidavits in any court in the State of Texas for the collection of Consumer Debts:
>
> i) Midland will not file an affidavit in a Texas court unless (a) the facts stated in the affidavit are ***based upon the affiant's review of the business records of Midland*** or his or her personal knowledge and (b) the affidavit is signed in the presence of a notary;
>
> ii) For affidavits used to substantiate a Consumer Account, Midland shall include the following information in affidavits executed after the date of this AVC and filed in any Texas court to the extent the information is known to Midland or in Midland's possession:
>
> the identity of the Original Creditor;
> the identity of the subsequent owners of the Consumer Account;
> last four digits of the original account number;
> date of charge off of the Consumer Account by the Original Creditor;
> the amount charged off by the Original Creditor; and
> the current balance owed on the Consumer Account.
>
> To the extent the current balance owed includes any post charge-off interest, fees or other charges, such amounts shall be stated separately. Amounts sought, if any, representing attorneys' fees or reimbursement of court costs shall be supported in accordance with applicable statutes, court rules or procedures.

---

[4] *State of Texas v. Midland Funding, LLC, et al.*, Cause No. 2011-40626 in the 165th Judicial District Court, Harris County, Texas.

iii) Midland will employ paralegals or other legal specialists to review and sign affidavits, to ***confirm that any Consumer and Consumer Account information referenced in those affidavits is consistent with information contained in Midland's business records and data***, and to review any attachments to proposed affidavits to confirm that true and correct copies of the referenced documents are attached;"

[***emphasis added***, text reformatted for readability]. See **Section A, Exhibit 1**, page 3.

Rule 578 stands in stark contrast to the requirements of the Compliance Agreement. Whereas the Compliance Agreement sets forth a basic list of informational elements which must be addressed in any account affidavit and allows for these items to be based upon a "review of the business records of Midland," Rule 578 takes a much harsher stance; requiring voluminous documentation and testimony from the original creditor.

The TXCBA wishes to highlight to the Supreme Court and to the Advisory Committee the fact that an agency of the State of Texas charged with the protection of Texas consumers has endorsed the creation of a debt purchaser's damage affidavit which (a) contains specific and discrete account information, and (b) is based only upon a review of that debt purchaser's own business records.

Rule 578 Imposes an Evidentiary Standard Which Does Not Exist in Texas Law

> "I am a custodian of records for the bank. I have reviewed the records of the bank and according to those records, the amount owed is $729,510.96."
>
> – Paraphrase of damage testimony *Texas Commerce Bank v. New*

While the affidavit required by Rule 578 would seemingly satisfy the requirements of a hearsay exception under Texas Rule of Evidence 803(6) and constitute substantial conformity with Rule 902(10), there remains another central issue: ***this is a prove-up***. As such, the overcoming of a hearsay objection is a burden to be met at trial once an objection has actually been made; not a responsibility to be imposed upon every petitioner who brings a debt collection case in justice court. Further, Rule 578 wholly discards the Texas Supreme Court's reasoning in *Texas Commerce Bank v. New*, 3 S.W.3d 515 (Tex. 1999). In the *New* case, the Court held that an affidavit may be offered as evidence at a default judgment hearing and that the testimony therein, though hearsay, is admissible to prove-up a claim. The *New* decision was important for a number of reasons: (1) it confirmed that when proving-up a default judgment, the court may rely upon affidavit testimony, (2) it implicitly held that the prove-up affidavit may be based upon a review of the business' records, and not be solely limited to the affiant's own personal knowledge, and (3) it reminded the courts that pursuant to TRE 802, hearsay testimony is admissible as evidence absent an objection, and that it was an abuse of discretion to exclude such evidence in a unopposed prove-up hearing. A copy of the *Texas Commerce Bank v. New* case is attached as **Section A, Exhibit 2**, as is a copy of the damage affidavit in that case (the "*New* Affidavit") (**Section A, Exhibit 3**).

A review of the *New* Affidavit highlights certain key issues in proving up unliquidated damages. In the *New* Affidavit there are no documents, not business record attestations, no expanded detail to prove the trustworthiness of the testimony. The witness simply testifies "I have reviewed the records of the deposit account . . . which is at issue in this lawsuit." The Court found the affidavit's predicate sufficient to sustain a $729,510.96 default judgment award. Unfortunately, the proposed Rule 578 is not so trusting. It chooses, instead, to create a new evidentiary burden. In so doing, Rule 578 turns the Texas Rules of Evidence and Supreme Court precedence upside down; requiring that plaintiff meet and overcome a hearsay objection at default, even in the absence of an opposing party. As such, Rule 578, itself, becomes the defendant's advocate.

Rule 578 Attempts to Suppress Developing Case Law

There exists in Texas an apparent split of authority over whether the assignee of a debt claim may offer as its own business records the information and documents which it obtained from its predecessor-in-interest. Whether such a split truly exists is the subject of considerable debate among debt collection attorneys and judges. In actuality, the admissibility of information and documents obtained from a third-party has been adopted by at least eight separate circuits of the United States Courts of Appeals, as well as eight of the fourteen Texas appellate districts. (See Resource Information for a lay presentation of the case). So, what at first appears to be a split in authority may, in actuality, be reconcilable once the facts of the individual cases are considered.

The issue of the admissibility of such documents is best characterized by a line of cases originating with *Simien v Unifund CCR Partners*, 321 S.W.3d 235 (Tex.App--Houston[1st] 2010). In *Simien*, the court held that documents obtained from a predecessor-in-interest are admissible as the proponent's own business records when:

1) the documents are incorporated and kept in the course of the testifying witness's business;

2) that business typically relies upon the accuracy of the contents of the document; and

3) circumstances otherwise indicate the trustworthiness of the document.

It is probably fair to say that the Task Force does not like *Simien*. In fact, they do not like *Simien* so much, that they are advocating a rule of civil procedure designed specifically to render *Simien* and similar cases ineffective. Specifically, Rule 578 states:

"(a) **Default Judgment Without Hearing.**
. . . The following documents . . . must be served on the defendant before a default judgment can be granted without a hearing:
(1) . . . This document shall be ***supported by affidavit from the original creditor.***
(2) . . . be attached and shall be ***supported by affidavit from the original creditor.***

"(c) **Requirements of Affidavit.** Any affidavit ***from the original creditor*** must state:"

By requiring an affidavit from the original issuer to prove-up a default judgment, the Task Force is effectively eliminating purchased debt cases from these courts. The reality is that it is practically impossible for a debt purchaser to obtain an affidavit from an original issuer on an account-by-account basis. Further, the natural consequence of this rule is for justice court judges to view these default judgment requirements as the minimum standard of proof; ***effectively establishing this evidentiary burden in all cases and in all circumstances***. The Task Force may say that these rules only pertain to prove-ups – they will not. The Task Force may say that there will be an opportunity for an oral hearing – there will not. The Task Force may say that the court has discretion to consider other evidence – it will not. It is the consensus view of the members of the TXCBA, based upon years of experience in practicing in the justice courts, that there is very little chance that a justice court judge will grant any sort of judgment on evidence which that judge was told was insufficient to prove-up a default in a case.

Finally, the TXCBA urges the Supreme Court and the Advisory Committee to keep in mind the fact that *Simien* is a case pertaining to ***the admissibility of evidence over objection***. The information and documents which were obtained from a third-party in a business transaction, which were material to that transaction, and which were relied upon by the proponent of the information in the conduct of its business, fall squarely within a hearsay exception provided by TRE 803(15) (Statements in Documents affecting an interest in property). Numerous courts have found such information to be admissible, not only for prove-up, but at trail over objection.

Summary of TXCBA's Objections to Rule 578 as Proposed

Rule 578, as proposed, is fixated upon plaintiff's proving the validity of its claim to the satisfaction of a skeptical court. To create such a requirement is to wholly change the nature of a default judgment in Texas. The Task Force seeks to modify the legal standards as they relate to the sufficiency of the evidence offered to prove damages. In the Task Force's view, the testimony of an affiant is no longer enough; properly authenticated business records must be required. And not just any business record; those of the original issuer. Presumably, the Texas Attorney General's Office could have sought to compel Midland to meet such an enhanced standard in its settlement with that debt purchaser, but did not do so; probably because it believed the requirements set forth in the Compliance Agreement were consistent with the requirements of the law and sufficient to protect Texas consumers.

The TXCBA asks the Supreme Court and its Advisory Committee two simple questions:

1) Are the legal underpinnings of the rules of civil procedure, as well as that of Texas jurisprudence, so readily discarded for the sake of social expediency?

2) Are there to be two types of law in Texas? Justice Court law and the law that applies to everything else?

CAUSE NO. 2011-40626

STATE OF TEXAS,	§	**In the District Court of**
	§	
	§	
Plaintiff,	§	**Harris County, Texas**
	§	
v.	§	
	§	
MIDLAND FUNDING LLC,	§	
MIDLAND CREDIT MANAGEMENT, INC.	§	
and ENCORE CAPITAL GROUP, INC.,	§	**165th Judicial District**
	§	
Defendants	§	
	§	

AGREED ASSURANCE OF VOLUNTARY COMPLIANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas ("State"), acting by and through the Attorney General of Texas, Greg Abbott, and Defendants Midland Funding LLC, Midland Credit Management, Inc. and Encore Capital Group, Inc. (collectively, "Midland"), by and through their attorney of record, respectfully submit the following Assurance of Voluntary Compliance ("AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices – Consumer Protection Act ("DTPA"), Tex. Bus. & Com. Code Ann. § 17.58. This AVC is attached as Appendix A to the Agreed Final Judgment entered in this case.

I. STIPULATIONS/DEFINITIONS

1) The parties hereby agree and stipulate that

   a) Prior to the filing of the present action by the State, Midland had already substantially revised its affidavit procedures, had created and published its Consumer Bill of Rights,

APPENDIX A

and had undertaken several other measures to address concerns articulated by the State in the present action;

b) The State and Midland agree to the entry of this AVC by this Court;

c) The corporate signatories are fully authorized to sign this AVC on behalf of Midland;

d) The Office of the Attorney General has jurisdiction in this matter under the DTPA § 17.47 and Tex. Fin. Code § 392.403(d);

e) The venue of this cause is proper in Harris County, Texas; and

f) Midland's consent to the entry of this AVC is not an admission of liability by Midland, its officers, agents, servants, employees, successors, assigns, or affiliates as to any issue of fact or law.

2) As used in this AVC, the following terms are defined as follows:

a) "Consumer" means an individual residing in the State of Texas who has a Consumer Debt or allegedly has a Consumer Debt.

b) "Consumer Debt" means an obligation, or an alleged obligation, primarily for personal, family or household purposes and arising from a transaction or alleged transaction.

c) "Consumer Account" means an account for a Consumer Debt that Midland has acquired the rights to collect.

d) "Original Creditor" means a party, other than a Consumer, to a transaction or alleged transaction giving rise to a Consumer Debt.

e) "Debt Collection" means an action, conduct, or practice in collecting, or in soliciting for collection, Consumer Debts that are due or alleged to be due.

f) "Procedure" means a procedure developed and utilized by Midland for conducting its business that is in effect as of the effective date of this AVC and includes any future

modifications to the procedure which do not materially alter or undermine the purpose of the procedure.

II. TERMS OF VOLUNTARY COMPLIANCE

3) Midland, its officers, agents, servants, employees, successors, and assigns hereby voluntarily agree and assure the State, from the date of the signing of this AVC, that Midland will itself, or through its affiliates, cause the following:

a) In connection with the use of affidavits in any court in the State of Texas for the collection of Consumer Debts:

i) Midland will not file an affidavit in a Texas court unless (a) the facts stated in the affidavit are based upon the affiant's review of the business records of Midland or his or her personal knowledge and (b) the affidavit is signed in the presence of a notary;

ii) For affidavits used to substantiate a Consumer Account, Midland shall include the following information in affidavits executed after the date of this AVC and filed in any Texas court to the extent the information is known to Midland or in Midland's possession: the identity of the Original Creditor; the identity of subsequent owners of the Consumer Account; last four digits of the original account number; date of charge off of the Consumer Account by the Original Creditor; the amount charged off by the Original Creditor; and the current balance owed on the Consumer Account. To the extent the current balance owed includes any post charge-off interest, fees or other charges, such amounts shall be stated separately. Amounts sought, if any, representing attorneys' fees or reimbursement of court costs shall be supported in accordance with applicable statutes, court rules or procedures;

iii) Midland will employ paralegals or other legal specialists to review and sign affidavits, to confirm that any Consumer and Consumer Account information referenced in those affidavits is consistent with information contained in Midland's business records and data, and to review any attachments to proposed affidavits to confirm that true and correct copies of the referenced documents are attached;

iv) Midland's Procedures for the generation and use of affidavits will be in writing, and each employee who has job duties involving the preparation and signing of affidavits to be used in collection matters will be regularly trained on those Procedures; and

v) Midland's Procedures for the generation and use of affidavits to be used in collection matters will require, at a minimum, the following of those paralegals or other legal specialists who are employed to review and sign affidavits:

(1) Such employees must carefully review any proposed affidavit prior to executing the proposed affidavit;

(2) Such employees must confirm that all of the data points in the proposed affidavit accurately reflect data in Midland's account records prior to executing the proposed affidavit;

(3) To the extent that a proposed affidavit includes attachments, such employees must carefully review the proposed affidavit and attachments to confirm that true and correct copies of documents contained within Midland's records are attached and are accurately described in the proposed affidavit; and

(4) Only after such review and confirmation of any proposed affidavit, such employees will execute those affidavits passing review in the presence of a notary.

b) In connection with Debt Collection of a Consumer Debt in Texas:

i) Midland will follow its Procedures designed to identify Consumer Accounts that are within 150 days before an estimated statute of limitations expiration date using the charge off date of the Consumer Account by the Original Creditor and preclude those Consumer Accounts from being referred for potential litigation in Texas;

ii) Midland will instruct firms to which Midland places Texas Consumer Accounts for Debt Collection ("LO Firms") that the LO Firms are responsible for calculating the limitations period for each Consumer Account according to applicable law, that a lawsuit should not be filed on an account for which the statute of limitations has expired, and that the prosecution of any lawsuit brought to collect on an account must cease and the suit must be non-suited promptly if it is determined the suit was filed after the applicable statute of limitations had expired unless there is a good faith belief that a lawful exception to limitations exists to a particular account not including the good faith belief that a payment made on an account renews or restarts the limitations period;

iii) Midland will provide the following information to LO Firms to the extent the information is available to Midland and instruct LO Firms to include in their petitions, where permitted by court rules, the following information to the extent available: the identity of the Original Creditor; last four digits of the original account number; date of the charge off of the Consumer Debt and amount charged off; and

iv) Midland will instruct its LO Firms in suits for collections of Consumer Debts not to serve requests for admissions on a Consumer which requests the Consumer to admit a fact that LO Firm knows or has reason know is false.

c) In order to prevent the misrepresentation of the character, extent, or amount of Consumer Debt owed on an account, Midland will continue to adhere to the following Procedures regarding the collection of Consumer Debt from residents of the State of Texas: Midland will request from the seller of a Consumer debt portfolio information regarding the identity and address of the individual(s) responsible for the account, the balance owed, the date of last payment, the charge-off date, and the applicable interest rate pursuant to the terms and conditions of the credit agreement. Once Midland owns an account, Midland will use its Procedures to update regularly the Consumer Account information, which in addition to the information listed above, will include whether the account has been discharged in bankruptcy, or if the individual(s) responsible for the account are deceased. Midland will base all communications with the individuals responsible for the debt, credit bureaus, and/or any other parties entitled to such communications on data which it reasonably believes to be reliable and will comply with all applicable laws and regulations regarding such communications.

d) Midland will not knowingly employ or permit its agents, employees, representatives, LO Firms, or affiliates to employ any deceptive means to collect a debt or obtain information concerning a consumer.

e) Midland will continue to adhere to Procedures that are designed to address disputes, allow for modifications of Midland's Debt Collection practices, where appropriate, and provide account holders an opportunity to cure.

f) Midland will continue to dedicate representatives to resolve disputes or address questions from Texas Consumers.

g) Midland will instruct its LO Firms that they may not utilize process servers other than (i) officers from the local sheriff or constable's office; and (ii) process servers who are certified process servers pursuant to Rule 14 of the Rules of Judicial Administration, as promulgated by the Texas Supreme Court, and who have not had their certification suspended or revoked by the Process Server Review Board at any time; provided however, that for rural counties or other areas in which a certified process server is not available, LO Firms may utilize a reputable non-certified process server.

h) Within 90 days of the effective date of this AVC, Midland will notify the credit reporting bureaus, Equifax, Experian, and Trans Union that Midland requests the lawsuits and judgments be removed from the credit reports of any Consumer who (1) was a defendant in an action filed on behalf of Midland or its affiliates to collect a Consumer Debt between January 1, 2002 and August 31, 2009, (2) was a Texas resident at the time the action was filed, and (3) against whom a judgment was entered. The notice to the above-referenced credit reporting bureaus will contain a list of affected account holders.

i) Within 30 days of the effective date of this AVC, Midland will provide notice of this Assurance of Voluntary Compliance and Agreed Final Judgment to each of Midland's LO Firms handling collection matters on Midland's behalf in Texas.

j) Within 30 days of the effective date of this AVC, Midland will provide the Consumer Protection Division of the Office of Attorney General with the name and contact information of a representative of Midland who will be responsible for assisting with responding to Consumer complaints received by the Consumer Protection Division.

III. GENERAL PROVISIONS

4) The effective date of this AVC shall be deemed in effect from the day the Agreed Final Judgment is entered by the Court.

5) To seek a modification or termination of this AVC for any reason, Midland will send a request to the Attorney General. The Attorney General will make a good faith evaluation of the then existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision as to whether to agree to the modification or termination of this AVC. In the event the Attorney General timely denies the modification or termination, Midland reserves all rights to pursue any legal or equitable remedies that may be available to it. No waiver, termination, modification, or amendment of the terms of this AVC shall be valid or binding unless made by order of the Court; provided, however, the parties may agree to an extension of any time periods in this AVC without an order of the Court.

6) Midland will respond to reasonable requests by the Office of Attorney General regarding its compliance with the provisions of this AVC.

7) Jurisdiction is retained for the purpose of enabling any party to this AVC to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this AVC, for modification of the provisions, and for enforcement.

8) This AVC is not intended to grant or limit any legal rights or remedies of any nature of any third party. This AVC may not be relied upon by third parties to assert or defend any rights or remedies that they might have or pursue.

9) The State's execution of this AVC does not constitute approval by the State of any Procedures of Midland.

10) Any notices or other documents required by this AVC to be sent to the Attorney General or to Midland shall be sent to the following addresses:

Office of the Texas Attorney General
Consumer Protection & Public Health Division
Attention: Assistant Attorney General Rosemarie Donnelly
808 Travis, Suite 1520
Houston, Texas 77002

Midland Credit Management, Inc.
Attention: General Counsel
3111 Camino del Rio North, Suite 1300
San Diego, CA 92108

11) This AVC may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same AVC. True and correct copies of signatures by any of the parties hereto are as effective as original signatures.

AGREED this 22 day of December, 2011

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

TOMMY PRUD'HOMME
Chief, Consumer Protection Division

PAUL D. CARMONA
Deputy Chief, Consumer Protection Division

MIDLAND FUNDING, LLC

Signed By: _____

Print Name: GREG CALL

Print Title: SECRETARY

MIDLAND CREDIT MANAGEMENT, INC.

Signed By: _____

Print Name: Greg Call

Print Title: SVP, General Counsel

ENCORE CAPITAL GROUP, INC.

Signed By: _____

Print Name: Greg Call

Print Title: SVP, General Counsel

_____

ROSEMARIE DONELLY
SBN 05983020
Assistant Attorney General
Consumer Protection Division
808 Travis, Suite 1520
Houston, Texas 77002
Telephone 713-225-8919
Facsimile 713-223-5821

ATTORNEYS FOR THE STATE OF TEXAS

_____

D. GIBSON WALTON
SBN 00000082
Hogan Lovells US LLP.
Bank of America Center
700 Louisiana, Suite 4300
Houston, Texas 77002
Telephone: 713-632-1435
Facsimile: 713-583-8909

_____

ANDREW WEBER
SBN 00797641
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: 512-495-6451
Facsimile: 512-495-6930

ATTORNEYS FOR MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC., AND ENCORE CAPITAL GROUP, INC.

Signed By:_____

Print Name:_____

_____ Print Title:_____

ROSEMARIE DONELLY
SBN 05983020
Assistant Attorney General
Consumer Protection Division
808 Travis, Suite 1520
Houston, Texas 77002
Telephone 713-225-8919
Facsimile 713-223-5821

ATTORNEYS FOR THE STATE OF TEXAS

ENCORE CAPITAL GROUP, INC.

Signed By:_____

Print Name: _____

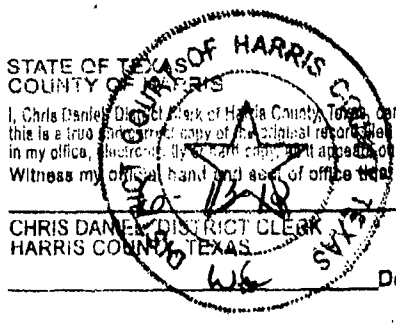
Print Title:_____

_____

D. GIBSON WALTON
SBN 00000082
Hogan Lovells US LLP
Bank of America Center
700 Louisiana, Suite 4300
Houston, Texas 77002
Telephone: 713-632-1435
Facsimile: 713-583-8909

ANDREW WEBER
SBN 00797641
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: 512-495-6451
Facsimile: 512-495-6930

ATTORNEYS FOR MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC., AND ENCORE CAPITAL GROUP, INC.



STATE OF TEXAS
COUNTY OF HARRIS

I, Chris Daniel, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

H

Supreme Court of Texas.
TEXAS COMMERCE BANK, NATIONAL ASSOCIATION, n/k/a Chase Bank of Texas, National Association, Petitioner,
v.
Robin NEW d/b/a River City Auto Sales and William Pacheco d/b/a Pacheco Motor Car Sales, Respondents.
No. 98-0744.

Sept. 9, 1999.

Bank brought action against customer and customer's partner in check kiting scheme, alleging breach of contract, fraud, conspiracy to defraud, and violations of civil theft statute. The District Court, Travis County, 353rd Judicial District, F. Scott McCown, P.J., granted default judgment and awarded damages and attorney fees. Defendants appealed. The Court of Appeals, 971 S.W.2d 711, affirmed in part, reversed in part, and remanded. Petition for review was filed. The Supreme Court held that: (1) affidavits to which no hearsay objection was made constituted probative evidence as required for consideration of claim for unliquidated damages before entry of default judgment, and (2) affidavits of bank officers and bank's legal counsel were legally sufficient to support default judgment awarding both damages and attorney's fees.

Affirmed in part, reversed in part, and remanded to trial court for entry of judgment.

West Headnotes

[1] **Damages** 194
115k194 Most Cited Cases
Affidavits to which no objection was made were probative evidence, even if they constituted hearsay, and thus satisfied requirement under Rules of Civil Procedure that court hear evidence on claim for unliquidated damages before entry of default judgment. Vernon's Ann.Texas Rules Civ.Proc., Rule 243; Rules of Evid., Rule 802.

[2] **Damages** 194
115k194 Most Cited Cases
Affidavits of bank officers averring personal knowledge, describing check kiting scheme resulting in loss to bank, and identifying total amount owed on overdrawn account, were legally sufficient to support default judgment awarding damages to bank.

[3] **Damages** 194
115k194 Most Cited Cases
Testimony of the total amount due under a written instrument is legally sufficient to support an award of that amount in a default judgment proceeding.

[4] **Costs** 207
102k207 Most Cited Cases
Affidavit of legal counsel for bank was legally sufficient to support default judgment awarding attorney fees to bank, where affidavit stated that bank had contract with customer entitling bank to recover its reasonable attorney fees, that affiant was duly licensed attorney, that he was familiar with usual and customary fees in county, and that $30,000 was reasonable fee for prosecuting bank's claims based on his knowledge of services rendered to bank.

***515** G. Alan Waldrop, C. W." Rocky" Rhodes, Barbara M. Ellis, Austin, Susan P. Kravik, Dallas, for Petitioner.

William B. Gammon, William Pacheco, Austin, for Respondents.

PER CURIAM.

Texas Commerce Bank obtained a default judgment against Robin New, d/b/a River City Auto Sales, and William Pacheco, d/b/a Pacheco's Motor Car Sales. To support its motion for default judgment, Texas Commerce presented three affidavits. No oral testimony was taken at the default judgment hearing. On appeal, the court of appeals held that the affidavits,

constituting hearsay, were not evidence under Rule 243 of the Texas Rules of Civil Procedure, which requires that the trial court "hear evidence" on unliquidated ***516** damages. [FN1] The court of appeals further held that even if affidavits constitute evidence under Rule 243, these affidavits were not legally sufficient to support the trial court's judgment. Accordingly, the court of appeals affirmed on the issue of New and Pacheco's liability and reversed and remanded for a new trial on the issue of unliquidated damages and attorney's fees. [FN2]

FN1. tex.R. Civ. P. 243.

FN2. 971 S.W.2d 711.

We conclude that because unobjected-to hearsay is, as a matter of law, probative evidence, affidavits can be evidence for purposes of an unliquidated-damages hearing pursuant to Rule 243. We further conclude that the affidavits here are legally sufficient to support the trial court's judgment on both damages and attorney's fees. Consequently, we affirm the court of appeals' judgment on the issue of liability, reverse on the issue of unliquidated damages and attorney's fees, and render judgment for Texas Commerce Bank.

At the outset, Texas Commerce contends that New and Pacheco did not preserve for the court of appeals' consideration the issues of whether the affidavits constituted evidence of unliquidated damages under Rule 243 or whether the affidavits, if evidence, were legally sufficient. We assume without deciding that these issues were properly preserved.

In addressing the merits, the court of appeals correctly stated:

> It is well settled that once a default judgment is taken against a non-answering defendant on an unliquidated claim, all allegations of fact set forth in the petition are deemed admitted, except the amount of damages. [citations omitted] [FN3]

FN3. 971 S.W.2d at 713.

Therefore, we know that New and Pacheco were partners in a check-kiting scheme that resulted in a loss to Texas Commerce. New would deposit checks into his Texas Commerce account drawn against insufficient funds in Pacheco's Norwest Bank checking account. Before the normal banking deadlines for return of items drawn on insufficient funds ran, New would write checks on the Texas Commerce account for deposit in Pacheco's Norwest account to cover the overdraft created in the Norwest account by the previous day's checks. Then Pacheco would write additional checks from the Norwest account for deposit to the Texas Commerce account to cover the overdraft that would appear in New's Texas Commerce account. This scheme had the effect of keeping a group of checks "floating" in the banking system that were not supported by real deposits. Norwest discovered this scheme and stopped payment on all checks drawn from Pacheco's Norwest account. As a result, several items New deposited in his Texas Commerce account were returned. Texas Commerce charged these items as debits on New's account, resulting in an overdraft that neither New nor Pacheco covered.

Texas Commerce filed suit against New and Pacheco for various causes of action, including fraud, breach of contract, conspiracy to defraud, and violations of the civil theft statute. [FN4] When New and Pacheco did not answer, Texas Commerce filed a motion for default judgment asking among other relief to be awarded damages and attorney's fees. This the trial court granted. And the court of appeals reversed in part.

FN4. *See* tex. Civ. Prac. & Rem.Code §§ 134.001-.005.

[1] The first issue is whether affidavits constitute evidence as required by Rule 243. That rule provides:

> If the cause of action is unliquidated or be not proved by an instrument in writing, *the court shall hear evidence as to damages* and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in ***517** which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket. [FN5]

FN5. tex.R. Civ. P. 243 (emphasis added).

Although several courts of appeals have held that affidavits can constitute evidence of unliquidated damages, [FN6] the court of appeals here held that they cannot. It concluded that Rule 802 of the Texas Rules of Evidence, the hearsay rule, prevents the use of affidavits "because the application of Rule 802 anticipates opposing counsel's and/or an opposing party's presence at the hearing to object to such inadmissible hearsay." [FN7] It further concluded, therefore, that a trial court does not hold "an evidentiary hearing merely by accepting the affidavits attached to [the] motion." [FN8]

FN6. *See, e.g., Irlbeck v. John Deere Co.*, 714 S.W.2d 54, 57-58 (Tex.App.--Amarillo 1986, writ ref'd n.r.e.); *K-Mart Apparel Fashions Corp. v. Ramsey*, 695 S.W.2d 243, 247 (Tex.App.--Houston [1 st Dist.] 1985, writ ref'd n.r.e.); *Naficy v. Braker*, 642 S.W.2d 282, 285 (Tex.App.-- Houston [14 th Dist.] 1982, writ ref'd n.r.e.); *Angelo v. Champion Restaurant Equip. Co.*, 702 S.W.2d 209, 211 (Tex.App.--Houston [1 st Dist.] 1985), *rev'd on other grounds*, 713 S.W.2d 96 (Tex.1986).

FN7. 971 S.W.2d at 714.

FN8. *Id.*

The court of appeals is incorrect. Rule 802 says, "Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay." [FN9] Nothing in rule 802 limits its application to contested hearings. The rule is not ambiguous and requires no explication. Consequently we will give it none. [FN10] Because unobjected to hearsay constitutes probative evidence, it satisfies the requirement of Rule 243 that there be evidence of unliquidated damages. The trial court did not err when it considered the affidavits in rendering its default judgment.

FN9. tex. Civ. R. Evid. 802; *see also Irlbeck*, 714 S.W.2d at 57-58 (concluding that Rule 802 provides for hearsay admitted without objection to support a default judgment for damages and attorney's fees).

FN10. *See Bridgestone/Firestone, Inc. v. Glyn-Jones*, 878 S.W.2d 132, 133 (Tex.1994).

[2] The court of appeals also concluded that the affidavits here were conclusory and, therefore, not legally sufficient to support the trial court's award for unliquidated damages and attorney's fees. [FN11] Texas Commerce presented three affidavits at the default judgment hearing. Two of the affidavits were from Texas Commerce vice presidents, Thomas Neville and Roger Bott. Neville explained the details of the check-kiting scheme and that, as a result, the Texas Commerce account had a considerable overdraft balance. Bott stated that he had reviewed pertinent bank records and that the Texas Commerce account was overdrawn in the amount of $729,510.96.

FN11. 971 S.W.2d at 714-15.

[3] Testimony of the total amount due under a written instrument is legally sufficient to support an award of that amount in a default judgment proceeding. [FN12] Texas Commerce's bank officers' affidavits aver personal knowledge of the facts, describe the scheme resulting in the bank's loss, and identify the total amount owed on the overdrawn Texas Commerce account. The affidavits are legally sufficient to support the trial court's damage award.

FN12. *See Irlbeck*, 714 S.W.2d at 57-59. *See also, e.g., 8920 Corp. v. Alief Alamo Bank*, 722 S.W.2d 718, 720 (Tex.App.--Houston [14 th Dist.] 1986, writ ref'd n.r.e.); *American 10-Minute Oil Change, Inc. v. Metropolitan Nat'l Bank-Farmers Branch*, 783 S.W.2d 598, 601 (Tex.App.-- Dallas 1989, no writ).

[4] The third affidavit, from Texas Commerce legal counsel G. Alan Waldrop, was legally sufficient to support the trial court's attorney's fees award. Waldrop testified that among other things, Texas Commerce had a contract with New entitling Texas Commerce to recover its reasonable attorneys' fee. He further testified that he is a duly licensed attorney, that he was familiar with the usual and customary attorney's fees in Travis County, ***518** and, based on his knowledge of the services rendered to Texas Commerce on this matter,

which he detailed, $30,000 was a reasonable fee for prosecuting Texas Commerce's claims. This was legally sufficient to support the trial court's judgment for attorney's fees.[FN13]

> FN13. *See, e.g., Cap Rock Elec. Coop. v. Texas Utils. Elec. Co.*, 874 S.W.2d 92, 101-02 (Tex.App.--El Paso 1994, no writ) (uncontested affidavit establishing prima facie case for attorney's fees legally sufficient to support attorney's fees award); *Murrco Agency, Inc. v. Ryan*, 800 S.W.2d 600, 606 (Tex.App.--Dallas 1990, no writ).

Accordingly, pursuant to Rule 59.1 of the Texas Rules of Appellate Procedure, the Court grants the petition for review of Texas Commerce Bank and, without hearing oral argument, affirms the court of appeals' judgment on liability, reverses the judgment on the issue of damages and attorney's fees, and remands to the trial court for entry of judgment for Texas Commerce Bank consistent with this opinion.

3 S.W.3d 515, 42 Tex. Sup. Ct. J. 1175

END OF DOCUMENT

CAUSE NO 97-08490

TEXAS COMMERCE BANK NATIONAL ASSOCIATION, *Plaintiff,*	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
ROBIN D. NEW d/b/a RIVER CITY AUTO SALES and WILLIAM PACHECO d/b/a PACHECO'S MOTOR CAR SALES, *Defendants.*	§	353rd JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S APPLICATION FOR WRIT OF ATTACHMENT PRIOR TO JUDGMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority on this day personally appeared Roger D. Bott, Vice President of Texas Commerce Bank National Association, known to me to be the person whose name is subscribed hereto and having been by me duly sworn upon oath states that he is authorized to make this Affidavit and further states as follows:

1. "My name is Roger D. Bott. I am over the age of eighteen (18) years, of sound mind and have never been convicted of a felony or any crime involving moral turpitude. I have personal knowledge of all facts set forth herein and am fully competent to testify to these facts.

2. "I am a Vice President of Texas Commerce Bank National Association ("Texas Commerce") and in that position have obtained personal knowledge of the facts recited herein, and these facts are true and correct. I am the custodian of records for Texas Commerce. I have reviewed

EXHIBIT A

the records of the deposit account of Robin New d/b/a River City Auto Sales (the "Texas Commerce Account"), which is at issue in this lawsuit.

3. "As of July 18, 1997, account number 09921041835 (the "Texas Commerce Account") at the 700 Lavaca branch of Texas Commerce in Austin, Travis County, Texas in the name of Robin D. New d/b/a River City Auto Sales is overdrawn in the amount of $729,510.96.

4. "I was involved in communications with a representative for Robin New on July 31, 1997. Mr. New's representative indicated that Mr. New is financially unable to make restitution to Texas Commerce and he has declined to offer any restitution to Texas Commerce."

FURTHER AFFIANT SAYETH NOT.

Roger D. Bott, Vice President
Texas Commerce Bank N. A.

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority on this 5th day of August 1997, by Roger D. Bott, Vice President of Texas Commerce Bank N.A.

KELLY GOURLEY
Notary Public, State of Texas
Commission Expires: 12-10-99

Notary Public, State of Texas
Printed Name: Kelly Gourley
My Commission Expires: 12-10-99

A1995A:28322-1
50175:0328

SECTION B

A DIFFERENT PERSPECTIVE

In 2009, the Federal Trade Commission undertook a review of the use of litigation in connection with debt collection. The resulting report, entitled *Repairing a Broken System, Protecting Consumers in Debt Collection Litigation and Arbitration*, concluded with four principle findings, two of which bear on the issues which are before the Texas Supreme Court in its efforts to propose new rules. The Commission found:

(1) Complaints filed in debt collection suits often do not contain sufficient information to allow consumers in their answers to admit or deny the allegations and assert affirmative defenses, and

(2) Consumers frequently fail to appear or defend themselves and that collectors sometimes fail to properly notify consumers of suits they have filed.

While a variety of collection industry professionals take issue with the methodology of the FTC and its willingness to accept unsubstantiated statements as fact, the issues represented by the two points stated are hard to dispute. The FTC Report suggested that the states consider requiring collectors to include more debt-related information in their complaints and adopt measures to increase consumer participation in suits against them. The TXCBA supports these objectives. Consumers should know (a) that they are being sued, (b) why they are being sued, and (c) what they need to do to contest the litigation, should they desire to do so.

Similarly, the Texas Attorney General's Compliance Agreement with Midland took up the issue of what information needs to be stated in a consumer debt collection case in order to properly apprise the consumer of the basis for the claim. After completing an investigation of the consumer collection practices of Midland, the Attorney General and Midland agreed:

> "Midland will provide the following information to [Texas local counsel] to the extent the information is available to Midland and instruct [Texas local counsel] to include in their petitions, where permitted by court rules, the following information to the extent available:
>
> the identity of the Original Creditor;
> last four digits of the original account number;
> date of charge off of the Consumer Debt; and
> the amount charged off.

[text reformatted for readability]. See **Section A, Exhibit 1**, paragraph 3(b)(iii), page 5.

The TXCBA Wishes to Offer a Revised Set of Rules for Consideration by the Supreme Court and the Advisory Committee

Attached are two proposed rules of civil procedure in justice courts; one addressing pleading requirements and the other, the default judgment process. These rules squarely meet the concerns of both the Texas Attorney General and the FTC with regard to pleading requirements, as well as due process issues with regard to the default judgment. TXCBA's proposed Rule 577 generally tracks the recommendations of the Justice Court Rule Task Force, with a few notable exceptions. However, Rule 578 is a new rule which seeks to accomplish both efficiency and due process

TXCBA's proposed Rule 577 differs from that of the Task Force in a number of ways; all of which reflect a removal of unnecessary or confusing information, including the requirement that plaintiff:

(1) State the name and address appearing on the original creditor's records. This information is not readily available (it is no maintained in data records), cannot generally be verified at the time of suit, and will contribute to confusion as to the debtor and the service address.

(2) State the date and amount of the last payment. Neither of these items is relevant to either plaintiff's claim or defendant's affirmative defense.

(3) Disclose collection bond information. Such disclosure is irrelevant to a debt collection suit, becoming relevant only if a claim is filed against the creditor. As such, it only serves to encourage litigation and promote third-party claims against the bonds of legitimate creditors.

As a separate matter, the TXCBA wishes to note that it supports the filing of some form of account related document with the Original Petition as a way of helping the defendant better understand the nature of the claim against them. Some of the states -- albeit a significant minority -- require the filing of the charge-off statement at the time of suit. This document is generally available to plaintiffs and is the most relevant of the account related document to plaintiff's claim for damages. It is the belief of the TXCBA that by better informing the defendant as to the specifics of the underlying claim, the defendant could better understand and meet the claim of the plaintiff.

The TXCBA supports an enlarged plenary period for justice courts in which the defendant may seek to set aside any default judgment. Nothing in the rules of civil procedure can force a consumer to participate in the litigation process; however, the TXCBA believes that the new rules should be designed to address the concerns of both the Commission and the Courts. A default taken in error, or in a circumstance where the defendant intended to answer, but simply failed to do so, is not beneficial to the parties or to the courts. Everyone benefits when debtors appear, participate in the process, and seek to resolve their problems.

Finally, creditors should know that their claims will be respected by the courts and will not be disallowed simply for social expediency. Similarly, the courts need to be able to handle these claims in a systematic way which affords to the parties the assurances of due process while addressing the courts' burgeoning case loads and resulting demands upon court staff.

Task Force Proposal	Texas Creditor's Bar Association Proposal
RULE 577. PLAINTIFF'S PLEADINGS (a) The following information must be set forth in the petition of a suit filed under this chapter: (1) The defendant's name and address ~~as appearing on the original creditor's records~~; (2) The name of the original creditor; (3) The original account number; (4) The date of origination/issue of the account; (5) ~~The date and amount of the last payment;~~ (6) The charge-off date and amount; (7) If the plaintiff seeks post-charge-off interest, then the petition shall state whether the rate is based on contract default or statute, and the amount of post-charge-off interest claimed; (8) If the plaintiff is represented by an attorney, then the attorney's name, address, and telephone number; and (9) Whether the plaintiff is the original creditor. (b) If the plaintiff is not the original creditor, the petition shall also state: (1) ~~The date on which the debt was assigned to the plaintiff;~~ (2) The name of each previous owner of the account and the date on which the debt was assigned to that owner. (c) ~~If the plaintiff is a third party debt collector, the debt collector must plead that it has complied with Texas Finance Code Section 392.101 requiring a bond. The petition should include the name of the bonded debt collector and the date it filed a copy of the bond with the Texas Secretary of State.~~	**RULE 577. PLAINTIFF'S PLEADINGS** (a) The following information shall be set forth in the petition of a debt collection case: (1) Plaintiff's name and capacity; (2) Defendant's name / co-defendant's name and service address; (3) Account or card name, if different from that of the plaintiff, if known; (4) Account number (which may be masked); (5) Date of issue or origination of the account, if known; (6) Date of charge-off or breach of the account, if known; (7) The damage amount claimed as of a date certain (preferably at the time of charge-off or breach); (8) Whether plaintiff seeks continuing interest and, if so, (i) the effective interest rate claimed, (ii) whether the interest rate is based upon contract or statute, (iii) the reference date for beginning to compute interest, and (iv) the dollar amount of interest claimed as of a date certain. (b) Additionally, if the pleading pertains to an assigned debt claim, the pleading must include: (1) a statement that the claim has been transferred and/or assigned; and (2) the name of the original creditor, the account/card name.

Task Force Proposal	Texas Creditor's Bar Association Proposal
RULE 578. DEFAULT JUDGMENTS	**RULE 578. DEFAULT JUDGMENTS**
~~(a) Default Judgment Without Hearing. The following documents may be attached to the petition, and must be served on the defendant before a default judgment can be granted without a hearing:~~ ~~(1) A copy of the contract, promissory note, charge-off statement or an original document evidencing the original debt which must contain a signature of the defendant. This document shall be supported by affidavit from the original creditor.~~ ~~(2) If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then a copy of the card member agreement in effect at the time the card was charged-off and copies of documents generated when the credit card was actually used must be attached and shall be supported by affidavit from the original creditor.~~ ~~(b) Required Documents. To support a default judgment, these documents must include:~~ ~~(1) A document signed by the defendant evidencing the debt or the opening of the account; or~~ ~~(2) a bill or other record reflecting purchases, payments, or other actual use of the credit card or account by the defendant; or~~ ~~(3) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.~~ ~~(c) Requirements of Affidavit. Any affidavit from the original creditor must state:~~ ~~(1) that they were kept in the regular course of business;~~ ~~(2) that it was the regular course of business for an employee or representative of the creditor with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the~~	(a) If the defendant does not file an answer by the answer date, the judge may enter a default judgment as to such defendant based upon: (1) Plaintiff's pleading, if plaintiff's claim is liquidated and such claim is proved by an instrument in writing, attached to the petition, and capable of being calculated by the court; or (2) Plaintiff's evidence of damage, if plaintiff's claim is unliquidated and proved by plaintiff. (b) The court may grant a default judgment based upon the documents attached to the pleading and/or submitted by a party in support of judgment. (c) The court may grant default judgment on submission and need not conduct a hearing in order to do so. (d) Affidavit of Damages. (1) An affidavit in support of plaintiff's claim will be sufficient to obtain a default judgment if it: (i) attests to the ownership of the account, (ii) identifies the person obligated to pay the account, (iii) attests to the closing of the account, and (iv) attests to the amount due on the account as of a date certain after all payments, credits and offsets have been applied. (2) The affidavit may be made by a representative of a legal entity and may be based upon that person's review of the account information as maintained by that legal entity.

Task Force Proposal	Texas Creditor's Bar Association Proposal
~~record or to transmit information to be included in such record;~~ ~~(3) the record was made at or near the time or reasonably soon thereafter; and~~ ~~(4) the records attached are the original or exact duplicates of the original.~~ ~~(d) Default Judgment after Hearing. If the plaintiff does not file with the court and serve on the defendant the documents required above, and the defendant files a timely answer, the court will proceed with the case as usual. If the plaintiff does not file with the court and serve on the defendant the documents required above, and the defendant fails to file a timely answer, the case will proceed under Rule 525(c). If a defendant who had failed to answer appears at a default judgment hearing, the judge must reset the case or may proceed with trial on the merits, if all parties agree to proceed.~~ ~~(e) Post-Answer Default. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly.~~	(e) If the defendant files an answer or otherwise appears in the case before a default judgment is signed by the judge, the judge may not enter a default. (f) If a default judgment cannot be entered as described above, the plaintiff may request a hearing at which the plaintiff shall appear, in person or by telephonic or other electronic means, and prove its damages. If the plaintiff proves its damages, the judge shall grant judgment for the plaintiff in the amounts proven; otherwise, the case shall be set for trial. Justices are encouraged to allow parties to appear by telephonic or other electronic means whenever practicable.

SECTION C

OTHER RULE RECOMMENDATIONS

The TXCBA believes there are other areas for concern and opportunities for improvement in the rules proposed by the Task Force.

The Rules of Evidence Should Not Be Strictly Enforced but They Should Be Respected

The TXCBA is concerned about the wording of Rule 504. The TXCBA urges that the language of the final rule clearly communicate to the justices of the justice courts that while the Texas Rules of Evidence need not be strictly applied, the court must respect evidence offered in conformity to these rules. The new rule should not be so broad as to create the sense that the justice courts operate without any guiding legal principals.

Task Force Proposal	Texas Creditor's Bar Association Proposal
RULE 504. RULES OF EVIDENCE The Texas Rules of Evidence do not apply to justice courts except to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties.	**RULE 504. RULES OF EVIDENCE** (a) The Texas Rules of Evidence do not apply to justice courts except to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties. (b) A justice court judge may not disregard evidence that would be admissible under the Texas Rules of Evidence.

[Continued on Next Page]

The Parties Should be Allowed to Accomplish Post-Answer Service by First-Class Mail

The TXCBA asks that Rule 515 be expanded. The TXCBA urges that the language rule be modified to allow for service by first class mail. First class mail is considered an acceptable method of service:

1) by the court when notifying the parties of a hearing date;
2) by the court when notifying a party of the entry of judgment; and
3) by the federal courts in civil cases (see Fed.R.Civ.Proc. Rule 4(e)(2)(b)).

The simple fact of the matter is that first class mail is more reasonably calculated to reach its intended recipient than is certified mail. A certificate of service still operate to create a presumption of service; a presumption which can still be rebutted upon the testimony of a party that service was not actually received. Further, pro se defendants generally find the requirement for certified mail cumbersome and an impediment to their participation in the legal process.

Task Force Proposal	Texas Creditor's Bar Association Proposal
RULE 515. SERVICE OF PAPERS OTHER THAN CITATION Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under these rules of civil procedure, other than the citation, may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify and may be served by: . . . (b) courier receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail will be complete when the document is properly addressed and deposited in the United States mail, postage prepaid;	**RULE 515. SERVICE OF PAPERS OTHER THAN CITATION** Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under these rules of civil procedure, other than the citation, may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify and may be served by: . . . (b) courier receipted delivery or by first class, certified or registered mail, to the party's last known address. Service by first class, certified or registered mail will be complete when the document is properly addressed and deposited in the United States mail, postage prepaid;

[Continued on Next Page]

The Should Be No Bond Requirement When Appealing a Take-Nothing Judgment

The TXCBA asks that Rule 560 be revised. The TXCBA is concerned that the language of the proposed rule imposes an unnecessary and unworkable burden on a plaintiff who is appealing a take-nothing judgment. Under such a circumstance, the plaintiff's payment of the filing fee for the appeal should sufficiently meet the concerns of the court. Further, a $500 bond made payable to the appellee could only operate as a fine or penalty for initiating the appeal in that there is no actual liability to the appellee at the time of the appeal. The rule, though well intentioned, needs to be revised to meet the most common circumstance encountered by the justice courts.

Task Force Proposal	Texas Creditor's Bar Association Proposal
RULE 560. APPEAL (a) *Plaintiff's Appeal.* ~~If the plaintiff wishes to appeal the judgment of the court, the plaintiff or its agent or attorney shall file a bond in the amount of $500 with the judge no later than the 20th day after the judgment is signed or the motion for new trial, if any, is denied. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy such costs if judgment or costs be rendered against it on appeal.~~	**RULE 560. APPEAL** (a) *Plaintiff's Appeal.* Plaintiff may appeal the judgment of the court by filing a notice of appeal in the justice court within 20 days after the date of judgment or any motion for new trial is denied and by timely paying the applicable filing fee with the County Court.

TXCBA Proposal
To the
Justice Court Rules Task Force

RECOMMENDED RULE CHANGES

In 2009, the Federal Trade Commission undertook a review of the use of litigation in connection with debt collection. The resulting report, dated July 2010 and entitled *Repairing a Broken System, Protecting Consumers in Debt Collection Litigation and Arbitration*, concluded with four principle findings, two of which bear on the issues which are before the current rules committee. The Commission found that:

(1) The complaints filed in debt collection suits often do not contain sufficient information to allow consumers in their answers to admit or deny the allegations and assert affirmative defenses, and

(2) Consumers frequently fail to appear or defend themselves and that collectors sometimes fail to properly notify consumers of suits they have filed.

While a variety of collection industry professionals take issue with the methodology of the FTC and its willingness to accept unsubstantiated statements as fact, the issues represented by the two points stated are hard to dispute. Consumers should know (a) that they are being sued, (b) why they are being sued, and (c) what they need to do to contest the litigation, should they desire to do so. Similarly, creditors should know that their claims will be respected by the courts and will not be disallowed simply for social expediency. Finally, the courts need to be able to handle these claims in a systematic way that affords to the parties the assurances of due process, while facilitating the courts' handling of their burgeoning case loads and resulting demands upon the courts' staffs.

The FTC Report suggested that the states consider requiring collectors to include more debt-related information in their complaints and adopting measures to increase consumer participation in suits against them. While nothing in the Texas Rules of Civil Procedure force a consumer to participate in the litigation process, the TXCBA believes that the rules that it is suggesting are a substantial improvement in the handling of these consumer debt cases and makes significant headway in addressing the concerns of the Commission and the Courts. Everyone benefits when debtors appear and discuss their problems.

The basic goals of the TXCBA in designing these rules are to:

(1) Ensure that the nature of each case is clearly and concisely stated;
(2) Provide defendants with a simple, plain English method to answer the lawsuit;
(3) Create a structured approach to the granting of a default judgment;
(4) Ensure that the defendant has an opportunity to set aside a default judgment without undue burden on the parties;
(5) Standardize the expectations placed upon the parties at trial; and
(6) Remove gamesmanship from the legal process.

Ensure That the Nature of the Cases in Clearly and Concisely Stated.

The proposed rules anticipate form pleadings with specific information requirements for both original credit grantors and debt buyers. Amounts sought, and the basis for each element of plaintiff's claims are specifically enunciated.

Provide Defendants with a Simple, Plain English Method to Answer the Lawsuit

The proposed rules anticipate that a service is not proper unless a standardized answer form is delivered to the defendant as part of the service of process package. This answer form will contain instructions listing what is needed to answer the lawsuit and will provide a structured format for the defendant to assert special issues and/or defenses.

Create a Structured Approach to the Granting of Default Judgment

The proposed rules require that to proceed under Debt Collection Case Rules, certain documents should be filed with the petition. The required documents include an account affidavit, a copy of a statement, an affidavit of non-military service, and verification that the attorney's fees sought are reasonable and necessary. These are essentially the evidentiary elements necessary for any default judgment. A complete set of these documents will be provided to the court at the initiation of the case and will be served on the defendant as part of the service of process package, along with an answer form.

If the defendant does not answer the lawsuit, the rules mandate that the court enter a default judgment in the ordinary course of business. If judgment is not entered after the answer date, the plaintiff may request entry. The court must, within 30 days, either enter judgment or inform the plaintiff why judgment cannot be entered.

Ensure That the Defendant Has an Opportunity to Set Aside a Default Judgment Without Undue Burden on the Parties

Although the delivery of an answer form should result in increased defendant participation in lawsuits, the rules also contemplate an expanded period of time (20 days) in which the defendant may request a new trial. This allows the defendant additional time to evaluate the fact that a default judgment has been entered and to seek to have such judgment set aside for good cause shown.

Standardize the Expectations Placed upon the Parties at Trial

The proposed rules require the parties to specifically describe those matters which give rise to either a claim or a defense so that the issues to be presented at trial are fully disclosed.

Remove Gamesmanship from the Legal Process

The proposed rules require the exchange of suit related information prior to trial and curtails other discovery except to that which is shown to be needed.

PROPOSED RULES

RULE NO. 1. SCOPE

- **RATIONALE:**

  This rule allows the automatic application of the rules of this chapter to debt collection cases based upon the initial designation of the case by the plaintiff, but also allows the court to modify or revoke that status as needed to promote justice.

- **RULE:**

  Scope. The rules in this chapter shall apply to any case designated as a debt collection case by the plaintiff, unless the designation is changed by an order of the court after finding that the designation was improper or should not apply.

RULE NO. 2. CONSTRUCTION OF RULES

- **RATIONALE:**

  This rule encourages the courts to consider important factors when resolving ambiguities or uncertainties regarding the reading and implementation of these new rules.

- **RULE:**

  Construction of Rules. The rules in this chapter should be interpreted in such a manner as to promote judicial efficiency, enhance uniformity amongst justice courts, ensure due process for all parties, and lessen the burdens of litigation on both plaintiffs and defendants.

RULE NO. 3. APPLICABILITY OF SMALL CLAIMS RULES TO DEBT COLLECTION CASES

- **RATIONALE:**

  This rule is designed to promote efficiency in debt collection cases by incorporating small claims court rules (which are less formal) into debt collection cases.

- **RULE:**

  Applicability of Small Claims Rules to Debt Collection Cases. Except as otherwise provided in this chapter, small claims rules will apply in debt collection cases.

RULE NO. 4. DESIGNATION AS DEBT COLLECTION CASE

- **RATIONALE:**

  Under this rule, the designation of a case as a debt collection case is automatically made by the plaintiff's use of the form petition; therefore, no court order is needed. The rule also limits the use of the form to cases involving the recovery of a debt.

- **RULE:**

  Designation as Debt Collection Case. A plaintiff may designate his case as a debt collection case by using the form petition promulgated by the Supreme Court of Texas. A plaintiff may only designate a case as a debt collection case if the plaintiff seeks the recovery of a debt from defendant.

RULE NO. 5. CONTESTING DESIGNATION AS DEBT COLLECTION CASE

- **RATIONALE:**

  Under this rule, the court has the authority to remove a case from the scope of the debt collection rules upon determining that the case was improperly filed.

- **RULE:**

  Contesting Designation as Debt Collection Case. [1] Any party may contest the improper designation of a case under this chapter, and after a hearing, the court shall affirm or revoke the designation. If the court revokes the designation, the case shall not be dismissed but the rules of this chapter will no longer apply to the case.

---

[1] Plaintiff's election to proceed under debt collection case rules is presumed to be appropriate unless it becomes clear from the pleadings or the evidence that the case is improperly designated. As such, a motion challenging the designation of a case as a debt collection case should be presumed to be brought in bad faith and for the purpose of harassment and is available for sanction under Rule 215-2b, unless it is founded upon specific facts or assertions which would prohibit the case from proceeding under those rules.

RULE NO. 6. PLAINTIFF'S PLEADINGS

- **RATIONALE:**

  The rule in written in anticipation of form pleadings which may ultimately lead to information being communicated with the courts in an electronic format, rather than the paper process currently employed. As such, the rule contemplates the use of electronic signatures by plaintiff's counsel.

- **RULE:**

  a. Plaintiff's pleading shall be in writing utilizing the form promulgated by the Supreme Court of Texas. [2]

  b. Plaintiff shall file with its pleading,

     i. an Affidavit of Debt, as described herein,

     ii. an affidavit as to defendant's non-military status,

     iii. a proposed default judgment, and

     iv. a proposed answer form in the format promulgated by the Supreme Court of Texas.

  c. Plaintiff's pleading may be endorsed by plaintiff or plaintiff's attorney with a digital image of an attorney's signature or other electronic signature.

---

[2] That pleading must state:
- a. Plaintiff's name
- b. Plaintiff's capacity
- c. Defendant's name / co-defendant's name and service address
- d. Account/card name, if different from plaintiff
- e. Account number (may be masked)
- f. Date of issue/origination, if known
- g. Date of last payment, if known
- h. Date of chargeoff or breach
- i. Amount owed at chargeoff/breach
- j. Whether plaintiff seeks post-chargeoff interest, and if so,
  - i. the chargeoff date,
  - ii. whether rate is based on contract/default or statute, and
  - iii. amount of post-chargeoff interest claimed.

Additionally, if the pleading relates to an assigned claim, the pleading must include
- a. a statement that the claim has been transferred and/or assigned, and
- b. the name of the original creditor.

RULE NO. 7. AFFIDAVIT OF DEBT

- **RATIONALE:**

The proposed rule incorporates the elements found in the *Unifund vs. Simien* case which held that the affidavit of a successor-in-interest which contained the listed elements was sufficient evidence of a claim.

- **RULE:**

Affidavit of Debt. An affidavit in support of the debt will be sufficient to obtain a default judgment if it:

a. attests to the amount due,

b. verifies that the attached documentation which it incorporates are kept in the course of plaintiff's business,

c. attests that the business relies upon the accuracy of the contents of the document in the conduct of its business, and

d. attaches the following documentation to the affidavit:

   i. a copy of the contract evidencing the debt, or in the case of a credit card account or other type of revolving line of credit, at least one monthly statement evidencing the debt; and

   ii. if the plaintiff is not the original lender, a bill of sale, affidavit of account or other evidence of plaintiff's ownership of the debt.

RULE NO. 8. ATTORNEYS FEES IN DEBT COLLECTION CASES

- **RATIONALE:**

  Attorneys in most debt collection cases have significant operations which allow them to meet the security and information demands of their clients. As such, by the time a case is filed, substantial firm resources have been brought to bear to support an attorney's request for attorneys' fees. The proposed rule makes it clear that the attorney may attest to this effort at the time the suit is filed and that the court may rely upon the attorney's attestation in awarding a default judgment.

- **RULE:**

  Attorneys Fees in Debt Collection Cases. If a plaintiff seeks the recovery of attorneys' fees from the defendant under the contract or by statute, the plaintiff may attach to the original petition or file separately an affidavit of the attorney evidencing the amount of plaintiff's reasonable attorneys' fees, and the court may consider the affidavit in awarding attorneys' fees at the time of judgment.

RULE NO. 9. SERVICE ON DEFENDANT

- **RATIONALE:**

  The proposed rule contemplates that the defendant will be provided with a copy of all documents which plaintiff would rely upon in obtaining a default judgment, as well as an answer form to facilitate the defendant's response to the lawsuit.

- **RULE:**

  Service on Defendant.

  a. In a debt collection case, the defendant must be served with citation, plaintiff's petition, any supporting affidavits filed with plaintiff's petition, and an answer form in the format promulgated by the Supreme Court of Texas.

  b. Service may be made in the same manner as set forth in TRCP 535.

  c. In the event that service of process is accomplished upon the defendant at a residential address other than that set forth in plaintiff's petition, the person making the affidavit of service shall file with the court a Certificate of Last Known Address setting forth the residential address at which service was accomplished.

RULE NO. 10. SUBSTITUTED SERVICE OF PROCESS

- **RATIONALE:**

  The proposed rule allows either the party or any process server to request an order for substituted service from the court. The process server, as an agent of the court, should have sufficient standing to facilitate the service which they are commanded to perform.

- **RULE:**

  Substituted Service of Process. Application for substituted service of process under Rule 106 may be made by any party or their attorney, or the sheriff, constable, or licensed private process server attempting service of citation on a defendant.

RULE NO. 11. METHODS OF SERVICE

- **RATIONALE:**

  Pro se defendant's rarely claim certified mail and the court's have long believed that certified mail is not an effect method of service. The rule simply recognizes that first class mail is the most effective method of communication with most defendant's and protects the defendant from being disadvantaged because they did not claim a certified letter.

- **RULE:**

  Methods of Service. In addition to the methods of service set forth in Tec.R.Civ.Proc. Rule 21a, service of any notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action may be made by depositing that notice, pleading, plea, motion, or other form of request with the United States Postal Service, proper first class postage prepaid and addressed to the party's last known address.

RULE NO. 12. DEFENDANT'S ANSWER

- **RATIONALE:**

  The defendant's answer often does not include information that is required by the rules. The TXCBA is working to develop a standardized answer form, but believes that the rule, itself, should list the critical elements. The proposed rule establishes the informational elements of an answer and the effect of filing a general denial. Part (b) of the rule reiterates the continued responsibility of the defendant to assert certain please and defenses. The purpose is to avoid the "kitchen sink" response that claims every possible denial and defense, with no support.

- **RULE:**

  Defendant's Answer.

  a. Defendant's answer must be in writing and utilize the Answer Form promulgated by the Supreme Court of Texas. A written answer filed by a pro se defendant that is in a form other than the approved Answer Form shall be considered a general denial to the claims in plaintiff's petition only.

  b. Affirmative defenses, verified pleas, and pleas of payment must be in writing and pled with specificity as required by in Tex.R.Civ.Proc. Rules 93-95. [3]

  c. If the defendant's fails to meet the pleading requirements of this rule, the defendant may not offer evidence of that matter at trial. In such an event, the plaintiff has no burden to refute the unsubstantiated contention.

---

[3] The rule continues to incorporate the verified pleas, affirmative defenses and pleas of payment requirements set forth in Tex.R.Civ.Proc. Rules 93-95. These include, for example:

a. denial of the account (Rule 93(10))
b. assertion of Payment (Rule 95)
b. allegation of ID Theft or Fraud (Rule 93(4), 93(7)),
c. challenge to assignment of claim (Rule 93(8))

For example, Rule 93(8) requires the defendant to place the validity of the assignment of a claim at issue through a verified plea. "The genuineness of an assignment by Rule 93's provisions, is held as fully proved in the absence of a sworn denial." *American Hydrocarbon Corp v. Hickman*, 393 S.W.2d 197 (Tex.Civ.App. — Texarkana 1965, no writ). Further, specific denials under Rule 93 are affirmative defenses. *Gray v. West*, 608 S.W.2d 771, 778 (Tex.Civ.App.-Amarillo 1980 writ ref'd n.r.e.) (Denials under Rule 93 are affirmative defenses. No burden of proof was placed on West for a defense never properly raised by Gray under Rule 93.).

RULE NO. 13. COUNTERCLAIMS

- **RATIONALE:**

  Counterclaims are increasingly used by opposing counsel as both a negotiating ploy and as a method for generating attorneys' fees. The trial courts should expect to see an increasing number of these claims. The proposed rule ensures that plaintiff's pleading burden in debt collection cases is being shared by a defendant who counterclaims. The counter-plaintiff must describe the conduct giving rise to a cause of action and state generally what that cause of action is. The rule is intended to require the defendant to specify the factual and legal grounds for a counterclaim.

- **RULE:**

  Counterclaims.

  a. A counterclaim must be in writing and specify the actions or omissions that give rise to a claim.

  b. If the counter-plaintiff does not meet his burden, the court must enter a take-nothing judgment on the counterclaim.

  c. The counter-defendant is presumed to have asserted a general denial and need not answer a counterclaim, other than to assert certain defenses.

RULE NO. 14. DEFAULT JUDGMENTS

- **RATIONALE:**

The pleading requirements associated with the Debt Collection Cases will satisfy plaintiff's burden of proof when the suit is filed. The failure to answer a properly served suit entitles the plaintiff to a default judgment. The proposed rule emphasizes that the plaintiff need take no further action and that the responsibility for entry of the default judgment rests with the court. The rule requires that upon request, the court either enter a default judgment or advise the plaintiff of any issue that is preventing the court from granting judgment. This process allows the plaintiff to take corrective action.

In proposing this rule, it is anticipated that the period for setting aside a default judgment will be enlarged to 20 days. This will provide additional protection to a defendant who may have mistakenly failed to answer the lawsuit.

- **RULE:**

Default Judgment.

a. The Court must enter a default judgment in the amount prayed for by the plaintiff when:

   i. The petition, with attachments, meets the requirements of Rule __;

   ii. A properly executed return of service is on file;

   iii. The answer date has passed; and

   iv. The Court has not received a written answer or other written communication from the defendant denying at least part of the suit;

b. Last Known Address. The court may rely upon the service address for the defendant as set forth in plaintiff's pleadings, subject to any revision resulting from the service of process when granting a default judgment.

c. No Requirement to Request Entry. If the requirements of section (a) are met, the court must enter a default judgment for the plaintiff within ____ days of the answer due date without further action by the plaintiff.

d. Notice of Deficiency. If the court determines that the requirements of section (a)(i) are not met, the court must send a notice of deficiency that specifies the reasons why judgment has not been entered. Such Notice shall set forth the deficiency or omissions which plaintiff must cure in order to obtain judgment or otherwise inform plaintiff of the reason judgment may not be entered.

RULE NO. 15. DISCOVERY

- **RATIONALE:**

Debt Collection Cases are very straightforward contests. Unfortunately, discovery is often employed solely to harass, rather than as a mechanism for developing a case. The proposed rule adopts the premise that if a party intends to use a document or an issue at trial, it must disclose that document or issue to the opposing party in advance, through mandatory disclosures. Additional discovery is limited to that which the court allows based upon the circumstances of the case.

- **RULE:**

Discovery.

a. Discovery in a Debt Collection Case is limited to that set forth in this rule.

b. Parties to Make Required Disclosures. When an answer is filed contesting any part of a claim, the parties to the disputed claim must make certain specific disclosures.

i. Disclosures Generally

(1) Disclosure by each party is to be made not more than 45 days following the filing of the answer and must be supplemented timely as needed.

(2) Disclosures may not be supplemented less than 14 days before the date of trial.

(3) When a disclosure requests the identification of a witness, the identification must include the name, address, and telephone number of the witness, a brief statement of the person's connection with the case, and a brief summary of the expected testimony. If the witness is an expert witness, the party shall also disclose:

(a) the expert's name, address, e-mail address, fax, and telephone number;

(b) the subject matter on which the expert will testify;

(c) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting the information;

(d) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(e) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(f) the expert's current resume and bibliography.

ii. Plaintiff's Disclosures.

(1) Plaintiff must disclose the identity of any witness whom plaintiff intends to call at trial, except that plaintiff may identify generally any records custodian whose affidavit will be submitted before trial or that may appear at trial.

(2) Plaintiff must provide defendant with copies of all documents which plaintiff intends to introduce at trial.

(3) Documents included in plaintiff's initial filings served on the defendant or included in a timely submitted business records affidavit need not be separately disclosed.

iii. Defendant's Disclosures

(1) Defendant must disclose the identity of every witness whom defendant intends to call to testify at trial.

(2) Defendant must provide to plaintiff copies of all documents that defendant intends to introduce at trial.

iv. A party may not call as a witness nor offer as evidence any document not disclosed pursuant to this rule.

c. The court may, on a case-by-case basis, allow additional discovery to be conducted, provided that the party seeking such discovery shows good cause why the discovery required by this rule would not be sufficient to properly develop the case for trial.

d. Nothing is this rule shall preclude a party from conducting a deposition on written question of its own witness.

RULE NO. 16. MOTION FOR SUMMARY JUDGMENT

- **RATIONALE:**

  The rules require plaintiff to file a substantial amount of material at the initiation of the case. Under existing Texas law, these documents would overcome any no-evidence motion for summary judgment. As such, a no-evidence motion for summary judgment would simply be filed to harass the plaintiff, rather than to promote the parties' legitimate legal interests. The prohibition operates against the plaintiff as well, to ensure a balanced approach.

- **RULE:**

  No party may file a no-evidence motion for summary judgment in a debt collection case.

RULE NO. 17. EVIDENCE

- **RATIONALE:**

There is a significant amount of discrepancy among the courts regarding the evidentiary standards and burdens of proof requirements in Debt Collection Cases. These issues also pose a tremendous burden upon the justices in that they require the justices to have a level of sophistication for which many are untrained. The purpose for this rule is to provide to the courts some basic guidance to serve as a foundation for the management of Debt Collection Cases. The proposed rule is based upon the following: (a) the legal requirements created under Regulation Z of the Fair Credit Reporting Act; (b) the role of hearsay and proof affidavits expressed by the Texas Supreme Court of *Texas in Texas Commerce Bank vs. New*; and (c) the elements of proof in an assigned debt case as stated in *Unifund vs. Simien*. The objective of the rule is to create a prima facie proof standard against which the court can measure the adequacy of the evidence presented.

- **RULE:**

Evidence.

a. The plaintiff makes a prima facie showing of its case if it offers as evidence,

   i. An Account Affidavit, the contents of which testifies to:

      (1) the existence of the account;

      (2) the identity of the person obligated to pay the account;

      (3) the date the account was charged-off/closed;

      (4) the balance of the account on the date of chargeoff/closure;

      (5) the effective interest rate on the account on the date of chargeoff/closure, if applicable;

      (6) the balance of the account on the date of the affidavit after all payments, credits, and offsets have been applied; and

   ii. Attaches a copy of the contract or chargeoff statement.

[Continued on Next Page]

b. Sufficiency of the Account Affidavit. The Account Affidavit:

i. may be made by a representative of the plaintiff;

ii. may be based upon a review of the plaintiff's business records;

iii. in the case of a successor-in-interest, may be based upon information received from plaintiff's predecessor-in-interest; and

iv. may be a copy or reproduction of the original.

c. The judge must hear the testimony of the parties and the witnesses that the parties produce and must consider the other evidence offered, as in small claims cases.

RULE NO. 18. HEARINGS

- **RATIONALE:**

  The proposed rule seeks to minimize the burden on the parties for purely procedural motions and scheduling conferences.

- **RULE:**

  Hearings.

  a. Notice. The Court will provide to each party a notice of hearing at least seven days prior to any hearing date.

  b. Telephonic Hearing. When practicable and subject to the consent of the court, a party may attend a hearing by telephonic means.

RULE NO. 19. TRIAL

- **RATIONALE:**

  The proposed rule seeks to ensure that the parties are afforded sufficient opportunity to prepare for trial and that the trial be conducted according to the same standards as in the majority of other justice court cases.

- **RULE:**

  Trial.

  a. Notice. The Court will provide to each party a notice of trial at least 45 days prior to the date on which the case is set to be tried.

  b. Telephonic Hearing. When practicable and subject to the consent of the court, a party may attend a trial by telephonic means if they do not intend to offer into evidence anything more than their own testimony and the documents which were attached to their records affidavit or current pleading. In such an event, the documents should bear sufficient identification to ensure that they are identifiable to the court and any party to the litigation. A party may not attend a jury trial telephonically.

  c. Trial Limited to Issues Pled. The parties at trial are limited to those claims, disputes, pleas and defenses as disclosed in their active pleadings.

  d. Trial is Informal. The trial is informal, with the primary objective being to dispense speedy justice between the parties.

  e. Jury Trial. A party is entitled to a jury trial if the requesting party files a request not later than fourteen days before the date on which the hearing is to be held and at the same time pays the jury fee.

RULE NO. 20. FAILURE TO APPEAR

- **RATIONALE:**

  The proposed rule seeks to clarify how a court should dispose of a case if one or more parties do not appear at trial. In proposing this rule, it is anticipated that the period for requesting a new trial will be enlarged to 20 days. This will provide additional protection a defendant who may have mistakenly failed to appear.

- **RULE:**

  Failure to Appear at Trial.

  a. If a defendant who has been served with citation fails to appear at trial, the judge must enter a default judgment for the plaintiff in the amount pled.

  b. If the plaintiff fails to appear at trial, the judge may enter an order dismissing the action without prejudice.

RULE NO. 21. CONFESSION OF JUDGMENT

- **RATIONALE:**

  The proposed rule addresses two issues. First, Tex.R.Civ.Proc. Rule 563 is being utilized by some consumer attorneys to confess judgment in an amount substantially less than that claimed by the plaintiff, the effect of which is to disruptive the legal process and propel the case to an appeal. Second, the rule adopts a process which is available in other states which allows for the parties to a dispute to agree to the entry of judgment without the need for issuance of a citation or for service of process.

- **RULE:**

  Confession of Judgment

  a. Any party may appear in person, by written instrument, or by an attorney, before any justice of the peace and confess judgment for any amount within the jurisdiction of the justice court, and such judgment shall be entered on the justice's docket as in other cases if:

     i. in a case where the party's appearance is prior to the filing of a petition by a plaintiff, the plaintiff, his agent or attorney shall make and file an affidavit signed by him, to the justness of his claim, or

     ii. in a case where the party's appearance is after the filing of a petition by a plaintiff, the plaintiff, his agent or attorney agrees to the confession of judgment.

RULE NO. 22. SETTING ASIDE DEFAULT JUDGMENT

- **RATIONALE:**

  The proposed rule enlarges the period of time in which a party may seek to set aside a judgment by default or of dismissal.

- **RULE:**

  A justice may within twenty days after a judgment by default or of dismissal is signed, set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such hearing shall be given to the opposite party at least three full days prior to the hearing and such hearing must be held and order entered within the twenty days or the motion is deemed denied by operation of law.

RULE NO. 23. APPEAL

- **RATIONALE:**

  The proposed rule expands the availability of appeal to both parties by reducing the number of sureties and allowing a parties attorney to stand for their client in guaranteeing the performance of a judgment.

- **RULE:**

  a. Appeal from a Debt Collection Case is perfected upon filing a cash or verified surety bond equal to double the amount of the judgment, within twenty days of the judgment date.

     i. The surety bond may be filed by the defendant and one good and sufficient surety, which surety may be the parties attorney.

     ii. No appeal bond is required to appeal a take-nothing judgment or dismissal.

     iii. The appeal applies only to the judgment against the appealing party.

     iv. Judgment may be severed as to the non-appealing party, with the judgment's being enforceable.

  b. Enforcement against sureties.

     i. If judgment is granted against appellant, the judgment is executable against the sureties, without further order. Entry of judgment against the sureties is not required.

TXCBA Correspondence
To the
Justice Court Rules Task Force

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

January 6, 2012

The Honorable Russell B. Casey
Chairman, Texas Supreme Court
Justice Court Task Force
Southlake Government Complex
1400 Main St. Suite 220
Southlake, Texas 76092

Re: Texas Creditor's Bar Association's Proposal and Presentation to the Supreme Court Task Force at its December 7, 2011 Meeting

Dear Judge Casey and
Members of the Supreme Court Justice Court Task Force:

The Texas Creditor's Bar Association (TXCBA) sincerely appreciates the opportunity to make recommendations regarding the important task which your committee is undertaking.

In thinking back on our exchange during the recent committee meeting, we felt that a couple of points should be addressed.

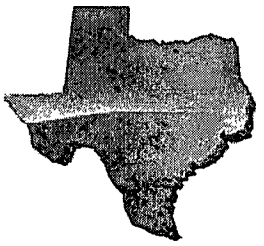
The TXCBA Proposal Sought To Address The Goals Of The Statute

The TXCBA believes that HB 79 sought to create a simple, speedy and fair set of rules for the handling of bank loan, credit card and assigned debt claims (collectively, Debt Claim Cases). Further, these rules needed to be easy for the courts to administer and for the litigants to understand. To this end, the TXCBA proposed changes to the current rules of civil process which were designed to increase the information available to all parties, with the least amount of delay or confusion.

The TXCBA's proposal included a number of changes from the current legal practice in Texas; the most striking of which was ***the burdens placed upon the plaintiff*** in these cases. Specifically, the TXCBA proposed (a) the marshalling of default judgment evidence when the lawsuit is filed, and (b) the mandatory disclosure by plaintiff of both its witnesses and its documents to be used at trial. These are significant departures from the current practice in Debt Claim Cases or, for that matter, any type of lawsuit in Texas.

In exchange for the increased burden of marshalling evidence, the TXCBA asked:
1) For certainty in obtaining a default judgment;
2) That the default judgment be handled by submission; and
3) That the defendant not be allowed to file a no evidence summary judgment (as the evidence necessary to defeat the motion was already filed with the petition).

In exchange for the voluntary disclosure of witnesses and documents, the TXCBA only asked:
1) That a reciprocal duty be placed upon the defendant; and
2) For limited discovery, unless the circumstances of the cases warranted expanded litigation.



Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The TXCBA Proposal Was A Comprehensive Approach

The TXCBA proposal was a comprehensive set of procedures designed to interface with the other rules, not simply an ad hoc collection of ideas. As such, it sought to address in a comprehensive fashion the ordinary issues faced by the parties and the courts in Debt Claim Cases. Unfortunately, it seemed that this approach was perhaps misunderstood by some present at the meeting, who looked for an "evil intention" in every rule. For example, the discussion regarding limitation on no evidence summary judgment motions seemed to occur without any recognition of the fact that the TXCBA was proposing significant pleading/proof requirements and mandatory disclosure. Similarly, the committee seemed dead-set against the idea of specificity in the defendant's answer, when the TXCBA was simply proposing that both sides move away from notice pleadings, and put the issues clearly and succinctly before the court so that discovery and motions can be curtailed or eliminated. The federal rules, as well as most other states, require specific denials, not just a general denial.

The TXCBA Believes That Its Members Should Not Be Held to a More Onerous Standard

It also concerned us that it appears to be the desire of some of the task force members to do away with or severely curtail debt cases in the new justice courts. The TXCBA does not believe that this was part of the legislative mandate to the Supreme Court of Texas, nor the Court's mandate to the task force. The discussion about the "high price of admission" that creditors should be forced to pay was both troubling and counter to the guiding principles of Texas jurisprudence. Creditors, regardless of their level of sophistication or background, must have the same opportunities as all civil litigants to prove their cases by a preponderance of the evidence – that they are "more likely than not" entitled to a judgment.

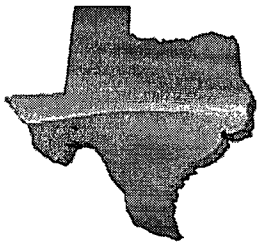
The TXCBA Is Hoping For Clarity

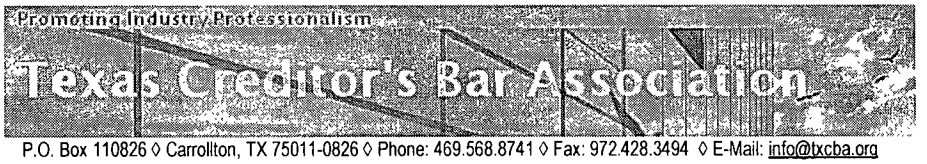
Texas justice court judges are often confused by the legal standards being quoted by the myriad of attorneys who bring and defend Debt Claim Cases. While anecdotal stories can capture the imagination, they constitute a poor basis for establishing rules of court. Add to this a fair amount of misinformation and basic misunderstandings, and we have a recipe for disaster. For example, during the presentation, there ensued a discussion about how the TXCBA was attempting to circumvent the limitations of TRCP 185 (Suit on Sworn Account) and TRCP 241 (Assessing Damages on Liquidated Demands). In actuality, the TXCBA was merely attempting to provide, at the time of filing, the evidence that the plaintiff would ordinarily offer as proof of damages under TRCP 243 (Unliquidated Demands). If the very intelligent people gathered in one room cannot come to an easy understanding of the distinction between these two approaches, what are the odds that 800+ justices of the peace, many of whom are not attorneys, will be able to do so? This example, alone, cries out for clarity as to what is sufficient evidence of a claim.

The TXCBA's proposal at its most basic, fundamental level is a request for clarity, so that a former-teacher-turned-judge has the same understanding as an experienced attorney as to how these types of cases should be heard. We believe that was the spirit of the legislation, and we hope to see it preserved in the rules proposed by the task force.

The TXCBA is Hoping for Additional Participation

The decision by the task force to consider a debtors' bar counter-proposal set of rules without an adequate opportunity for comment by creditors is particularly dismaying, given the opportunity the debtor's bar had to review and comment on our proposal at the December meeting. Our understanding, as it stands today, is that the recommendations (not yet written) of the debtor's bar would be reviewed and discussed in the absence of any representation/participation from the creditors' bar. In the view of the TXCBA, this is highly problematic. We are cognizant of the





P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

time deadlines faced by the task force and understand the desire to keep moving forward. However, we believe the best possible rules will come from fair and active participation from both sides. We hope that this decision will be reconsidered, and we stand ready to assist in any way necessary.

The TXCBA Is Prepared for the Challenge

Finally, we ask that the task force understand and acknowledge that the TXCBA has offered a totally new pleading concept; one that is foreign to Texas law. Never before has a party been expected to marshal its evidence at the time of filing suit, nor make mandatory disclosures upon the joining of the action by an opposing party. Such a change should be supported by a compelling justification; namely a significant improvement in the handling and disposition of Debt Claim Cases. The task force has an opportunity to recommend substantial improvements to Texas civil process. Conversely, should the task force seek to simply impose a "price of admission" for creditors, then the TXCBA would suggest that a tremendous opportunity will have been missed. We would urge the task force to seize the opportunity for change, rather than to merely impose a burden, as has been advocated by some.

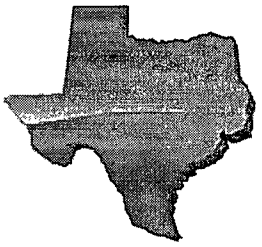
In conclusion, it has been a privilege to be involved, even tangentially, in your discussions, and we look forward to rules that treat both sides fairly, increase court efficiency without sacrificing justice, and set a new standard for the twenty-first century.

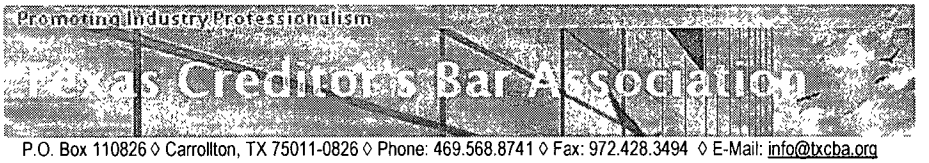
We remain respectfully yours,

Craig Noack, President
Texas Creditor's Bar Association

Michael J. Scott, Chair
Executive Committee

TXCBA Response To the Draft Rules by the Justice Court Rules Task Force





P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

March 14, 2012

The Honourable Russell B. Casey
Chairman, Texas Supreme Court
Justice Court Task Force
Southlake Government Complex
1400 Main St. Suite 220
Southlake, Texas 76092

Re: Texas Creditor's Bar Response to the Proposed Rules Under Consideration by The Supreme Court Task Force

Dear Judge Casey and
Honourable Members of the Supreme Court Justice Court Task Force:

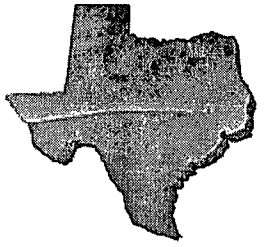
This response is made by the Texas Creditor's Bar Association ("TXCBA") to the Justice Court Rules Task Force appointed by order of the Texas Supreme Court on September 17, 2011 ("Task Force"), and pertains to the proposed rules governing debt collection cases in Justice Courts first circulated on or about February 8, 2012, and as subsequently revised on March 7, 2012 (the "Proposed Rules"). Members of the TXCBA Executive Committee have had an opportunity to review the Proposed Rules and to speak with various members of the Task Force regarding the legal basis and practical effect of these rules.

The TXCBA believes that it is necessary to convey to the Task Force our extreme concern over these rules and their effect, should they be enacted. By separate document, the TXCBA will address the specifics of each rule and provide to the Task Force its recommendations.

The critique which follows is based upon four tenets. It is the position of the TXCBA that the Proposed Rules:

- cannot be implemented by the justice courts;
- do not treat all parties equally;
- run contrary to the clear legislative mandate; and
- are contrary to established Texas law.

The details of our concerns follow:



Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The Proposed Rules Cannot Be Implemented

The Proposed Rules are so unwieldy that they cannot be implemented in a fair or efficient manner. The TXCBA proposed an alternative procedure that conformed to current case law and where creditors could elect to put on a *prima facie* showing in exchange for consistency amongst the hundreds of justice courts in considering the evidence and rendering default judgments. The Proposed Rules have turned that on its head; it has made mandatory a system whereby *justice court clerks* are the arbiters of justice, by denying creditors even an opportunity to have citation issued unless a laundry list of requirements and evidence is met to the clerk's or the judge's satisfaction.

The Proposed Rules also would likely not survive a constitutional challenge. The Proposed Rules prohibit claims from being heard unless a creditor's entire case is proven up front, and effectively require third-party testimony for assignees before a plaintiff may even present its claim. No other state has such a requirement, because it bars a class of claimant access to the courts for no reason. Gone are confessions of judgment, friendly suits, and the typical result of a justice court suit: a settlement beneficial to both creditor and consumer, whereby the creditor takes less than is owed and the consumer cleans up his or her credit.

The practical effect of these rules would be to reduce case filings in the Justice Courts by somewhere between 50,000 and 100,000 cases statewide per year, with the commensurate loss of filing fees to each county and court. This is because the burdens placed upon the claimants by Rule 586, Plaintiff's Pleadings, would exceed either their ability or willingness to comply.

The Proposed Rules Do Not Treat All Parties Equally

Many of the pleading requirements and all of the documentation requirements included in the Rule 586 are not necessary to state a claim. The Proposed Rules shift the plaintiff's burden from that of articulating the legal and factual basis of a claim, to actually proving its case at the time of suit; and yet they go even further, to demand that a plaintiff defeat the defendant's affirmative defenses, verified denials, and possible counterclaims . . . ***all before the defendant is actually served.***

In short, the Proposed Rules scrap the adversarial system of justice that has been present in Texas and in the United States since their founding, in favor of a stacked deck against creditors from the very start. The Proposed Rules represent a "Main Street" versus "Wall Street" bias that is inappropriate in judicial rules, and inaccurately paints all creditors with the same brush. The truth is that creditors would no longer be equal under the law with other parties. While any other party in justice court could allege a fact and, if not denied, rely upon the court to accept the allegation as true (excluding damages), the Proposed Rules would effectively refuse to believe creditors on any fact issue unless evidence is produced.

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

Both the Federal Trade Commission and the Texas Attorney General's Office have each reviewed the issue of pleading requirements in debt collection cases. (See Exhibits 1 and 2, attached). Their conclusions were remarkable similar to the TXCBA's proposal and radically different than the Proposed Rules. Given that these two organizations each exist, in part, to protect the consumer, it is clear that the Task Force has created rules that seek to accomplish something more: to create an environment favorable to a defendant in a creditor lawsuit. While such a scheme may be a politically popular amongst some, it is not justice. The TXCBA believes that justice lies in creating rules that allow for claims to be heard and all parties to settle their claims fairly and equitably if possible.

The Proposed Rules Run Contrary to the Clear Legislative Mandate

As described by Texas Supreme Court Justice Thomas R. Phillips (Ret.), the current efforts by both the legislature and the judiciary seek to make the courts more efficient, more accountable, and the outcome more certain.

Texas Government Code Sec. 27.060 establishes these objectives. The statue mandates that the Texas Supreme Court develop rules of civil procedure ***"to ensure the fair, expeditious, and inexpensive resolution of small claims cases."***[1] And while the statute specifically provides for the creation of a unique set of procedural rules for credit grantor and assigned debt claims ("Debt Collection Cases"), it retains the overall expectation that ***all justice court rules***:

> (1) not require that a party be represented by counsel;
>
> (2) not be so complex that a reasonable person without legal training would have difficulty understanding or applying the rules; or
>
> (3) not require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied. [11]

Many of the Proposed Rules are so complex that a reasonable person, acting on behalf of a plaintiff *or* defendant, could not apply them. Any small plaintiff, whether the original creditor or an assignee, attempting to apply Rule 586 would almost certainly fail, rendering their claim's resolution unfair, not expeditious, and expensive. Additionally, it is absurd that the Proposed Rules essentially enshrines a particular (and incorrect) view of evidentiary law under the guise of doing away with the application of the Texas Rules of Evidence.

The legislative mandate was to make a simple system of justice that anyone could use. The Task Force has done the opposite; it has decided to impose complex and expensive rules upon creditors. Respectfully, the TXCBA submits that a simple system of justice must apply through ***all*** Justice Court Rules, not just through some; and to ***all*** parties, not just to defendants.

---

[1] Sec. 27.060(d).

Promoting Industry Professionalism
Texas Creditor's Bar Association
P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The Proposed Rules are Contrary to Established Texas Law

The issues taken up in this section pertain to the requirement in the Proposed Rules that an assignee must file an affidavit from the original issuer before the justice court can issue a citation.

The Proposed Rules seem to be directed at the hearsay nature of an assignee's affidavit. It is, of course, hearsay, just as all business records affidavits, regardless of their source, are technically hearsay. Any affiant testifying to any business records has no personal knowledge of the claim other than that which he gleaned from a review of the company's records. Yet the laws of our country and our state have determined that their reliability is such that an *exception* to hearsay is warranted for such testimony and documentation. The only remaining issue, then, is whether there is something in an assignee's affidavit testimony to justice court that changes this time-honored rule.

First, the Texas Supreme Court has squarely held that in the absence of an objection, a court *must* admit and consider the testimony. In *Texas Commerce Bank v. New*, 3 S.W.3d 515 (Tex. 1999), the Texas Supreme Court held that an affidavit may be offered as evidence at a default judgment hearing and that the testimony therein, though hearsay, is admissible to prove-up a claim. The *New* decision was important for a number of reasons: (1) it confirmed that when proving-up a default judgment, the court may rely upon affidavit testimony, (2) it held that the affiant's affidavit may be based upon a review of the businesses records, and not be solely limited to the affiant's personal knowledge, and (3) it reminded the courts that hearsay testimony is admissible as evidence in Texas, absent an objection, and that it is an abuse of discretion to exclude such evidence in a unopposed prove-up hearing. As noted by the Court,

> "Rule 802 says, 'Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.' Nothing in rule 802 limits its application to contested hearings. The rule is not ambiguous and requires no explication."

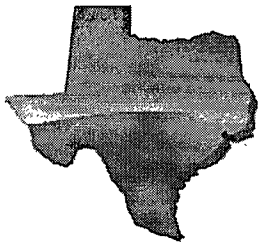
Id. at 517. The Court's rather curt treatment of any argument to the contrary is instructive and should be heeded by the Task Force.

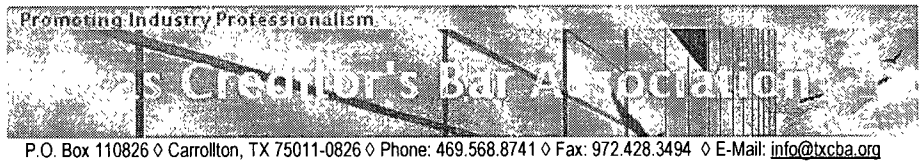
Second the information about which the assignee is testifying is derived from information obtained from the predecessor-in-interest as the result of a business transaction wherein the information was material to the transaction. As such, this information qualifies for a hearsay exception under Tex.R.Evid. Rule 803(15). [1] Supporting this is the fact that *eight* Texas District Courts of Appeal have held that the records of a third-party may be adopted and incorporated by a successor-in-interest or assignee, ***thereby becoming the business records of the current claim holder*** and thus qualifying as an exception to hearsay rule under Tex.R.Evid. Rule 803(6). [2, 3] As such,

---

[1] **Tex.R.Evid. 803(15) Statements in Documents Affecting an Interest in Property.**

A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the





P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

an affiant's testimony satisfies multiple exceptions to the hearsay rule and would be admissible even over objection.

Third, *Simien* [4] and its brethren opinions from several other appellate courts require the admission of third-party derived business records ***over the defendant's objection, and specifically in the context of collection cases***. Over the past two years, every court considering the *Simien* rule has adopted it, recognizing that due to the high level of federal regulation over major lenders, the documents referenced in a collection case are inherently reliable and admissible, noting the strong possibility of business failure and heavy criminal and civil penalties if it were otherwise.

The Proposed Rules, in short, go against the great weight of Texas jurisprudence in numerous ways: in excluding unobjected-to testimony, regardless of its nature; in singling out one class of plaintiff for heighted evidentiary requirements; and in disregarding the learned opinions of numerous courts who have recently considered these issues. The TXCBA respectfully suggests a reworking of the Proposed Rules to more accurately reflect Texas law.

Conclusion

It is the belief of the TXCBA that the current effort of the Task Force is misguided on the above issues and that there is no substantive basis for several of the rules that are being proposed. The effect of the Proposed Rules are devastating to the clients we represent, will be devastating to the courts we practice in, and are ruinous to the concept of simple and fair justice.

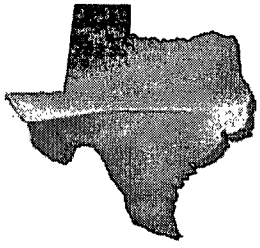
---

document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

[2] **Tex.R.Evid. 803(6) Records of Regularly Conducted Activity.**
A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether conducted for profit or not.

[3] See Exhibit 3 for article regarding business records obtained from third-party.

[4] *Simien v Unifund CCR Partners*, 321 S.W.3d 235 (Tex.App--Houston[1st] 2010).



Promoting Industry Professionalism

Texas Creditor's Bar Association

P.O. Box 110826 ◊ Carrollton, TX 75011-0826 ◊ Phone: 469.568.8741 ◊ Fax: 972.428.3494 ◊ E-Mail: info@txcba.org

The TXCBA continues to be willing to work with the Task Force in an effort to develop a set of rules which it and its members can support. In addition, there are many other organizations that would be affected by the Proposed Rules, such as the Texas Bankers Association, the Texas Process Servers Association, the National Association of Retail Collection Attorneys, the International Association Credit and Collection Professionals and the Debt Buyers Association International. We are in the process of reaching out to these organizations so that we can, with a common voice, work with the Task Force. But this must be said: if the Proposed Rules stand as they are currently written, then the TXCBA will have no choice but to actively oppose them.

As always, the Texas Creditors Bar Association appreciates the opportunity to work with the Task Force, and eagerly looks forward to a fair set of rules governing our practice.

We remain respectfully yours,

Michael J. Scott, Chair
Executive Committee
Texas Creditor's Bar Association

SUMMARY OF RECOMMENDED REVISIONS
TEXAS CREDITOR'S BAR ASSOCIATION

March 14, 2012

Rule	Topic	Scope	Comment
503	**Applicability to Other Rules**	**Clarifies and Expands Rule**	**Enlarges the proposed rule to include the Texas Rules of Civil Procedure discovery rules and ensures proper integration with the remainder of those rules.** [1]
510	**Venue**	**Eliminates Rule**	**Venue is established by statute, not by rule.** [2]
512	**Service**	**Clarifies and Expands Rule**	**Expands rule to allow for service methods available under federal law; specifically, delivery to a person of competent age at the residence of the defendant.** [3]
513	**Alternative Service**	**Clarifies and Expands Rule**	**Allows private process servers to request alternative service and allows service by posting of the citation.**
514	**Service of Papers other than Citation**	**Clarifies and Expands Rule**	**Allows service by first class mail** [4] **and expands the circumstances when email may be utilized to include its first use by another party.**
516	Answer Filed	Clarifies Rule	No substantive change to rule
517	**General Denial**	**Clarifies and Expands Rule**	**Requires defendant to plead specific defenses and payment; but there is no verification requirement and there is no verified plea**
518	Counterclaim	Clarifies Rule	No substantive change to rule
521	Unclear Filings	Clarifies Rule	No substantive change to rule
525	**If Defendant Fails to Appear**	**Revises Rule**	**Allows the court discretion in holding default judgment hearing when Rule 586 not fully satisfied. Removes dismissal with prejudice prior to trial or dismissal hearing.**
526	**No Dispute of Facts**	**Revises Rule**	**Allows for summary judgments, but limits their use to uncontested matters** [5]
527	**Setting**	**Clarifies and Expands Rule**	**Requires 14 day notice of trial when case is reset**

Rule has been changed, but <u>IT IS NOT</u> significantly different from Task Force Proposal
Rule has been changed and <u>IT IS</u> significantly different from Task Force Proposal

Rule	Topic	Scope	Comment
531a	Trial Setting	Clarifies Rule	No substantive change to rule
555	Setting Aside Default Judgments and Dismissals	Clarifies Rule	No substantive change to rule
560	**Appeal Bond**	**Clarifies Rule**	**Removes plaintiff's bond requirement when appealing a take-nothing judgment [6]**
581	**Definitions**	**Eliminates Rule**	**The definitions are not otherwise referenced in the rules and are unnecessary**
582	**Scope**	**Revises Rule**	**Adopts language of the Tex.Gov.Code 27.060**
583	**Construction of Rules**	**Revises Rule**	**Clarifies uniformity of Rules**
584	Applicability of Rules of Procedure for Justice Courts	Clarifies Rule	No substantive change to rule
585	**Removal to County or District Court**	**Clarified and Revises Rule**	**Eliminates use of paupers affidavit to satisfy filing fees when case is removed**
586	**Plaintiff's Pleading**	**Revises Rule**	**Brings rule into conformity with Texas law and historical pleading standards while addressing issues raised by the FTC and the Texas Attorney General [7]**
587	**Service**	**Eliminates Rule**	**Revisions to Rule 512 render this rule unnecessary**
New	**Discovery in Collection Cases**	**Proposed Rule**	**Establishes a disclosure system for handling pre-trial exchange of information and documents**
New	**Duty of Parties to Develop Case**	**Proposed Rule**	**Supercedes Rule 507**
New	**Mediation**	**Proposed Rule**	**Controls cost of mediation is these cases to ensure that costs are not disproportionate to the amount of the claim and that mediation is beneficial to the parties**

Rule has been changed, but <u>IT IS NOT</u> significantly different from Task Force Proposal
Rule has been changed and <u>IT IS</u> significantly different from Task Force Proposal

Endnotes:

1. *Tex.Gov.Code* Section 27.060(d)(3) provides that "[t]he rules adopted by the supreme court may not . . . require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied except to the extent the justice of the peace hearing the case determines that the rules must be followed to ensure that the proceeding is fair to all parties.

2. *Tex.Civ.Prac.&Rem.Code* Chapter 15 establishes the rules pertaining to venue. These cannot be superceded by rule.

3. *Fed.R.Civ.Proc.Rule* 4(e) provides that "an individual . . . may be served . . . by . . (2) doing any of the following:
   (a) delivering a copy of the summons and of the complaint to the individual personally;
   (b) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
   (c) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

4. Service by First Class Mail is recognized as an acceptable method of service in all federal court cases and in a significant number of individual states as well. *See Fed.R.Civ.Proc.* Rule 4.

5. *Tex.Gov.Code* Section 27.060(a) requires that the rules of civil procedure promulgated by the supreme court should "***ensure the fair, expeditious, and inexpensive resolution of small claims cases***." Summary judgment is most often utilized as a tactical annoyance, than as a true tool for the resolution of a legal matter. As such, its availability should be eliminated or greatly reduced. If a party wishes to move a case to trial, they need only ask.

6. If the plaintiff loses a case, they should not be required to post a $500 bond when there is no judgment to satisfy and there are no costs of prosecution which will not be immediately borne by the plaintiff in paying the filing fee to the county or district court. As such, a $500 bond is unnecessary, and certainly not one payable to the defendant.

7. See letter from Texas Creditor's Bar Association to Justice Court Rules Task Force dated March 14, 2012.

Rule has been changed, but <u>IT IS NOT</u> significantly different from Task Force Proposal
Rule has been changed and <u>IT IS</u> significantly different from Task Force Proposal

RULE 503. APPLICABILITY OF OTHER RULES

(a) The pre-judgment discovery rules in the Texas Rules of Civil Procedure do not apply to justice courts unless, after notice and hearing, the judge orders that a rule must be followed to ensure that the proceedings are fair to all parties. The enforcement of a judgment shall not be affected by any rule in this chapter.

(b) The Texas Rules of Evidence do not apply to justice courts unless, after notice and hearing, the judge orders that a rule must be followed to ensure that the proceedings are fair to all parties.

(c) Although the Texas Rules of Evidence do not apply to justice courts, the judge may not disregard evidence that would be admissible under the Texas Rules of Evidence.

RATIONALE: The Rule as written would allow a justice court to change the rules relating to the admissibility of evidence at any point in the trial process, including in the middle of trial. The proposed changes are not significantly different, but would require notice and hearing before a judge applies evidentiary rules to a particular case and would prevent a judge from ignoring what would otherwise be admissible evidence.

RULE 510. VENUE

[This Proposed Rule conflicts with the governing venue statute.]

RATIONALE: The Task Force's proposed rule conflicts with Texas Civil Practice & Remedies Code Chapter 15. While the TXCBA feels that the justice courts should be empowered to freely transfer venue as appropriate, a rule prohibiting filing would be contrary to the statute and would confuse unsophisticated parties.

RULE 512. SERVICE

(a) The plaintiff is responsible for serving the defendant with the citation, a copy of the petition, and the documents that are a part of the petition.

(b) To obtain service, the plaintiff may:

(i) Request the sheriff or constable to personally serve the defendant. The plaintiff must pay the service fee or provide a sworn statement why plaintiff is unable to pay;

(ii) Request the court to serve the defendant by registered or certified mail, return receipt requested, restricted delivery requested. The plaintiff must pay the actual cost of the certified or registered mail;

(iii) Employ a private process server licensed by the Supreme Court of Texas to serve the defendant by personal delivery or by registered or certified mail, return receipt requested.

(iv) File a written request with the court to allow any other uninterested party who is at least 18 years old to serve the defendant by personal delivery or by registered or certified mail, return receipt requested. If the court approves the request, the authorized person may serve the defendant in any of the above listed methods.

(c) Personal service is accomplished when a copy of the citation, petition and the documents that are a part of the petition are:

(i) Personally delivered to the defendant;

(ii) Left at the defendant's dwelling or usual place of abode with someone of suitable age and discretion who resides there, and a copy is mailed by first class mail to the defendant at that address; or

(iii) Delivered to an agent authorized by appointment or law to receive service of process.

(d) Neither the plaintiff nor any person with an interest in the case may serve the citation.

(e) If service is by registered or certified mail, return receipt requested, in order for the service to be valid, the defendant's signature must be present acknowledging receipt for the service.

RATIONALE: The rule is enlarged to include delivery to a person of suitable age at the defendant's home. The language of the rule is taken directly from *Fed.R.Civ.Proc. 4(e)(2)(B).*

RULE 513. ALTERNATIVE SERVICE

(a) If the methods under Rule 512 are insufficient to accomplish service, the plaintiff constable, sheriff or private process server licensed by the Texas Supreme Court may request alternative service. This motion must include a sworn statement detailing the methods attempted. The plaintiff, constable, sheriff or licensed private process server may request that the citation, petition and documents that are part of the petition be:

(i) Mailed first class mail to the defendant,

(ii) Attached to a door or gate at the defendant's residence or other place where the defendant can probably be found, or

(iii) Any other method that is reasonably likely to notify the defendant of the suit.

(b) The judge shall approve the method requested if it is reasonably likely to notify the defendant of the suit. If denied, a different method may be requested.

RATIONALE: The Texas Supreme Court licenses and regulates private process servers. The rule should be amended to provide that licensed process servers should also be allowed to move for alternative service.

Alternative service should be allowed by first class mail for small claims cases, so long as said service is attested to by a sheriff, constable, or licensed process server. This process exists in other states. *See Ohio Civ.R. 4.6.*

RULE 515. SERVICE OF PAPERS OTHER THAN CITATION

(a) Except as expressly provided in these rules, every pleading, notice, or motion that these rules require be served, other than the citation, may be served by a party, an attorney or record, a sheriff or constable, or any other person competent to testify, and may be served by:

(i) Delivering a copy to the party to be served, or the party's authorized agent or attorney;

(ii) Mailing a copy by first class mail, to the party's last known address. Service by mail is complete upon depositing the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service;

(iii) Faxing a copy to the recipient's current fax number. Service by fax after 5:00 p.m., local time of the recipient, is deemed to be served the following day;

(iv) Emailing a copy to an email address expressly provided by the party for such service or utilized by the party for communication regarding the case. Service by email after 5:00 p.m., local time of the recipient, is deemed to be served the following day; or

(v) Any manner that the court may direct.

(b) Service by fax, mail, or email adds three days to the time that a party has to respond.

(c) The party or attorney of record shall sign a statement explaining how all filings were served or certify service in open court. A certificate by a party or an attorney of record, the officer's return, or the sworn statement of any person showing service of a notice, pleading, plea, motion, or other document is presumptive evidence of service.

(d) A party to whom service is directed may offer proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the required action, or grant such other just relief.

RATIONALE: Service by first class U.S. mail is recognized as an acceptable method of service in all federal courts and in a significant number of individual states as well. *See Fed.R.Civ.P. 5(b)(2)(C).*

RULE 516. ANSWER FILED

(a) Defendant must file with the court a written answer to a lawsuit by the end of the 14th day after the day of on which the defendant was served with the citation, and must send a copy of the answer to the plaintiff as provided by Rule 515.

(b) If defendant is served by publication, the time in which the defendant has to answer the lawsuit is 42 days, instead of 14 days.

(c) If defendant's answer date falls on a weekend or a legal holiday, or if the court in which the answer is due closes before 5:00 p.m. on the answer day, the answer is due on the next business day.

(d) Defendant's appearance shall be noted on the docket, and the case may be set for trial by the court.

RATIONALE: No substantive changes have been proposed for this rule.

RULE 517. GENERAL DENIAL

(a) Defendant's general denial of the suit filed is sufficient to constitute an answer and appearance, but does not raise any specific defense at trial.

(b) If defendant wishes to raise a specific defense to plaintiff's claim or to assert that a payment has been made, the defendant must provide sufficient detail to allow plaintiff to understand the basis of the defense or claim of payment.

RATIONALE: The Task Force has eliminated all forms of discovery for cases, and also seeks to eliminate all forms of disclosure by a defendant. To avoid surprise, affirmative defenses should be disclosed in the answer. Otherwise, a claimant will not have sufficient knowledge to request limited discovery in order to investigate a contested issue.

RULE 518. COUNTERCLAIM

A defendant who seeks to recover money from a plaintiff must file a counterclaim. The counterclaim must include all information in the counter petition that is required under Rule 509, and the defendant must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation need not be served on the plaintiff, but the defendant must serve the counterclaim on all other parties, as provided by Rule 515.

RATIONALE: There are no substantive changes proposed to this rule.

RULE 521. UNCLEAR FILINGS

A party may file a motion court asking that another party clarify any pleading filed with the court. The court shall determine if the pleadings are sufficient to place all parties on notice of the issue and scope of the suit. If the pleading is insufficient, the court shall order the party to amend the pleading, and set a date by which to make the corrections. If the party refuses, the pleading may be stricken.

RATIONALE: There are no substantive changes proposed to this rule.

RULE 525. IF DEFENDANT FAILS TO APPEAR

If the defendant does not file an answer by the date listed in Rule 516, the judge shall proceed in the following manner:

(a) If the plaintiff's claim is based on a written instrument signed by both parties, a copy of which is on file, along with plaintiff's affidavit proving the copy's authenticity and the amount owed after all payments, credits and offsets have been applied, the judge must enter judgment for plaintiff, as sought, without a hearing. Plaintiff's attorney may submit affidavits supporting reasonable and necessary attorney's fees, which the court must consider.

(b) If the suit is a Debt Claim case that is filed in accordance with Rule 586 and a copy of the charge-off statement along with a sworn statement from the plaintiff have been filed, the judge must enter judgment for plaintiff, as sought, without a hearing. Plaintiff's attorney may submit affidavits supporting reasonable and necessary attorney's fees, which the court must consider.

(c) If a default judgment cannot be entered as described in paragraph (a) or (b), the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove the right to the damages sought. If the plaintiff proves the right to judgment, the judge must grant judgment for the plaintiff in the amounts proven. If plaintiff does not prove the right to judgment, the case shall be set for trial.

(d) Justices are encouraged to allow plaintiffs to appear by telephonic or electronic communication systems.

(e) If the defendant files an answer before a default judgment is signed, the judge may not enter a default judgment and the case shall be set for trial.

RATIONALE: The proposed changes allows the court discretion in holding a default judgment hearing when Rule 586 is not fully satisfied as determined by the court. Otherwise, a plaintiff has no recourse to request reconsideration of a court or clerk's determination of compliance with the rule.

The proposed changes also remove the concept of dismissal with prejudice prior to the trial or dismissal hearing.

RULE 526. NO DISPUTE OF FACTS

(a) If defendant admits the debt, plaintiff may file a request for entry of judgment and must serve a copy of the request on all parties. If the defendant does not dispute plaintiff's request within 21 days, the court may proceed to review plaintiff's request and the answer filed by the defendant, and may enter a judgment if it appears that there is not disagreement between the parties as to defendant's liability.

(b) A party may file a motion for summary judgment asking to court to enter judgment on its behalf and setting forth the evidence of its claim or defense. The opposing party has 21 days to submit a written statement disputing the evidence or otherwise showing why the motion should be denied. If the court does not receive a response to the motion, it must then consider the motion and the sufficiency of the supporting evidence and may enter judgment if the motion proves the relief that is sought; otherwise, the motion shall be denied.

(c) A case brought under this chapter may not be disposed of through a no-evidence motion for summary judgment.

RATIONALE: Tex. Gov't Code Sec. 27.060(a) requires that the changes to the rules should "ensure the fair, expeditious, and inexpensive resolution of small claims cases." Summary judgment is most often utilized in justice court as a tactical annoyance, rather than as a true tool for the resolution of a legal matter. As such, its availability should be greatly reduced and its resolution simplified. If a party wishes to obtain a resolution in a case, they may request an expedited trial setting.

RULE 527. SETTING

After defendant answers, the case shall be set on a pretrial or trial docket, at the judge's discretion. The date, time, and place of the setting must be sent by the court to all parties at their addresses of record, and must be mailed or otherwise served at least 45 days before the setting date, unless the judge determines that an earlier setting is required in the interests of justice. All subsequent settings must be sent to all parties at their addresses of record at least 14 days prior to the trial date, unless all parties agree to shorter notice.

RATIONALE: A minimum notice period should be required for trial resettings; otherwise, parties may not be adequately notified or prepared for trial, or even be available for the time and date of the reset.

RULE 528. CONTINUANCE

The judge, for good cause shown, may continue any setting.

RATIONALE: No substantive changes have been proposed to this rule.

RULE 531a. TRIAL SETTING

On the day and time that the case is set for trial, the judge shall call the cases in their order. If the plaintiff does not appear when the case is called, the judge may postpone the case or dismiss the suit, without prejudice. If the defendant does not appear when the case is called, the judge may postpone the case or take evidence. If the judge proceeds and takes evidence and plaintiff proves the case, judgment must be awarded in the amounts proven; otherwise, a take-nothing judgment must be rendered in favor of defendant.

RATIONALE: No substantive changes have been proposed to this rule.

RULE 555. SETTING ASIDE DEFAULT JUDGMENTS AND DISMISSALS

(a) A plaintiff whose case is dismissed may move to reinstate the case within ten days of the dismissal. The plaintiff must serve all parties with a copy of the motion by the next business day using a method approved under Rule 515. If plaintiff shows good cause why the case should be reinstated, the court may reinstate the case.

(b) A defendant against whom a default judgment is granted may file a motion, seeking to set aside the judgment, within ten days of the date of the judgment. The defendant must serve all other parties with a copy of the motion by the next business day, using a method approved under Rule 515. If the defendant shows good cause why the judgment should be set aside, the court may set aside the judgment and proceed with a trial setting.

(c) If the court denies a motion for new trial, or motion to reinstate, the party making the motion is entitled to appeal that court's dismissal or judgment as provided by Section 6, and will receive a new trial in the receiving court if the appeal is properly perfected.

RATIONALE: No substantive changes have been proposed to this rule.

RULE 560. APPEAL BOND

(a) Plaintiff may appeal the judgment by filing a notice of appeal, personally or by plaintiff's attorney, within 20 days after the judgment date or any motion for new trial is denied.

(b) Defendant may appeal the judgment by filing a notice of appeal and a bond, personally or by defendant's attorney, within 20 days after the judgment is rendered The bond must equal twice the total judgment amount, must be signed by two sureties approved by the judge, must be payable to the plaintiff, and must include the condition that the defendant will prosecute the appeal to effect and pay the judgment that may be granted against him on appeal.

(c) The appealing party must serve a copy of the notice of appealand bond on all parties. The court hearing the appeal may not enter an order of default judgment without proof that the notice of appeal was served.

(d) The appeal is perfected when the notice and bond, if applicable, have been filed. All parties must make their appearances at the next term of the receiving court.

(e) The appeal may not be dismissed for procedural defects or irregularities, either as to form or substance, without allowing appellant five days after notice to correct or amend the pleadings. This notice must be given by the court to which the cause has been appealed.

RATIONALE: The proposed change eliminates the bond for the appeal of a take-nothing judgment. Given the extreme reduction in available discovery and dispositive motions, a plaintiff should not be required to post a $500 bond for appeal. There is no judgment to satisfy and no costs of prosecution which will not be immediately borne by the plaintiff in paying the filing fee to the county or district court.

RULE 581. DEFINITIONS

[TXCBA recommends that this rule be deleted]

RATIONALE: The definitions section includes numerous terms that are not used in the rules, and do not comport with the statute's goal of crafting rules that are understandable by a lay person.

RULE 582. SCOPE

(a) This chapter applies to:

(i) an assignee of a claim or other person seeking to sue on an assigned claim;
(ii) a person primarily engaged in the business of lending money at interest; or
(iii) a collection agency or collection agent,

to the extent that the claim pertains to monies lent to or advanced on behalf of the defendant.

(b) The court has authority to remove a case from the scope of this chapter if it determines this chapter does not apply.

(c) The court may require parties to adhere to this chapter if it determines that this chapter applies.

RATIONALE: The proposed changes adopt the language of Texas Government Code Sec. 27.060.

RULE 583. CONSTRUCTION OF RULES

The rules in this chapter should be interpreted in such a manner as to promote judicial efficiency, enhance uniformity among justice courts, and ensure due process for all parties.

RATIONALE: The second sentence proposed by the Task Force is prejudicial and would seem to be a blanket rule to support judges in inferring that individuals, as opposed to corporations, are entitled to "more" justice. In the hands of judges who are not necessarily trained attorneys, such a rule could lead to substantial injustice.

RULE 584. APPLICABILITY OF RULES OF PROCEDURE FOR JUSTICE COURTS

(a) Except as outlined in this chapter, the rules of civil procedure promulgated by the Texas Supreme Court for justice courts shall apply.

(b) Upon request, a justice of the peace hearing a cause of action to which this chapter applies may, determine that the Texas Rules of Evidence and Texas Rules of Civil Procedure should be followed to ensure that the proceeding is fair to all parties.

RATIONALE: No substantive changes have been proposed to this rule.

RULE 585. REMOVAL TO COUNTY OR DISTRICT COURT

(a) If either party in a suit to which this chapter applies wishes to remove the suit to a county or district Court with concurrent jurisdiction, that party may do so by filing a motion for removal.

(b) Removal is not automatic; the court has discretion to grant or deny the motion. The court may consider whether:

(i) The parties are represented by counsel;
(ii) The amount in controversy; and
(iii) If justice would be served by allowing the case to be adjudicated in a higher court.

(c) If the motion for removal is granted:

(i) The court shall send its court file to the court to which the suit is removed; and
(ii) The moving party must pay the filing fee for the higher court.

(d) A defendant seeking removal under this rule is not allowed to avoid the payment of the filing fee by submitting an affidavit of indigency in accordance with Texas Rule of Civil Procedure 145.

RATIONALE: It is outside the purview of the Task Force to allow a pauper's affidavit to waive filing fees for removed cases. Such a modification should only be considered, if at all, by the county and district courts.

RULE 586. PLAINTIFF'S PLEADINGS

(a) The petition of a suit filed under this chapter must contain:
- (i) Each defendant's name and address;
- (ii) The name of the original creditor, if different from plaintiff;
- (iii) The original account number, which may be masked;
- (iv) The account's date of origination/issuance;
- (v) The charge-off date and amount, if applicable to the claim;
- (vi) If the plaintiff seeks post-charge-off interest, whether the rate of interest is based on a contract or statutory rate, and the amount of post-charge-off interest claimed; and
- (vii) If the plaintiff is represented by an attorney, the attorney's name, address, and telephone number.

(b) A copy of a document evidencing the existence of the account may be incorporated into petition, for instance:
- (i) the contract;
- (ii) the promissory note;
- (iii) a charge-off statement; or
- (iv) other documents that prove the debt.

(c) Plaintiff's affidavit, attesting to the amount that is owed after all payments, offsets or credits due to the defendant have been applied, may be incorporated into the petition.

RATIONALE: The Task Force's proposed rule is a significant deviation from any state's practice and extant Texas case law. It is incomprehensible to the lay person and acts as an unconstitutional bar to access to the courts by creditors, by essentially requiring proof of an entire case before a citation will even be issued. The Texas Creditors Bar Association laid out the significant issues inherent in the rule in its letter to the Task Force dated March 14, 2012.

The TXCBA agrees that significant disclosure in a petition is a way to enhance disclosure of the relevant facts to a defendant; however, this rule essentially attempts to create a "rule of evidence", in direct contravention of the statute, which must be satisfied before a case may even be presented to the defendant. There is no mechanism for contesting a court's determination of whether the rule has been satisfied.

RULE 587. SERVICE ON DEFENDANT

[Eliminated]

RATIONALE: Revisions to proposed Rule 512 make this rule unnecessary.

RULE 5__. DISCOVERY IN DEBT COLLECTION CASES

(a) Within 30 days after the defendant has filed an answer, each party must serve a written notice on all other parties that identifies every person who has knowledge of facts that are relevant to the case and must provide a brief summary of those facts.

(b) If, at any time after the initial disclosure required by paragraph (a), an additional witness becomes known, or the information known to a previously identified witness should change, this information must be communicated to all parties as soon as practicable, and not fewer than 14 days before trial.

(c) A party that intends to offer the affidavit of a custodian of records need only provide such documents in compliance with paragraph (d). A custodian of records does not need to be identified under paragraph (a).

(d) As soon as is practicable, but not fewer than 14 days before trial, each party to the lawsuit must deliver to the other parties a copy of every document that they intend to use during the trial.

(e) ,After good cause is shown, the court may order discovery, to ensure that the proceeding is fair to all parties.

(f) This rule supercedes Rule 505.

RATIONALE: This new rule proposed by the TXCBA establishes a simple method to exchange witness and documentary evidence prior to the trial date. Because collection cases often revolve around documentary evidence, this will allow for the full disclosure of most issues in the absence of standard discovery.

Custodians of business records are inherently protected by the Texas Rules of Evidence from being used as pawns in litigation. Specifically, an affidavit which substantially conforms to Texas Rule of Evidence 902(10) "shall be sufficient." See Tex.R.Evid. 902(10)(b). Therefore, there is no particular purpose in disclosing the custodian's identity when the function of the custodian is simply the certification of the records, rather than the offering of testimony.

RULE 5___. DUTY OF THE PARTIES TO DEVELOP THEIR CASE

In a case brought under this chapter, it is the duty of the parties, rather than the judge, to develop the facts of the case.

RATIONALE: This rule would supersede proposed Rule 507. The TXCBA is concerned that the proposed rules attempt to create a continental system of "judge-directed" discovery and trial, as opposed to the time-honored American model of party-directed litigation. Such a dramatic shift is outside the purview of the Task Force and the statutorily-mandated changes.

RULE 5__. MEDIATION

(a) The judge may require the parties to participate in third-party mediation, provided that the costs incurred by any party does not exceed $50.

(b) A party may only be required to attend one mediation.

(c) The attorney for plaintiff in a Debt Collection case may serve as the corporate representative of the plaintiff at mediation.

RATIONALE: The statute requires the expeditious and inexpensive resolution of small claims cases. Many counties have established low-cost resolution through mediation, which should be encouraged, but there should be a rule capping the expense of alternative dispute resolution.

TXCBA Lay Article
On the Admissibility of Records Obtained from Third-Parties

Just in Case

A Review of Issues Facing the Legal Collection Industry

Admissibility of Third-Party Records

A Question and Answer Session

Michael J. Scott

In 2010, the Court of Appeals of Texas, First District, Houston, rendered its decision in *Simien v Unifund CCR Partners*, 321 S.W.3d 235 (Tex.App--Houston[1st] 2010). Whether the panel of justices considering the case understood the contrast in opinions, both legal and personal, that *Simien* has created is unclear. What is clear is that the admissibility of third-party records as the business records of the proponent, *a la Simien*, (Third-Party Records) is an issue that is challenging for both the courts and counsel.

Simien involved an affidavit offered by the representative of a debt purchaser to prove-up that party's claim. The court held that the admission of the affidavit over a hearsay objection was not an abuse of discretion. In so doing, it determined that the affidavit fell within an allowed exception to the hearsay rule under Tex.R.Evid. Rule 803(6) [1] because it met certain criteria. These criteria constitute a three-pronged test which has become the *Simien* standard. Specifically, for third-party records to be admissible as a proponent's own business records, the affiant must show that:

1) the documents are incorporated and kept in the course of the testifying witness's business;
2) the business typically relies upon the accuracy of the contents of the document; and
3) circumstances otherwise indicate the trustworthiness of the document.

Purpose

The purpose of this article is to show that *Simien* was not only correctly decided, but that it is:

1) consistent with a substantial line of legal authority;
2) consistent with the rulings in other Texas courts; and
3) becoming widely adopted.

[1] Going forward, the rules of evidence will be referred to by rule numbers only. Please note that the Texas Rules of Evidence are patterned after the Federal Rules of Evidence.

Presentation

The argument goes as follows:

Q-01: Is there any legal basis for admitting the documents of a third-party as a proponent's own business records?

A-01: Not only yes, but heck yes. As the Rules of Evidence were formalized in their current form, the issue of the interplay between the hearsay exception afforded by Rule 803(6) and Third-Party Records came to the forefront. Substantially all United States Circuit Courts of Appeal have considered the issue and have ruled that documents furnished originally from a third-party source but kept in the regular course of business and relied upon by the proponent of that record may be properly admitted under 803(6).[2]

---

[2] The following cases hold that Rule 803(6) does not require that a document actually be prepared by the business entity proffering the document. Rather, the cases stress two factors which are indicative of reliability and would allow an incorporated document to be admitted based upon the foundational testimony of a witness with first-hand knowledge of the record keeping procedures *of the offering business*, even though that business did not actually prepare the document. These two factors are:

1) that the incorporating business rely upon the accuracy of the document incorporated, and

2) that there are other circumstances indicating the trustworthiness of the document.

Case Summary

Fed. Cir.	*Air Land Forwarders, Inc. v. US*, 172 F. 3d 1338 (Fed. Cir. 1999) (Loss estimates produced by third party estimators were "business records" of the military . . . both reliance and additional assurances of credibility to be present in that the repair estimates at issue were clearly relied upon by the military during the claims adjudication process and the military considered the entire record, third-party repair estimates, in making its decision on the proper amount of compensation to be paid to the service member.)
1st Cir.	*United States v. Doe*, 960 F.2d 221, 223 (1st Cir.1992) (invoice properly admitted even though it was previously the record of another company)
2nd Cir.	*United States v. Jakobetz*, 955 F.2d 786 (2d Cir.1992), the Second Circuit also adopted this application of the business records exception in admitting into evidence toll receipts that had been incorporated into the business records of a construction company. The court stated: Rule 803(6) allows business records to be admitted "if witnesses testify that the records are integrated into a company's records and relied upon in its day to day operations." *Matter of Ollag Constr. Equip. Corp.*, 665 F.2d 43, 46 (2d Cir. 1981). Even if the document is originally created by another entity, its creator need not testify when the document has been incorporated into the business records of the testifying entity.

Q-02: Why do so many of these Federal cases involve the United States as a party?

A-02: When the United States is a party to litigation, the case often involves criminal conduct. The import of this fact is that not only are these federal courts of appeal prepared to consider Third-Party Records, but they are willing to deprive a person of his liberty (put him in jail) based upon this exception.

Q-03: Well, that's all fine and good, but what about Texas? What do Texas courts care about how the federal government construes its rules of evidence?

A-03: The Texas Rules of Evidence are patterned after the Federal Rules of Evidence, and thus cases that interpret the federal rules guide the application of the Texas rules unless the

---

	citing *United States v. Carranco*, 551 F.2d 1197, 1200 (10th Cir.1977).
3rd Cir.	*United States v. Sokolow*, 91 F.3d 396, 403 (3d Cir.1996) (explaining that business records exception still applies even though the records were derived from outside sources as long as there are other assurances of accuracy present)
5th Cir.	*United States v. Ullrich*, 580 F.2d 765, 771-72 (5th Cir.1978) (documents furnished originally from other sources but kept in the regular course of business and relied upon to confirm inventory were properly admitted under 803(6)).
9th Cir.	*United States v. Childs*, 5 F.3d 1328, 1334 (9th Cir.1993), the Court of Appeals for the Ninth Circuit held that documents prepared by third parties and integrated into the records of an auto dealership were properly admitted based on testimony that the documents were kept in the regular course of business and were relied upon by the dealership. The Ninth Circuit found the fact that the auto dealership relied upon the accuracy of the documents in its day-to-day business activities particularly relevant. *MRT Const., Inc. v. Hardrives*, 158 F.3d 478, 483 (9th Cir.1998) ("[R]ecords a business receives from others are admissible under Federal Rule of Evidence 803(6) when those records are kept in the regular course of business, relied upon by that business, and where that business has a substantial interest in the accuracy of the records.")
10th Cir.	*United States v. Hines*, 564 F.2d 925, 928 (10th Cir. 1977), cert. denied 434 U.S. 1022, 98 S.Ct. 748, 54 L.Ed.2d 770 (1978) ("The test of whether such records should be admitted rests upon their reliability. Here the test of reliability is met. Automobile manufacturers have a great interest in assuring that the VIN's on their products correspond with the appropriate invoices, for without careful, reliable identification procedures their business would greatly suffer or even fail.")
11th Cir.	*United States v. Parker*, 749 F.2d 628, 633 (11th Cir. 1984), also agreed that it is not necessary under Rule 803(6) that the records be prepared by the business that has custody of them and the fact that "the witness and his company had neither prepared the certificate nor had first-hand knowledge of the preparation does not contravene Rule 803(6)."

language of the rule clearly departs from its federal counterpart. [3] Also, the Texas Supreme Court says it is important. [4]

Q-04: Has any Texas criminal court adopted the Third-Party Records standard as the federal courts have?

A-04: Yes. There are at least two Texas criminal court decisions that have adopted the Third-Party Records exceptions applied by the federal courts. [5] [6]

Q-05: When was the first occasion where a Texas court recognized that Third-Party Records could be made part of a proponent's own business records?

A-05: Although *Harris v. State* (1993) is the first application of the Third-Party Records principle in the context of a criminal case, there are two decisions that pre-date *Harris*: *Cockrell v. Republic Mortg. Ins. Co.*,[7] rendered by Dallas Court of Appeals and *GT & MC, Inc. v. Tex.*

---

[3] *Cole v. State*, 839 S.W.2d 798, 801 (Tex.Crim.App.1990) ("To begin with, our Texas Rules of Criminal Evidence, and the Texas Rules of Civil Evidence for that matter, are patterned after the Federal Rules of Evidence, and cases interpreting federal rules should be consulted for guidance as to their scope and applicability unless the Texas rule clearly departs from its federal counterpart.").

[4] *Guevara v. Ferrer*, 247 S.W.3d 662, 667 n.3 (Tex. 2007) ("Considering federal precedent as to evidentiary matters is appropriate.").

[5] *See Harris v State*, 846 S.W.2d 960 (Tex.App.-Houston [1st Dist.] 1993, pet. ref'd.) (Witness allowed to treat a certificate of origin from a car manufacturer as their business record, notwithstanding the fact that the witness was unaware of who created it, or if that that person had personal knowledge of the information contained within [adopting Tenth Circuit's analysis in *United States v. Hines*, holding that documents created by a third party incorporated into the regular course of the testifying witness's business are admissible under Federal Rule of Evidence 803(6]).

[6] *See Bell v State*, 176 S.W.3d 90 (Tex.App-Houston[1st] 2004) (Letters prepared by a third-party, and relied upon by company representative were admissible as that company's business record in a criminal proceeding where the company relied upon and incorporated the documents into its business practices. The court noted that there was an indication of trustworthiness based upon the company's use of the letters in meeting regulatory compliance).

[7] *Cockrell v. Republic Mortg. Ins. Co.*, 817 SW 2d 106 (Tex.App--Dallas 1991, no writ). (Republic pled that it was the owner and holder of the notes by virtue of an assignment from the notes' originator. Republic's affiant was allowed to testify over objection that in her capacity as claims manager, she was custodian of and familiar with the records relating to Republic's claim and

City Ref., Inc.,[8] rendered by the Houston [14th Dist] Court of Appeals. Both *Cockrell* and *GT & MC, Inc.* were key cases relied upon by the Houston [1st Dist] Court of Appeals in deciding *Simien*.

Q-06: What exactly is the issue that the federal courts are attempting to address when considering Third-Party Records?

A-06: Reliability of the records is the primary basis for admitting evidence under the business records exception. [9]

Q-07: Are the issues similar for Texas courts?

A-07: The short answer is yes. Reliability of Third-Party Records is central to any decision regarding whether these records should be admitted. Texas courts typically formalize the inquiry by describing those circumstances under which reliability can be presumed. They are:

1) Records of a third-party that have become another entity's primary record of the underlying transaction; [10]

---

that the claim for loss, the notice of intention to foreclose, and the loan histories on the notes were all provided by the predecessor, and that it is the regular course of business for Repulic to keep such records and to rely upon them in the conduct of its business.)

[8] *GT & MC, Inc. v. Tex. City Ref., Inc.*, 822 S.W.2d 252, 258 (Tex. App.-Houston [14th Dist.] 1991, writ denied). (Invoices for the movement and storage of oil, including inspection reports regarding the storage facility were admitted as the proponent's business records, as documents originated by third parties. The witness testified that the invoices were maintained by the plaintiff in the regular and normal course of its business. The court held that the documents "became buyer's primary record of information about the underlying transaction").

[9] *See Munoz v. Strahm Farms, Inc.*, 69 F.3d 501, 503 (Fed.Cir.1995).

[10] *See Garcia v. Dutcher Phipps Crane & Rigging Co.*, No. 08-00-00387-CV, 2002 WL 467932, at *1 (Tex.App.-El Paso March 28, 2002, pet. denied) (mem. op., not designated for publication); *see also GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex.App.-Houston [1st Dist.] 1991, writ denied) (invoices received from outside vendors were admissible upon testimony by custodian of records as to the procedure by which the invoices became the company's business records).

2) Records of a third-party where the accuracy of the information contained therein has been verified by the proponent of the record; [11] or

3) Records of a third-party that form the basis for ongoing transactions." [12]

Q-08: Which Texas courts have adopted some form of a Third-Party Records provision regarding Rule 803(6)?

A-08: Each of the following Appellate Districts has adopted, or applied the Third-Party Records provisions:

1) Beaumont; [13]
2) Corpus Christ; [14]
3) Dallas; [15]
4) El Paso; [16]

---

[11] *See Id.*; *see also Duncan Dev., Inc. v. Haney*, 634 S.W.2d 811, 812-13 (Tex.1982) (subcontractors' invoices became integral part of builder's records where builder's employees' regular responsibilities required verification of the subcontractor's performance and verification of the accuracy of the invoices).

[12] *See Abrego v Harvest Credit Management VII, LLC*, 2010 Tex. App. LEXIS 3117, at **7-8 (*citing Cockrell v. Republic Mortgage Ins. Co.*, 817 S.W.2d 106, 112 (Tex. App.-Dallas 1991, no writ)).

[13] *Nice v. Dodeka, L.L.C.*, No. 09-10-00014-CV, 2010 WL 4514174, at *6 (Tex. App.-Beaumont Nov. 10, 2010, no pet.) (mem. op., not designated for publication) (Debt Buyer's affidavit that alincluded (1) various credit card agreements; (2) documents indicating DB's purchase of the account; (3) monthly statements, (4) DB's demand letter; and (5) an Affidavit of Indebtedness and Assignment was admissible, though ultimately insufficient to prove pre-judgment interest because the affidavit lacked specificity as to how the amount was calculated.)

[14] *Abrego v Harvest Credit Management VII, LLC*, 2010 Tex. App. LEXIS 3117 (Tex.App–Corpus Christi 2010).

[15] *Cockrell v. Republic Mortg. Ins. Co.*, 136 S.W.3d 762 (Tex.App.-Dallas 2004, no pet.) (previously described).

[16] *Martinez v. Midland Credit Management, Inc.*, 250 SW 3d 481 (Tex.App-El Paso 2008, no pet.) (Court enunciated *Simien* standards, but determined that witness not qualified to testify as to the accuracy of the documents because he did not produce name of third party, his own full name, information of original acquisition, or any evidence of qualification to testify).

5) Fort Worth; [17]
6) Houston [1st Dist]; [18]
7) Houston [14th Dist.]; [19]
8) San Antonio. [20]

---

[17] *Fleming v Fannie Mae*, No. 02-09-00445-CV (Tex.App.-Fort Worth November 24, 2010) (mem. op., not designated for publication) (Affidavit of law firm paralegal allowed testify as to business records of client servicing company and non-judicial foreclosure of property.).

[18] *Harris v State*, 846 S.W.2d 960 (Tex.App.-Houston [1st Dist.] 1993, pet. ref'd.); *Bell v State*, 176 S.W.3d 90 (Tex.App-Houston[1st] 2004) (previously described); *Simien v Unifund*, 321 S.W.3d 235 (Yex.App-Houston[1st] 2010) (previously described); *Monroe v. Unifund CCR Partners*, No. 01-09-00101-CV (Tex.App.-Houston[1st] May 13, 2010) (mem. op., not designated for publication) (Affidavit of debt purchaser contained assignment from credit grantor, Bill of Sale, monthly statements, and card member agreement. All documents were admitted over objection. The court noted that the same 16-digit account number was used for both the monthly account statements and the proponent's account that was acquired and is some evidence that the account was that of the defendants.); *Wood v Pharia*, No. 01-10-00579-CV (Tex.App.-Houston[1st] December 9, 2010) (mem. op., not designated for publication) (Debt purchaser's affidavit attesting to the assignment history of an account from credit grantor to debt purchaser and the amount owed, and attaching a Bill of Sale/Authorization for Assignment, a cardmember agreement, and numerous account statements was admitted as business records because the trustworthiness of the documents was supported by the fact that debt purchaser's predecessors in interest must keep careful records of their customer's debts or else their businesses would suffer or fail, and inaccurate records could result in civil or criminal penalties); and *Wande v Pharia*, No. 01-10-00481-CV (Tex.App.-Houston[1st] August 25, 2011) (mem. op., not designated for publication) (Debt purchaser's affidavit that (a) attached illegible portions of a card member agreement, (b) failed to include portions of the agreement document, (c) did not explain how the terms of the agreement supported the claimed balance, and (d) failed to offer testimony or evidence setting forth the calculations used to arrive at its claimed outstanding balance was (1) was admissible, (2) was insufficient to prove its claim, but (2) was sufficient to withstand a no-evidence summary judgment motion.).

[19] *GT & MC, Inc. v. Tex. City Ref., Inc.*, 822 S.W.2d 252, 258 (Tex. App.-Houston [14th Dist.] 1991, writ denied) (previously described); and *Jaramillo v. Portfolio Acquisitions, LLC*,No. 14-08-00939-CV, (Tex.App.-Houston[14th] March 30, 2010) (mem. op., not designated for publication) (Debt purchaser entered into evidence a credit card agreement and account statements that had been issued to the credit grantor (which reflected purchases and payments made on the account), and testified that the agreement provided by debt purchaser was the agreement controlling the account. Court found evidence insufficient to prove breach of contract, but sufficient to prove claims under Account Stated and Quantum Meruit theories of recovery).

[20] *Dodeka v Campos*, No. 04-11-00339-CV, 2002 Lexis 10003 (Tex.App.-San Antonio Dec. 21, 2011) (Debt purchaser offered into evidence an Affidavit of Assignment, Damages, and Business Records, which the trial court excluded. The court, in following *Simien*, held that the exclusion of

Q-09: Okay, but what about cases like *Martinez* [21] and *Riddle* [22] out of El Paso?

A-09: Cases are not just about the law; they are also about the facts. The analysis is sometimes confusing and can lead to what appear to be contradictory quotations. For example, in *Martinez*, the Court cited as authority all of the issues previously discussed. [23] In fact, *Martinez* was cited by *Simien* as authority in support of its decision. Only after the *Martinez* Court described the conditions under which third-party records could be admitted, did it then turn to the issue of the admissibility of the specific affidavit that was before it. The court determined that the proffered affidavit was insufficient to meet the requirements of the rule; observing that the affiant did not state the name of the third party, nor even the affiant's own full name for that matter, nor did he provide any information about the account's acquisition,

---

the evidence was an abuse of discretion).

[21] *Martinez v. Midland Credit Management, Inc.*, 250 SW 3d 481 (Tex.App-El Paso 2008, no pet.) (Court enunciated *Simien* standards, but determined that the witness was not qualified to testify as to the accuracy of the documents because he did not produce the name of predecessor, his own full name, information of original acquisition, or any evidence of qualification to testify.).

[22] *Riddle v. Unifund CCR Partners*, 298 S.W.3d 780, 782 (Tex.App.-El Paso 2009, no pet.).

[23] Specifically, in the paragraph immediately preceding the disallowance of Midland's affidavit, the Court stated:

> "Business records that have been created by one entity, but which have become another entity's primary record of the underlying transaction may be admissible pursuant to rule 803(6). *Garcia v. Dutcher Phipps Crane & Rigging Co.*, No. 08-00-00387-CV, 2002 WL 467932, at *1 (Tex.App.-El Paso March 28, 2002, pet. denied) (mem. op., not designated for publication); see also *GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex.App.-Houston [1st Dist.] 1991, writ denied) (invoices received from outside vendors were admissible upon testimony by custodian of records as to the procedure by which the invoices became the company's business records). In addition, a document can comprise the records of another business if the second business determines the accuracy of the information generated by the first business. Id.; *see also Duncan Dev., Inc. v. Haney*, 634 S.W.2d 811, 812-13 (Tex.1982) (subcontractors' invoices became integral part of builder's records where builder's employees' regular responsibilities required verification of the subcontractor's performance and verification of the accuracy of the invoices); *Cockrell v. Republic Mortgage Ins. Co.*, 817 S.W.2d 106, 112-13 (Tex. App.-Dallas 1991, no writ) (testimony by employees of mortgage insurer that documents received from a loan servicer were kept in the ordinary course of business and formed the basis for an insurance payment satisfied the requirements of rule 803(6))."

Martinez v. Midland Credit Management, Inc., 250 SW 3d at 485.

the way that the business records were relied upon by Midland, or provide any other indicium of trustworthiness that the court could rely upon in admitting the records.

Once a party fails to meet the requirements of Third-Party Records, the analysis of admissibility collapses to that of a traditional Rule 902(10) business records affidavit where the proponent is testifying as to its own records, or regarding records of a third-party where the proponent has knowledge as to how the records are created and maintained. For example, the exclusion of the testimony in *Riddle* was warranted because the affiant did not meet the requirements of Rule 803(6) and the Third-Party Record exceptions. Once that occurred, the court was left to determine if the records could be proved-up in a traditional way. They could not, as the proponent's testimony showed that he could not meet this requirement. [24]

Q-10: What, exactly then, is the importance of *Simien*?

A-10: *Simien* was a ***simple*** articulation. Further, *Simien* provided a three-prong test for the admissibility of third-party records. The proponent must show that:

1) the documents are incorporated and kept in the course of the testifying witness's business,
2) the business typically relies upon the accuracy of the contents of the document, and
3) circumstances otherwise indicate the trustworthiness of the document.

It must be recognized, however, that *Simien* was not new law. The *Simien* decision was rendered on April 15, 2010. There are at least six previous Texas cases discussing Third-Party Records,[25] many of which the *Simien* court relied upon in reaching its decision.

---

[24] Id. (In testifying about the telemarketing application, the witness stated that the information was input by someone at First USA, although he had no personal information about how the information was input or how the information was obtained. The same observation could be made about the account statements, and the cardholder agreement.).

[25] These cases are:

1) *Cockrell v. Republic Mortg. Ins. Co.*,817 SW 2d 106 (Dallas 1991);
2) *GT & MC, Inc. v. Tex. City Ref., Inc.*, 822 S.W.2d 252 (Houston [14th Dist.] 1991;
3) *Harris v State*, 846 S.W.2d 960 (Houston [1st Dist.] 1993);
4) *Bell v State*, 176 S.W.3d 90 (Houston[1st] 2004);
5) *Martinez v. Midland Credit Management, Inc.*, 250 SW 3d 481 (El Paso 2008); and
6) *Jaramillo v. Portfolio Acquisitions, LLC*, No. 14-08-00939-CV, (Houston[14th Dist.] 2010).

Simien was simply a clean and concise articulation of the legal principles expressed by these predecessor cases.

Q-11: How does this affect pending debt purchasers cases?

A-11: Answer - Part 1.

To answer this question, there must first be a basic understanding of the debt purchase industry. Accounts are acquired as part of debt portfolios, each of which is comprised of multiple individual accounts. These portfolios are priced in the hundreds of thousands, if not millions of dollars. Pricing is based upon a multitude of factors, two of which are the balance of each account and the availability of supporting documents; though certainly not a complete list of factors. The credit grantor sells to the debt purchaser the account and provides critical information about the account, including balance, last payment date, address, etc., and delivers a copy of various account documents, which may include statements, applications and terms and conditions pertaining to the transferred accounts. This information and these documents are material components to the transaction and their availability affects the purchase price.

The information and the related documents become the core of the debt purchaser's business. It is based upon this information that the debt purchaser makes decisions on how to collect, which vendors to employ, and which costs should be incurred in its collection efforts. In addition, all written communications that are sent to the debtor are predicated upon this information and are subject to the requirements of both state and federal law. The original credit grantor and the debt purchaser would be subject to substantial civil penalties if it were determined that the information contained in their communications were incorrect. Additionally, credit grantors, which are typically national banks or similar lending institutions, are subject to numerous regulatory oversight. It is this source information, obtained from the credit grantor, that forms the basis of the debt purchasers business.

A-11: Answer - Part 2.

Comparing the holding in *Simien* with Texas case law, we see that *Simien* distills two prior concepts of admissibility into its three-prong test; roughly paralleling what previously were characterized as independent bases for admissibility.

Prior Cases	***Simien***
The documents have become another entity's primary record of the underlying transaction	The documents are incorporated and kept in the course of the testifying witness's business
The documents form the basis for ongoing transactions	The business typically relies upon the accuracy of the contents of the document

Finally, *Simien* set forth the additional requirement of trustworthiness, harkening back to the core principal which justifies the admission of these documents: ***reliability***.

Applying *Simien* to the facts associated with debt purchasers, in can readily be seen why Third-Party Records should be admitted upon the filing of a proper affidavit.

***Simien* Requirements**	**Debt Purchase Industry**
The documents are incorporated and kept in the course of the testifying witness's business	The entire business model and operation of a debt purchaser's business revolves around its reliance on the information that it obtains in connection with claims it acquires from predecessors. These accounts are acquired in transactions involving upwards of hundreds of thousands, or even millions of dollars and the reliability of the information lies at the heart of the debt purchaser's business.
The business typically relies upon the accuracy of the contents of the document	The debt purchaser makes decisions based upon information obtained from the predecessor-in-interest regarding how to collect the debt, which vendors to employ, and which costs should be incurred in its collection efforts.
Circumstances otherwise indicate the trustworthiness of the document	The debt collection industry is subject to both state and federal laws, and general oversight by both the Federal Trade Commission and the newly formed Consumer Financial Protection Bureau. The penalty for the violation of the Fair Debt Collection Practices Act can be $1,000 per violation plus attorneys fees. Debt purchasers that elect to sue to collect their debt will incur costs averaging $200 per account. It is against this backdrop that the issue of trustworthiness is evaluated. Given the substantial civil liability and financial costs, the debt purchasers are certainly justified in treating the prior business records as valid.

Conclusion

Simien is a logical articulation of legal principals that are well established in both state and federal law. For those who push back against *Simien*, the disagreement general occurs in two forms:

1) That isn't the law in this part of the state, or
2) I just don't see how a person can testify about documents he didn't create.

In response to the "It's not the law here" argument, (a) it probably is, you just don't realize it,[26] or (b) it simply hasn't been presented cleanly or phrased properly enough to result in a similar decision.

In response to the "I don't see how" argument, one need only note that a substantial number of courts and judges, including some eight federal courts of appeal, two Texas criminal court cases, and eight Texas appellate districts have not only found the arguments persuasive, but have advanced these arguments themselves. *Simien* is merely a statement of the law, not a departure from it, which creates and easily applied three-prong test for the admissibility of third-party documents which have become the business record of the proponent.

Practice Tips

The Records are the Proponent's Records

The records that are being offered into evidence must be characterized as the records of the proponent. While the origin of the record is from a third-party, admissibility is premised upon the record having been incorporated into the business of the proponent. As such, the record must be characterized as the proponent's business record.

Simien Does Not Supercede Prior Law

Simien provides one method for the admission of third-party documents. It does not replace prior case law.

There is No Magic Language

Simien does not create, per se, some set of magic words which must be utilized when testifying regarding third-party-originated documents. While it is certainly possible to satisfy the *Simien* requirements by having the corporate representative testify that (1) the documents are incorporated and kept in the course of the testifying witness's business, and (2) the business typically relies upon the accuracy of the contents of the document, you are still required to meet the trustworthiness requirement. Since this issue goes to the document's reliability, it is easy to also incorporate testimony regarding reliance. It is good practice to include some testimony about the originator of the account, the acquisition of the account, how the company relied upon the information it obtained from the originator and how the account pertains to the continuation of a transaction initiated by that originator.

Contact the Author

Michael Scott
Michael J. Scott, P.C.
1120 Metrocrest Dr., Ste 100
Carrollton, TX 75006
Ph: (972) 428-3599
email: mscott@scott-pc.com

[26] *See, for example, Cockrell v. Republic Mortg. Ins. Co.*, 817 SW 2d 106 (Dallas 1991).

ASSURED CIVIL PROCESS AGENCY

600 Sabine St., Ste. 100
Austin, TX 78701

(512) 477-2681 (vox)
(512) 477-6526 (fax)

ATTN: SUPREME COURT ADVISORY COMMITTEE
HEARING: June 22, 2012

RE: Proposed Rule Changes

Dear Sirs & Madams:

Sprinkled throughout the proposed rules changes for Part V, TRCP, is the term *"certified process server."* This term recognizes a class of process server that was created by the unlawful judicial regulation of my occupation; and incorporates into the Rules a contradiction to the conclusions of this very committee.

Hearing of the Supreme Court Advisory Committee
November 2, 2001, between the hours of 2:28 PM and 5:30 PM.

The Committee discussed the prospect of imposing regulation of process servers by rule and the Supreme Court creating an administrative agency to regulate process servers and recognized that the Court had no authority to do either.

Page 353:

MR. ORSINGER
The problem is, first of all, that looks legislative and not rulemaking, even though it is, in fact, in a rule. And secondly, the Supreme Court doesn't have the authority to create an administrative agency and it doesn't have the money to fund it. So you'd think, "Well, probably the most the Supreme Court can do," and this is, frankly, where I've gone, is to say "Let's look and send a task force out, like my subcommittee and let's look and see what all the standards are:

Hearing of the Supreme Court Advisory Committee
March 8, 2002, between the hours of 1:30 PM and 5:45 PM.

The committee discussed three separate provisions for standardizing the authority of private individuals to serve civil process in Texas. The committee isolated the "notary public provision" calling it the "piggyback" provision; and voted to recommend it to the Supreme Court for implementation.

Page 123:

CHAIRMAN BABCOCK: Everybody against raise your hand. By a vote of 14 to zero that passes.

The process server certification program represents a breach of the constitutional separation of powers. Only the Legislature may regulate an occupation in Texas (Tx Govt Code, Ch. 318).

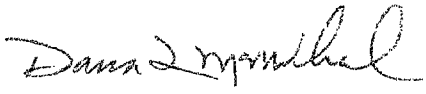
Director: The Civil Process Servers Association of Texas
Member: National Association of Professional Process Servers
assuredcivilprocessagency@yahoo.com

TRJA 14 (and the MDOs that created the certification program) are in violation of the Constitutional restriction of the Court's rulemaking authority, which states that the Court may promulgate rules that are not inconsistent with the laws of the State. The only laws ever passed regarding who may serve civil process in Texas (and there are seven of them) all give statutory authority to any disinterested adult to serve process without regard for training or background (i.e., a Fed. Rule 4 equivalent).

The Supreme Court created the Process Server Review Board as a judicial agency pursuant to TRJA Rule 12. According to Rule 12, a judicial agency may only provide an administrative support function to the Court; and yet, the Supreme Court has endowed the PSRB with unrestricted regulatory authority; and has even provided its members the authority to conduct civil and criminal investigations (which State law requires a license to perform).

I strongly encourage this committee to revisit its recommendations of November 2001 and March 2002, and urge the Court to protect its own interests and dismantle the certification program and implement the notary public provision. (The Supreme Court Rules Attorney testified under oath before a Legislative hearing in 2003 that the Supreme Court WAS going to implement this notary public provision.) If the Court does not dismantle the program, all of these inappropriate actions of the Court will come to light when the PSRB comes up for Sunset review.

Sincerely,



Dana McMichael

Direct Results Legal Service

516 West Annie
Austin, Texas 78704
Phone (512) 447-2300; Facsimile (512) 447-3303

June 22, 2012

Rules Advisory Committee for the
Texas Supreme Court
via hand delivery

RE: PROPOSED RULES, PART V, TRCP RULES 511, 512, 513, 514, 574 & 575:

Dear Committee Members,

My name is Tod E. Pendergrass and I am a certified process server. Thank you for allowing me this opportunity to comment. I would like to first address the proposed Rule 512, SERVICE of process in Justice Courts.

When this committee was formed back in 1993, one of the first recommendations it made to the Court was to simplify the Texas Rules of Civil Procedure, specifically, to rely on the Federal Rules of Civil Procedure as a guide. There are currently at least 16 separate TRCP rules that deal with the two issues involving service of process, which are "who may serve" and "how to serve." It's understandable that many procedures in Justice Courts differ from District and Court Courts at Law, but "who may" and "how to" serve are virtually identical; and the physical act of serving process is literally identical. The only difference that immediately came to my mind was the defendant's time to answer; currently, it's the Monday following 20 days for District and Court Courts at Law and 10 days for Justice Courts. The only reason this would concern a process server is because the return of service must be on file 10 days and 3 days respectively before a default can be taken. Other than that, I believe all or nearly all aspects of "who may" serve and "how to" serve in the proposed Rules 511 - 514, and 574 & 575 can be covered with one sentence:

> ***"Service on the defendant shall be made as prescribed by these rules for service and return of citation in District and County Courts at Law."***

This concept is found in the current TRCP Rule 17, and Rule 663(a) for service of garnishment on a defendant. By including the words, "and return," all aspects of service from the moment the server receives the process to the filing of the return would be covered; and it would apply to all persons who serve including certified and non-certified servers, sheriffs, constables and clerks. More importantly, it would not widen the disparity in the rules by duplicating procedures already covered in District and County Courts. The necessity of the return to be on file at least 3 days before default can be added somewhere else, e.g., Rule 503 for the computation of time.

Additionally, the suggested sentence above would finally remedy the long-standing error currently contained in Rule 536, TRCP (see my letter to the Committee dated 4-12-2006 attached.)

I would also like to share the following concerning proposed Rules 511 and 513:

> **RULE 511. ISSUANCE AND FORM OF CITATION**
> (c) *Notice.* The citation shall include the following notice to the defendant: "*You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Generally, your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday.* ***Do not ignore these papers****. If you do not file an answer by the due date, a default judgment may be taken against you. For further guidance, consult Rules of Civil Procedure 500-575, which are available online at* ***www.therules.com*** *and also at the court listed on this citation." If a statement of inability to pay has been filed by the plaintiff in this suit, you may have the right to contest that statement.*

I suggest it would be inappropriate for the Court to tell a citizen what he can and cannot ignore. Instead of adding this language, the "bold" should be applied to: "If you do not file an answer by the due date, a default judgment may be taken against you." That is adequate to make it apparent to the citizen that it is not in his/her best interests to ignore the citation.

> RULE 513. ALTERNATIVE SERVICE
> If the methods under Rule 512 are insufficient to effect service on the defendant, the plaintiff, or the constable, sheriff, or certified process server if utilized, may make a request for alternative service. This request must include a sworn statement detailing the methods attempted under Rule 512. The request shall be that the citation, petition and documents filed with the petition be:

This does not allow for sub-service if the paper is attempted by an "uninterested person" authorized by the court to serve the citation. Excluding authorized persons from being able to pursue alternative methods of service will necessarily increase the costs of litigation.

Lastly, I would just like to point out the inconsistency of the Court's process server certification program and the current rules allowing any disinterested adult to serve all forms of civil and criminal subpoenas, including grand jury subpoenas and all state agency subpoenas like the State Office of Administrative Hearings. The physical act of serving process is the same for subpoenas and citations, and both are equally as important.

Thank you again for your time and consideration.

Sincerely,

Tod E. Pendergrass

Direct Results Legal Service
516 West Annie Street
Austin, Texas 78704
(512) 447-2300 Telephone (512) 447-3303 Facsimile

April 12, 2006

The Supreme Court of Texas
Attn: Advisory Committee
P.O. Box 12248
Austin, Texas 78711

Re: Rule 536, Texas Rules of Civil Procedure

Dear Members:

Despite numerous attempts to rectify the situation, including previous letters to the Texas Supreme Court, a mistake in Rule 536, T.R.C.P. remains unchanged and could possibly effect adversely thousands of cases.

Rule 536. Who may serve and method of service pertains to service of civil process issued by the Justice Courts. Section (c) reads, in part:

...the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named...

This sections should read:

...the facts showing that service has been attempted under either **(b)(1) or (b)(2)** at the location named...

By comparing this rule to the same rule for service of civil process issued by the District and County Courts, Rule 106, it is clear the wording was inadvertently copied verbatim. However, the structure of the paragraph is slightly different which calls for this correction.

Now would be an appropriate time to address this matter. Thank you!

Respectfully,

Tod E. Pendergrass, SCH1660
President, DRLS, Inc.
Director, The Certified Civil Process Servers Association of Texas

AMERICAN COLLECTORS ASSOCIATION OF TEXAS
18604 Interstate 20 West, Lindale, Texas 75771
Office (512) 458-8666 Fax (512) 458-8740 www.texascollectors.com

June 21, 2012

Texas Supreme Court Advisory Committee
P.O. Box 12248
Austin, TX 78711

Re: Proposed Rules Recommended by the Justice Court Rules Task Force

Dear Justice Hecht and Honorable Members of the Supreme Court Advisory Committee:

First, the American Collectors Association of Texas (ACA of TX) would like to thank you and the Committee for the hard work you all have undertaken with respect to this issue. And, we appreciate the opportunity to be a part of this process.

ACA of TX wishes to formalize and record its support of the Texas Creditor's Bar Association (TXCBA) and its recommended changes to the Texas Rules of Civil Procedure for Justice Courts as originally proposed by the Justice Court Rules Task Force. Those changes are outlined in the TXCBA letter to you dated June 1, 2012.

ACA of TX is a trade association comprised of almost 180 third-party debt collection agencies with offices in Texas. ACA of TX is the second largest state unit within ACA International, the Association of Credit and Collection Professionals, and the primary trade association for members of the credit and collection industry. ACA of TX promotes lawful consumer debt collection for creditors and government and serve our members by providing education and training, promoting ethical professional conduct, and acting as a voice in business, regulatory and legislative matters.

ACA of TX members provide first and third-party collection services to virtually every business that extends credit or carries outstanding debt. ACA of TX members are primarily small, private companies with approximately two-thirds of members having 15 or fewer employees. Members are located in communities all over the state of Texas and collect delinquent and charged-off accounts for a variety of local, state-wide and even national companies.

In a recent study* of the value of debt collection agencies to the national, state and local economies, it was found that there was a positive economic impact of $5.3 B to Texas in terms of the amount of gross collections for our clients. It was also found that our industry contributes to the Texas economy through the over 18,000 jobs provided, compensation to our employees of over $510M and the payment of over $46M in state and local taxes.

ACA of Texas, along with TXCBA, want to ensure that consumers and debtors are protected; however, we are concerned that any weakening of our member's ability to effectively collect accounts through the use of the Justice Court system would lessen our member's ability to effectively collect for our clients. We respectfully urge the Supreme Court Advisory Committee to adopt the changes as proposed by the Texas Creditor's Bar Association. And, we thank you in advance for your consideration.

Sincerely,

Bruce Cummings
President

**Ernest & Young, 2011 – www.acainternational.org/impact*

Activity Report for Justice Courts

September 1, 2010 to August 31, 2011

98.4 Percent Reporting Rate
9,692 Reports Received Out of a Possible 9,848

	CRIMINAL CASES		CIVIL CASES			
	Traffic Misdemeanors	Non-Traffic Misdemeanors	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	REPORTED TOTALS
NEW CASES FILED	**2,123,689 66.6%**	**597,029 18.7%**	**43,287 1.4%**	**224,978 7.1%**	**199,226 6.2%**	**3,188,209**
DISPOSITIONS:						
Dispositions Prior to Trial:						
Bond Forfeitures	4,202	1,901	---	---	---	**6,103**
Fined	886,526	240,970	---	---	---	**1,127,496**
Cases Dismissed	324,733	154,654	18,629	51,785	53,954	**603,755**
Total Dispositions Prior to Trial	**1,215,461**	**397,525**	**18,629**	**51,785**	**53,954**	**1,737,354**
Dispositions at Trial:						
Trial by Judge						
Guilty	156,501	55,557	---	---	---	**212,058**
Not Guilty	2,072	2,337	---	---	---	**4,409**
Civil Trials	---	---	19,333	138,744	49,891	**207,968**
Trial by Jury						
Guilty	3,643	510	---	---	---	**4,153**
Not Guilty	295	186	---	---	---	**481**
Civil Trials	---	---	567	1,274	807	**2,648**
Dismissed at Trial	60,710	24,932	3,096	22,697	7,079	**118,514**
Total Dispositions at Trial	**223,221**	**83,522**	**22,996**	**162,715**	**57,777**	**550,231**
Cases Dismissed After:						
Driving Safety Course	164,084	---	---	---	---	**164,084**
Deferred Disposition	124,514	41,367	---	---	---	**165,881**
Proof of Financial Responsibility	67,783	---	---	---	---	**67,783**
Total Cases Dismissed After	**356,381**	**41,367**	---	---	---	**397,748**
TOTAL DISPOSITIONS	**1,795,063**	**522,414**	**41,625**	**214,500**	**111,731**	**2,685,333**
CASES APPEALED	28,987	1,786	467	4,084	428	**35,752**

JUVENILE ACTIVITY:

Warnings Administered	2,738
Statements Certified	4,297
Detention Hearings Held	1,931
Failure to Attend School Cases Filed	95,892
Violation of Local Daytime Curfew Ordinance Cases Filed	429
Referred to Juvenile Court for Delinquent Conduct	3,627
Held in Contempt, Fined, or Denied Driving Privileges	7,953

OTHER ACTIVITY:

Parent Contributing to Nonattendance Cases Filed		67,606
Peace Bond Hearings Held		2,061
Class A or B Misdemeanor Complaints Accepted		75,208
Felony Complaints Accepted		55,661
Examining Trials Conducted		1,696
Inquests Conducted		17,257
Safety Responsibility and Driver's License Suspension Hearings Held		17,523
Search Warrants Issued		4,334
Arrest Warrants Issued:		
Class C Misdemeanors Only	634,433	
Felonies and Class A and B Misdemeanors Only	79,379	
Total Arrest Warrants Issued		713,812
Magistrate Warnings Given		296,357
Emergency Mental Health Hearings Held		11,208
Magistrate's Orders for Emergency Protection		14,389

Conference Held Prior to Legal Action Resulting in:	Criminal	Civil	Total
Legal Action Being Filed in Court	3,293	882	4,175
No Legal Action Being Taken	1,274	788	2,062

TOTAL REVENUE **$344,026,093**

Justice Courts Summary of Reported Activity from September 1, 2010 to August 31, 2011

(Counties Listed in Population Order)

		CASES FILED					CASES DISPOSED					CASES APPEALED					MISCELLANEOUS		
	2010 Population	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Exam-ining Trials	In-quests	Revenue ($)
Harris	4,092,459	360,307	87,087	8,366	57,346	24,013	370,818	90,006	8,484	55,316	21,348	126	18	52	1,042	134	0	0	40,402,588
Dallas	2,368,139	163,080	12,080	4,949	37,633	16,208	144,211	13,420	6,449	38,550	17,928	21,041	82	97	858	66	62	0	28,064,326
Tarrant	1,809,034	8,213	6,807	2,951	28,853	9,874	6,857	11,397	3,083	29,681	9,226	989	86	61	869	40	230	4	4,467,889
Bexar	1,714,773	109,364	34,200	1,909	14,102	9,796	110,711	12,077	872	10,050	6,389	1,121	188	23	356	24	0	4	17,969,217
Travis	1,024,266	62,472	17,967	2,138	9,157	6,168	54,978	18,299	3,651	10,327	8,390	7	0	24	254	25	101	0	11,684,295
El Paso	800,647	40,680	26,822	1,170	2,547	2,832	34,626	19,938	758	3,774	1,436	22	4	12	31	4	131	0	6,841,590
Collin	782,341	27,103	9,016	1,080	7,828	3,726	23,160	6,592	1,121	7,408	3,818	59	18	2	54	0	277	54	5,150,333
Hidalgo	774,769	36,165	10,294	794	1,495	3,019	26,039	7,959	341	771	1,724	0	0	0	3	1	3	317	4,906,915
Denton	662,614	17,794	5,753	970	7,629	3,471	15,532	5,690	846	7,577	3,337	444	95	19	73	15	0	0	4,524,536
Fort Bend	585,375	28,654	15,866	744	3,271	2,315	25,386	11,762	566	3,201	2,050	11	2	5	67	2	0	356	4,381,293
Montgomery	455,746	47,498	41,454	783	2,853	3,177	46,566	30,352	650	2,234	1,432	50	45	10	50	12	0	1,049	8,710,129
Williamson	422,679	41,218	5,654	504	2,629	1,687	46,096	9,712	655	2,587	1,915	28	8	6	53	0	0	363	6,244,576
Cameron	406,220	41,623	7,683	579	1,088	2,481	32,613	4,634	402	665	1,375	3	0	0	2	0	95	203	5,717,659
Nueces	340,223	12,538	10,579	403	2,380	71,109	11,457	7,649	289	2,133	1,241	13	3	10	50	7	71	0	3,381,937
Brazoria	313,166	26,426	8,469	457	2,426	1,561	25,813	8,703	411	2,341	1,334	72	17	0	9	1	0	299	4,919,447
Bell	310,235	15,962	4,476	324	4,180	1,314	14,703	3,270	425	4,027	1,400	44	8	7	15	4	102	531	3,734,565
Galveston	291,309	14,168	11,946	688	2,582	1,112	15,252	10,809	696	2,637	1,268	197	62	11	41	2	0	0	4,802,444
Lubbock	278,831	9,798	6,714	336	2,379	1,462	8,933	4,821	320	2,425	1,279	30	15	3	3	0	0	0	2,999,733
Jefferson	252,273	11,670	10,193	748	2,467	1,903	9,345	9,582	1,145	2,502	2,562	2	0	6	8	3	0	914	3,259,507
Webb	250,304	24,675	1,620	495	465	1,219	16,487	780	689	532	656	1	0	12	14	2	0	0	3,744,212
McLennan	234,906	10,136	3,732	297	2,434	1,272	12,944	4,344	294	2,290	773	14	7	2	10	4	1	439	2,359,923
Smith	209,714	13,135	3,087	405	1,432	826	11,640	3,115	356	1,276	813	296	47	13	3	0	0	709	2,731,998
Brazos	194,851	7,580	10,227	312	1,014	650	8,502	9,073	259	952	536	154	196	2	2	1	0	197	3,394,263
Hays	157,107	9,658	7,773	194	670	884	8,737	6,880	162	628	592	5	0	1	1	1	0	154	2,710,443
Johnson	150,934	10,422	2,500	355	909	736	9,881	2,336	239	878	682	546	116	3	5	3	0	0	2,469,421
Ellis	149,610	5,025	5,758	204	832	735	4,705	2,751	211	610	428	14	7	1	9	4	0	154	1,661,597
Ector	137,130	7,446	2,381	183	735	513	8,070	2,998	164	693	595	231	37	0	0	0	0	0	1,930,907
Midland	136,872	8,282	3,341	95	554	445	7,591	3,415	73	445	398	63	11	0	3	0	2	188	2,430,994
Guadalupe	131,533	8,602	2,224	131	458	482	8,559	3,154	92	344	350	31	11	0	6	2	19	146	1,867,431
Taylor	131,506	4,210	2,199	289	1,095	378	4,244	2,109	333	1,119	342	39	23	3	10	0	15	167	1,231,523
Wichita	131,500	2,337	2,588	129	923	271	3,884	2,651	111	911	242	9	5	0	5	7	19	249	1,001,717
Gregg	121,730	8,338	977	209	1,022	1,495	6,998	1,505	254	995	989	5	1	4	10	3	3	274	1,447,168
Potter	121,073	5,319	2,823	121	1,138	757	6,271	3,588	875	1,216	2,334	17	0	1	4	0	62	315	1,347,012
Grayson	120,877	7,928	1,882	161	718	69	8,257	1,785	137	618	50	42	2	4	6	0	0	275	1,498,016
Randall	120,725	229,545	1,779	441	737	582	6,056	2,371	149	692	615	11	0	1	0	1	0	120	1,545,516
Parker	116,927	12,964	4,029	189	520	636	12,585	3,741	182	513	657	42	2	1	9	2	0	0	2,448,059
Tom Green	110,224	7,712	2,047	183	524	448	7,591	2,020	171	484	355	46	35	3	4	1	0	222	1,546,866
Comal	108,472	10,123	3,643	121	375	428	10,302	4,220	87	306	263	41	7	1	8	1	0	172	1,671,067
Kaufman	103,350	7,516	5,739	12	535	692	8,703	6,149	1	21	106	8	3	0	8	3	0	170	1,631,065
Bowie	92,565	3,826	2,995	1	803	953	3,351	2,273	1	393	1,113	3	2	0	0	1	0	496	1,252,118
Victoria	86,793	6,213	766	155	434	506	6,072	2,323	155	406	185	2	0	4	8	0	3	114	1,302,455
Angelina	86,771	5,588	2,543	101	368	357	5,461	1,937	75	351	247	8	1	0	0	0	0	178	1,053,885
Hunt	86,129	8,980	4,868	169	748	648	9,724	7,164	112	681	321	244	36	2	19	3	0	290	1,769,909
Orange	81,837	4,533	6,539	131	561	279	6,525	7,932	88	413	209	8	2	2	1	3	0	366	1,363,090
Henderson	78,532	5,415	1,703	116	350	482	4,589	2,032	86	288	319	63	15	4	5	2	14	113	1,052,624
Rockwall	78,337	5,599	1,294	165	377	409	6,334	1,163	169	365	372	92	31	3	7	0	1	182	1,153,046
Liberty	75,643	11,675	950	50	344	488	10,133	930	34	274	291	18	2	0	6	1	0	220	1,289,199
Coryell	75,388	1,452	497	44	392	220	1,216	454	54	374	142	0	0	0	0	0	0	66	277,068
Bastrop	74,171	14,554	1,897	105	254	199	11,568	1,533	78	188	119	0	0	0	1	0	2	102	2,134,075
Walker	67,861	4,718	7,521	54	249	289	4,787	6,442	62	242	222	12	10	0	2	9	0	111	1,948,940
Harrison	65,631	11,241	2,384	34	437	300	10,388	1,685	6	104	46	25	5	0	3	1	0	108	2,152,722
San Patricio	64,804	10,399	3,932	151	202	309	10,901	3,386	104	177	219	7	4	5	1	0	0	177	1,995,651
Nacogdoches	64,524	9,262	1,384	138	296	125	9,564	1,072	103	265	85	21	4	1	3	1	0	99	1,683,524
Starr	60,968	5,074	1,850	79	29	125	2,714	614	28	8	32	1	0	0	2	0	0	63	316,599
Wise	59,127	9,572	4,861	79	181	153	9,262	4,523	53	143	113	131	43	0	1	2	2	119	2,218,331
Anderson	58,458	3,200	2,067	42	156	113	4,346	1,120	41	116	94	67	34	2	1	0	0	112	827,999
Hardin	54,635	2,586	1,817	57	220	159	1,764	415	30	159	61	5	0	0	1	2	88	101	468,957
Maverick	54,258	4,809	731	94	78	175	3,938	463	30	22	29	0	0	0	0	0	0	109	720,246
Rusk	53,330	5,974	1,850	9	161	162	5,010	1,262	7	120	107	5	1	0	0	2	4	162	1,444,208
Van Zandt	52,579	4,639	1,156	63	202	208	4,705	1,488	59	164	164	103	16	0	5	0	1	123	1,030,710
Hood	51,182	5,129	918	198	180	347	5,144	1,042	216	178	243	45	17	5	0	0	0	101	942,041
Cherokee	50,845	2,826	1,554	53	188	172	2,567	1,116	30	122	98	24	9	1	1	1	3	134	696,015
Lamar	49,793	2,787	858	109	302	196	2,652	775	96	287	174	14	1	0	3	0	0	94	551,072
Kerr	49,625	4,319	882	65	163	179	3,953	689	53	143	132	10	3	0	1	0	0	98	789,427
Val Verde	48,879	2,791	2,164	106	62	993	2,195	776	2	5	19	0	0	0	0	0	0	64	645,032
Navarro	47,735	5,690	1,322	74	262	212	5,393	1,201	63	234	130	63	4	1	3	1	3	67	1,237,588
Medina	46,006	12,549	1,246	26	91	214	9,939	625	35	49	91	28	4	0	0	0	2	52	2,104,741
Polk	45,413	5,275	1,972	79	123	229	4,613	2,124	64	109	153	16	10	0	1	0	4	235	1,203,652
Atascosa	44,911	5,546	1,190	96	148	116	3,769	430	25	115	24	8	1	1	4	0	0	75	810,373
Waller	43,205	8,366	1,375	73	324	128	8,170	1,419	57	218	79	40	2	1	1	0	0	44	1,433,300
Wilson	42,918	3,253	707	46	80	220	2,877	508	21	50	77	10	3	0	1	0	1	75	523,077
Burnet	42,750	3,966	543	107	168	118	3,694	504	94	153	93	20	6	0	1	0	3	83	723,129
Wood	41,964	2,189	965	211	90	202	2,183	932	185	90	159	15	7	1	1	2	2	73	505,349
Wharton	41,280	5,277	1,677	48	156	339	4,812	1,778	34	139	263	26	28	0	0	1	4	63	1,256,958
Jim Wells	40,838	3,642	928	48	136	202	4,502	2,085	18	119	188	0	0	0	2	3	1	87	710,247
Upshur	39,309	3,344	960	28	138	202	3,430	1,086	31	119	127	7	3	0	0	0	2	106	656,442
Cooke	38,437	4,132	834	48	185	114	4,212	925	44	181	86	61	16	1	5	0	11	64	744,922
Brown	38,106	3,766	162	148	147	194	3,317	333	171	143	159	21	3	1	0	3	0	50	583,780
Caldwell	38,066	5,348	1,242	48	148	238	6,012	2,032	20	97	212	7	2	1	1	0	1	41	1,241,436
Erath	37,890	3,707	513	56	105	136	3,651	451	24	75	35	26	3	0	0	0	0	43	524,857
Matagorda	36,702	2,874	2,568	56	188	131	2,450	1,521	28	28	71	0	0	0	0	0	0	59	594,823
Hale	36,273	3,576	814	67	90	93	4,212	1,738	73	91	96	1	0	0	0	0	0	32	808,396
Jasper	35,710	6,957	1,680	74	80	79	6,764	1,706	53	62	24	20	1	0	2	0	94	103	1,343,001
Hopkins	35,161	2,457	1,306	33	164	338	2,019	1,312	38	148	249	4	5	2	3	1	5	73	528,426
Chambers	35,096	5,814	2,977	48	131	150	5,663	2,482	43	97	90	2	1	0	2	0	2	60	1,257,624
Hill	35,089	6,197	891	49	95	205	4,544	317	25	86	115	33	2	0	0	1	3	79	859,424
Howard	35,012	3,888	829	29	135	154	3,932	1,017	23	107	61	28	2	0	0	0	0	84	759,250

Justice Courts Summary of Reported Activity from September 1, 2010 to August 31, 2011

(Counties Listed in Population Order)

		CASES FILED					CASES DISPOSED					CASES APPEALED					MISCELLANEOUS		
	2010 Population	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Examining Trials	In-quests	Revenue ($)
Fannin	33,915	1,836	668	53	81	116	1,650	595	36	41	54	36	4	0	1	0	1	105	327,476
Washington	33,718	4,352	4,029	44	62	156	4,290	3,393	36	49	83	21	26	0	0	1	0	54	1,435,506
Kendall	33,410	2,229	507	54	40	150	1,949	770	51	41	112	4	0	1	2	0	0	57	381,391
Titus	32,334	3,393	1,249	23	87	100	3,259	1,527	13	67	53	40	19	2	0	2	0	56	945,452
Kleberg	32,061	9,802	1,596	60	89	0	9,065	919	3	22	0	46	0	0	0	0	0	29	1,980,361
Bee	31,861	4,760	277	55	44	48	3,429	192	36	19	16	3	0	1	1	0	0	14	481,711
Cass	30,464	4,318	1,051	20	64	140	3,999	1,192	17	49	68	6	0	1	0	0	0	34	960,857
Austin	28,417	4,766	830	44	77	58	7,297	831	46	64	69	15	3	0	1	0	0	48	847,335
Palo Pinto	28,111	4,260	812	49	205	120	4,149	738	37	183	89	35	3	0	0	0	0	60	828,442
Grimes	26,604	3,781	1,207	89	40	14	2,977	776	2	3	3	0	0	0	0	0	0	42	793,004
Uvalde	26,405	1,744	857	73	37	67	992	514	3	2	0	2	1	0	0	0	4	45	445,310
San Jacinto	26,384	8,523	727	37	80	64	5,899	301	16	57	30	21	0	0	0	1	0	47	1,230,659
Shelby	25,448	2,685	1,801	183	116	13	3,381	1,941	171	62	1	23	5	3	1	0	0	68	650,863
Gillespie	24,837	4,146	186	270	51	98	4,163	120	251	49	37	25	0	1	0	0	2	24	694,906
Milam	24,757	4,489	180	29	62	47	4,035	180	4	18	5	16	0	1	2	1	0	40	892,768
Fayette	24,554	7,208	1,079	70	31	58	6,907	1,411	29	21	29	2	0	2	0	0	0	42	1,608,074
Panola	23,796	2,615	647	61	71	61	2,922	523	75	59	82	2	2	0	0	0	6	68	439,608
Houston	23,732	1,892	380	38	50	48	2,061	366	5	7	12	4	0	0	0	0	0	77	354,325
Limestone	23,384	2,199	885	77	73	110	2,290	837	34	41	73	12	2	1	1	0	0	53	441,364
Aransas	23,158	1,808	2,043	70	98	69	2,959	1,289	46	40	85	3	0	0	0	0	20	49	929,253
Hockley	22,935	3,548	132	38	104	119	4,062	242	21	79	104	22	0	2	0	0	0	54	558,372
Gray	22,535	2,065	1,001	65	73	175	1,947	799	45	67	82	3	2	0	0	0	0	76	605,058
Hutchinson	22,150	1,044	564	32	73	63	896	532	29	70	70	7	9	0	1	0	0	37	291,563
Willacy	22,134	4,538	90	50	95	55	3,153	147	10	33	1	0	0	0	1	0	0	9	348,181
Moore	21,904	1,927	812	97	69	139	1,792	580	11	41	54	2	1	0	0	0	0	24	510,891
Tyler	21,766	1,706	297	12	9	53	1,302	177	2	3	10	0	0	0	0	0	0	46	194,877
Calhoun	21,381	1,959	2,387	58	54	80	1,925	1,517	34	42	70	5	1	2	2	0	1	28	625,466
Colorado	20,874	6,883	1,377	59	28	41	6,031	1,347	8	13	4	0	0	0	1	0	98	116	1,485,946
Bandera	20,485	2,160	1,170	49	44	58	1,990	805	23	35	30	1	0	0	2	0	1	35	428,429
Jones	20,202	1,463	82	36	23	21	1,516	215	62	9	8	17	0	0	0	0	6	29	274,861
De Witt	20,097	2,580	866	37	42	90	2,156	905	0	0	1	0	0	0	0	0	0	45	563,035
Freestone	19,816	4,864	712	71	23	36	4,533	507	47	18	24	43	2	0	1	1	2	56	1,018,289
Gonzales	19,807	12,060	1,663	29	60	48	9,502	1,021	26	41	48	6	2	0	1	1	0	50	1,831,396
Montague	19,719	3,366	261	18	52	179	3,244	194	9	3	50	32	0	0	1	1	0	36	752,640
Lampasas	19,677	2,579	357	29	44	40	2,387	291	11	35	24	6	0	0	0	0	4	27	512,960
Deaf Smith	19,372	1,592	797	0	50	97	1,542	833	0	0	0	0	1	0	0	0	0	21	475,295
Llano	19,301	1,421	1,332	43	61	63	1,628	1,350	29	55	34	7	7	2	1	0	1	60	433,745
Lavaca	19,263	948	489	68	40	45	962	291	6	14	14	0	0	1	0	0	2	36	270,078
Eastland	18,583	2,893	1,270	11	31	154	2,628	924	13	21	29	36	7	0	0	1	0	66	669,536
Young	18,550	1,601	773	71	60	54	1,642	832	91	53	69	14	3	0	1	0	1	42	424,140
Bosque	18,212	811	1,222	49	47	23	837	999	14	33	13	7	4	0	0	0	0	54	370,473
Falls	17,868	2,437	433	13	52	29	3,099	450	7	42	18	11	1	0	0	0	0	25	582,682
Gaines	17,526	2,020	254	17	11	38	1,614	204	0	0	0	12	0	0	0	0	0	21	353,336
Frio	17,217	5,511	2,103	7	18	43	5,245	1,730	0	4	3	47	3	0	0	0	2	29	1,200,530
Burleson	17,187	6,066	1,233	20	25	133	4,914	2,588	19	34	113	15	0	0	0	0	0	41	2,089,272
Scurry	16,921	3,138	1,573	26	25	86	3,029	1,517	28	14	53	19	6	0	0	0	0	26	757,315
Leon	16,801	3,482	1,621	25	36	36	3,161	1,448	9	22	16	30	6	0	0	1	0	46	792,079
Robertson	16,622	4,833	1,235	12	28	55	4,397	896	6	23	22	72	1	1	2	0	0	31	1,009,165
Lee	16,612	2,559	937	100	49	73	2,525	475	86	38	57	27	3	1	0	0	0	40	661,086
Pecos	15,507	4,497	451	64	29	39	4,149	252	0	0	0	50	5	2	0	0	30	25	848,007
Nolan	15,216	4,301	271	35	62	46	3,618	245	7	36	1	8	5	0	0	0	1	34	666,591
Karnes	14,824	2,695	668	21	8	43	2,409	547	4	7	21	4	0	0	0	0	0	19	575,306
Andrews	14,786	1,977	679	34	24	66	3,830	1,123	35	20	87	13	3	0	0	0	0	29	545,094
Trinity	14,585	1,188	1,052	190	61	55	699	359	28	2	8	0	0	0	0	0	0	83	328,432
Newton	14,445	2,396	641	9	26	32	2,090	564	4	14	9	2	0	0	1	0	0	30	372,098
Jackson	14,075	1,377	1,358	37	48	51	1,398	1,068	15	29	27	0	0	0	1	0	0	19	505,437
Zapata	14,018	2,292	1,121	58	9	25	838	246	26	6	0	0	0	0	1	0	8	6	176,924
Lamb	13,977	1,436	470	14	17	64	1,234	264	6	5	23	14	2	0	0	0	0	20	290,367
Comanche	13,974	1,480	109	41	15	27	1,467	85	23	10	10	6	0	0	0	0	0	18	271,440
Dawson	13,833	1,438	696	40	12	30	1,337	379	4	0	3	8	1	0	0	0	0	13	310,996
Reeves	13,783	1,526	1,069	80	24	73	1,316	741	59	17	43	22	5	0	0	0	0	25	366,825
Madison	13,664	3,014	903	20	33	32	2,254	617	1	1	0	1	1	0	0	0	0	0	508,155
Callahan	13,544	4,005	98	10	26	59	3,407	66	4	0	15	38	1	0	0	0	0	20	749,440
Wilbarger	13,535	2,763	1,704	81	50	2	2,495	1,221	37	8	2	26	12	0	0	0	0	26	634,309
Morris	12,934	1,239	205	17	38	15	1,147	118	0	0	0	0	0	0	0	1	0	29	215,474
Red River	12,860	1,377	262	15	53	59	1,361	272	2	33	37	3	0	0	0	0	0	32	216,118
Terry	12,651	2,402	685	16	34	33	2,161	758	0	2	5	4	2	0	0	0	1	12	458,969
Camp	12,401	496	348	16	32	35	310	218	0	3	0	0	0	0	0	0	0	36	165,903
Duval	11,782	1,169	414	30	13	6	783	191	3	1	0	0	0	0	0	0	2	34	181,721
Zavala	11,677	4,206	1,119	15	1	14	2,474	502	0	0	0	3	0	0	0	0	0	12	473,920
Live Oak	11,531	6,738	1,838	9	18	9	6,760	1,542	7	10	10	4	2	0	0	0	0	24	1,336,117
Rains	10,914	1,241	333	46	34	24	1,141	413	19	13	9	10	7	1	0	0	0	15	221,713
Sabine	10,834	393	611	14	9	19	418	630	11	4	8	0	0	0	0	0	0	35	139,049
Clay	10,752	3,097	330	3	20	30	2,524	278	0	0	0	1	0	0	0	0	0	23	480,518
Ward	10,658	4,311	776	23	34	17	3,286	346	3	9	5	41	2	0	0	0	1	37	775,969
Franklin	10,605	1,746	241	38	35	53	1,819	287	42	39	56	10	1	0	0	0	0	27	407,557
Marion	10,546	1,922	1,056	12	25	44	1,925	878	13	28	27	0	8	0	1	0	0	25	314,054
Runnels	10,501	1,475	145	22	1	39	1,310	103	0	0	1	0	1	0	0	0	0	12	282,270
Blanco	10,497	3,024	268	18	22	23	2,575	288	8	20	6	10	0	0	2	0	2	16	443,952
Parmer	10,269	1,295	163	29	4	159	1,489	165	8	3	46	6	1	0	0	0	0	5	269,625
Ochiltree	10,223	1,423	1,171	491	27	31	1,101	1,026	344	8	19	0	0	1	0	0	0	14	423,376
Dimmit	9,996	3,732	2,207	0	11	86	2,393	1,036	0	0	8	0	0	0	0	0	0	28	700,059
Stephens	9,630	591	172	19	41	25	541	152	9	41	2	8	1	0	1	0	0	21	148,223
Mitchell	9,403	3,126	212	13	51	65	3,051	457	6	26	42	17	0	0	0	0	0	4	537,835
Brewster	9,232	3,285	213	8	28	13	900	109	0	0	0	12	0	0	0	0	0	14	388,402
Archer	9,054	1,683	559	21	5	8	1,446	339	11	5	2	2	0	0	0	0	3	15	394,784
Jack	9,044	886	767	5	12	22	912	642	0	0	0	3	0	0	0	0	0	0	287,070

Justice Courts Summary of Reported Activity from September 1, 2010 to August 31, 2011

(Counties Listed in Population Order)

		CASES FILED					CASES DISPOSED					CASES APPEALED					MISCELLANEOUS		
	2010 Population	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Traffic	Non-Traffic	Small Claims Suits	Forcible Entry & Detainer	Other Civil Suits	Examining Trials	Inquests	Revenue ($)
Coleman	8,895	659	553	24	28	12	530	395	0	0	0	0	0	0	0	0	0	19	133,009
San Augustine	8,865	1,178	342	11	19	22	1,536	402	12	3	7	0	0	0	0	0	0	45	180,393
Hamilton	8,517	1,142	149	23	17	16	1,110	151	18	7	1	1	0	0	0	0	0	17	211,547
Somervell	8,490	1,100	466	1	19	25	1,188	294	3	17	20	11	1	0	0	0	0	7	182,347
McCulloch	8,283	1,739	195	47	0	40	1,548	101	3	0	0	0	0	0	0	0	0	26	277,023
Castro	8,062	869	140	55	6	0	676	117	15	4	0	0	0	0	0	0	0	11	135,771
Yoakum	7,879	1,486	34	4	7	25	1,596	65	6	7	46	3	0	0	0	0	0	11	223,653
Swisher	7,854	1,108	95	3	10	43	898	73	1	0	1	2	0	0	0	0	0	2	186,309
Presidio	7,818	2,726	261	29	1	0	2,138	32	3	0	0	8	0	0	0	0	4	7	375,432
Refugio	7,383	6,521	1,642	3	11	28	6,253	1,838	4	11	20	29	18	0	0	0	0	14	1,572,491
Brooks	7,223	3,237	2,655	21	3	6	1,878	2,928	1	0	1	6	0	0	0	2	0	54	976,404
Goliad	7,210	1,481	1,008	30	24	16	1,785	1,157	24	15	7	9	4	0	0	0	0	14	543,081
Bailey	7,165	1,371	1	9	1	127	1,351	0	1	0	4	6	0	1	0	0	0	5	233,303
Winkler	7,110	453	94	9	7	28	453	100	4	5	21	4	0	0	0	0	0	9	94,696
Childress	7,041	5,099	237	34	15	18	4,121	169	14	10	8	80	1	0	0	0	0	8	756,629
La Salle	6,886	5,115	1,053	28	5	2	4,390	791	6	0	1	14	3	0	0	0	0	11	1,185,560
Dallam	6,703	627	483	36	13	28	593	308	9	2	7	0	0	0	0	0	0	5	247,709
Garza	6,461	839	402	3	4	21	898	124	0	0	0	2	2	0	0	0	0	4	151,896
Floyd	6,446	246	203	7	8	10	408	252	6	0	3	0	0	0	0	0	0	0	82,951
Carson	6,182	1,485	816	11	3	14	2,027	721	3	1	2	29	1	0	0	0	0	8	514,746
San Saba	6,131	1,097	362	24	2	7	887	268	5	1	1	0	1	0	0	0	0	5	189,618
Hartley	6,062	1,361	645	2	2	18	1,407	522	0	0	1	0	0	0	0	0	0	6	462,383
Crosby	6,059	512	120	5	20	0	332	44	3	11	2	0	0	0	0	0	0	0	87,425
Lynn	5,915	1,450	172	0	0	12	1,810	124	7	0	4	17	3	0	0	0	0	8	367,076
Haskell	5,899	922	140	10	5	9	896	151	2	1	8	9	1	0	0	0	0	12	211,678
Hansford	5,613	280	173	22	5	8	271	186	13	1	10	2	0	0	0	0	0	6	69,772
Wheeler	5,410	3,314	1,535	13	4	21	3,399	1,388	2	1	2	24	5	1	0	0	31	13	1,140,256
Jim Hogg	5,300	1,921	504	0	0	5	1,190	107	0	0	5	0	0	0	0	0	0	0	234,176
Delta	5,231	945	209	5	18	3	647	134	0	0	0	12	3	0	0	0	0	0	156,240
Mills	4,936	942	61	7	4	17	1,082	35	4	3	4	5	0	1	0	0	0	3	224,955
Martin	4,799	1,935	1,160	2	0	23	2,127	1,047	0	0	0	38	0	0	0	0	0	10	474,236
Kimble	4,607	7,905	2,519	44	1	14	7,120	1,232	4	0	3	31	5	0	0	0	0	21	1,548,032
Crane	4,375	1,005	95	3	4	9	698	66	3	0	0	5	0	0	0	0	0	4	176,953
Hardeman	4,139	818	426	48	5	8	1,384	535	47	4	4	8	0	0	0	0	0	8	340,899
Sutton	4,128	5,983	306	4	2	12	5,379	197	6	2	11	43	7	0	0	0	0	10	1,036,289
Concho	4,087	2,395	546	1	0	17	1,743	213	0	0	3	1	3	0	0	0	0	12	462,268
Mason	4,012	980	701	4	2	4	1,098	176	2	3	3	2	0	0	0	0	0	6	280,991
Fisher	3,974	236	367	7	2	5	311	167	1	0	0	1	0	0	0	0	0	9	92,483
Hemphill	3,807	1,053	93	7	0	4	903	148	0	0	2	4	8	0	0	0	0	9	266,574
Baylor	3,726	940	7	10	3	3	937	4	4	3	1	3	0	0	0	0	0	6	123,176
Crockett	3,719	3,571	1,449	19	3	4	3,293	1,254	5	2	3	24	4	0	0	0	0	17	671,869
Knox	3,719	794	112	4	0	2	1,105	121	0	0	0	4	0	0	0	0	0	5	149,999
Donley	3,677	3,014	241	5	10	25	2,588	210	0	4	33	20	1	0	0	0	0	10	545,661
Kinney	3,598	2,049	332	3	5	1	2,136	87	0	0	1	13	1	0	0	0	0	6	409,065
Hudspeth	3,476	2,919	2,264	0	1	0	4,182	8	0	0	0	0	0	0	0	0	0	12	1,072,822
Schleicher	3,461	1,079	703	64	2	2	1,073	505	101	1	2	48	0	0	0	0	0	13	265,227
Shackelford	3,378	1,307	29	9	7	5	1,411	26	4	7	3	6	1	0	0	0	1	11	280,263
Reagan	3,367	2,087	406	6	1	7	1,823	241	1	1	8	22	2	0	0	0	0	4	308,000
Upton	3,355	736	78	7	2	2	574	49	1	2	0	1	0	0	0	0	0	6	93,124
Hall	3,353	3,567	30	8	7	30	3,363	30	1	2	0	0	0	0	0	0	0	3	565,999
Coke	3,320	1,079	105	5	7	10	1,218	288	1	1	1	1	0	0	0	0	0	5	207,303
Real	3,309	602	101	10	0	8	411	47	1	0	0	4	0	0	0	0	0	5	102,756
Lipscomb	3,302	626	73	4	0	6	627	126	2	0	3	0	0	0	0	0	0	3	145,439
Cochran	3,127	226	88	3	0	4	228	75	0	0	0	0	0	0	0	0	0	0	101,776
Collingsworth	3,057	408	91	3	4	7	459	97	4	3	1	10	0	0	0	0	0	4	168,294
Sherman	3,034	1,180	228	4	0	23	1,180	204	0	0	26	8	2	0	0	0	0	2	227,132
Dickens	2,444	1,218	30	5	8	90	1,218	30	1	0	5	3	1	0	0	0	0	6	229,656
Culberson	2,398	1,435	495	12	2	0	775	81	2	2	0	1	0	0	0	0	1	1	327,636
Jeff Davis	2,342	491	213	11	0	6	606	186	12	0	4	5	2	0	0	0	0	7	160,610
Menard	2,242	1,515	862	10	0	1	1,443	657	7	0	0	0	0	0	0	0	0	0	431,837
Oldham	2,052	2,570	629	2	1	3	2,919	428	0	0	0	18	1	0	0	0	0	7	615,426
Edwards	2,002	144	216	6	0	8	146	208	1	0	8	1	0	0	0	0	0	5	79,360
Armstrong	1,901	3,552	0	1	0	30	1,267	0	0	0	0	11	0	0	0	0	0	2	591,975
Throckmorton	1,641	257	79	5	0	6	287	63	0	0	0	2	0	0	0	0	7	3	56,789
Briscoe	1,637	449	153	16	0	2	406	71	10	0	0	0	0	0	0	0	0	6	95,274
Irion	1,599	986	211	1	1	1	746	264	0	0	0	19	1	0	0	0	0	8	168,905
Cottle	1,505	999	12	0	1	9	811	6	0	0	0	0	0	0	0	0	4	4	132,849
Stonewall	1,490	340	61	1	0	2	287	37	0	0	0	1	1	0	0	0	0	0	72,803
Foard	1,336	157	61	0	1	1	141	42	0	0	0	0	0	0	0	0	0	0	33,577
Glasscock	1,226	1,307	419	3	0	0	1,127	242	2	0	0	0	0	0	0	0	0	0	237,146
Motley	1,210	293	157	1	1	0	255	126	0	0	0	0	0	0	0	0	0	4	72,083
Sterling	1,143	1,815	234	0	0	0	2,019	274	0	0	0	0	0	0	0	0	0	0	307,492
Terrell	984	449	98	10	0	3	349	92	0	0	2	28	0	0	0	0	0	6	94,603
Roberts	929	407	263	0	0	3	417	115	0	0	0	9	1	0	0	0	0	0	105,357
Kent	808	83	17	0	0	1	87	9	0	0	0	0	0	0	0	0	0	9	16,303
McMullen	707	1,153	851	7	0	0	2,060	1,181	2	0	0	0	2	0	0	0	0	0	308,194
Borden	641	178	0	0	0	0	131	0	0	0	0	0	0	0	0	0	0	0	31,585
Kenedy	416	2,859	997	0	2	0	2,724	536	0	0	0	0	0	0	1	0	0	6	739,639
King	286	301	50	0	0	0	322	36	0	0	0	13	0	0	0	0	0	0	59,231
Loving	82	230	93	0	0	0	229	75	0	0	0	7	0	0	0	0	0	0	36,409
Totals	25,145,561	2,123,689	597,029	43,287	224,978	199,226	1,795,063	522,415	41,834	214,500	111,731	28,987	1,786	467	4,084	428	1,696	17,257	344,026,093

2011 Annual Report

Table of Contents

Published Reports: 2011 | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 | 1992 and Earlier | Annual Reports

Use the Trial Court Activity Database to run reports (Sep. 1992 to Present) containing the most up-to-date data available,
including corrections and reports submitted after the publication of the annual reports.

Annual Report for the Texas Judiciary 2011

- Summary Report [pdf] 3.66 MB
  Note: Due to budget constraints, the report was not printed this year.

Judicial Branch: Structure And Operation

- Court Structure Chart - [pdf]
- Judicial Appropriations Chart - [xls]
- Profile of Appellate and Trial Judges - [pdf]
- Judge Qualifications Chart - [pdf]
- Judges Salaries - [pdf]
- Supplemental Compensation - [xlsx]
- Demographic Profile of the Appellate Court Legal Staff - [xls]

Supreme Court

- Justices of the Supreme Court - [pdf]
- Supreme Court Activity - [pdf]

Court Of Criminal Appeals

- Judges of the Court of Criminal Appeals - [pdf]
- Court of Criminal Appeals Activity - [pdf]

Courts Of Appeals

- Courts of Appeals districts - [pdf]
- Courts of Appeals districts (Map) - [xls] | [pdf]
- Justices of the Courts of Appeals - [pdf]
- Courts of Appeals Activity
  - Activity Detail - [xls]
  - Opinion Summary - [xls]
  - Appeals by County - [xls]

Administrative Judicial Regions

- Assigned Judges in the Trial Courts - [pdf]
- AJR map - [pdf] | [jpg]
- Maps by AJR [pdfs] - 1st | 2nd | 3rd | 4th | 5th | 6th | 7th | 8th | 9th

District Courts

- Explanation of Case Categories - [pdf]
- Notes about Data for District Courts for FY 2011 [pdf]
- Activity Detail - [xls] | [pdf]
- Summary by County
  - Counties listed in alphabetical order - [xls] | [pdf]
  - Counties listed in population order - [xls] | [pdf]
- Age of Cases Disposed - [xls] | [pdf]
  - Sorted by population - [xls] | [pdf]
- Performance Measures - [xls] | [pdf]
  - Performance Measure Definitions - [pdf]
- Sentencing Information by County - [xls] | [pdf]
- Additional Civil and Family Case Activity by County - [xls] | [pdf]
- Additional Criminal Case Activity by County - [xls] | [pdf]
- Additional Juvenile Case Activity by County - [xls] | [pdf]

Statutory County Courts

- Explanation of Case Categories - [pdf]
- Notes about Data for Statutory County Courts for FY 2011 - [pdf]
- Activity Detail - [xls] | [pdf]
- Summary by County
  - Counties listed in alphabetical order - [xls] | [pdf]
  - Counties listed in population order - [xls] | [pdf]
- Age of Cases Disposed - [xls] | [pdf]
  - Sorted by population - [xls] | [pdf]
- Performance Measures - [xls] | [pdf]
  - Performance Measure Definitions - [pdf]
- Sentencing Information by County - [xls] | [pdf]
- Additional Civil and Family Case Activity by County - [xlsx] | [pdf]
- Additional Criminal Case Activity by County - [xls] | [pdf]
- Additional Juvenile Case Activity by County - [xls] | [pdf]

Constitutional County Courts

- Explanation of Case Categories - [pdf]
- Notes about Data for Constitutional County Courts for FY 2011 - [pdf]
- Activity Detail - [xls] | [pdf]
- Summary by County
  - Counties listed in alphabetical order - [xls] | [pdf]
  - Counties listed in population order - [xls] | [pdf]
- Age of Cases Disposed - [xls] | [pdf]
  - Sorted by population - [xls] | [pdf]
- Performance Measures - [xls] | [pdf]
  - Performance Measure Definitions - [pdf]
- Sentencing Information by County - [xls] | [pdf]
- Additional Civil and Criminal Case Activity by County- [xls] | [pdf]
- Additional Juvenile Case Activity by County - [xls] | [pdf]

District And County-Level Juvenile Activity

- Notes about Juvenile Data for FY 2011 - [pdf]
- Statewide Juvenile Activity - [xls] | [pdf]
- Juvenile Activity by County - [xls] | [pdf]
  - Sorted by population - [xls] | [pdf]
- Age of Cases Disposed - [xls] | [pdf]
- Other Juvenile Activity by County - [xls] | [pdf]

County-level Courts: Probate, Guardianship and Mental Health Activity

- Notes about Data for FY 2011 - [pdf]
- Statewide Activity - [xls] | [pdf]
- Probate Activity by County - [xls] | [pdf]
- Guardianship Activity by County - [xls] | [pdf]
- Mental Health Activity by County - [xls] | [pdf]

Justice Courts

- Explanation of Case Categories - [pdf]
- Overall Activity - [pdf]
- Summary by County (counties listed in alphabetical order) - [xls] | [pdf]
- Summary by County (counties listed in population order) - [xlsx] | [pdf]
- Summary of Reported Activity by Court - [xlsx] | [pdf]

Municipal Courts

- Explanation of Case Categories - [pdf]
- Overall Activity - [pdf]
- Summary by City (counties listed in alphabetical order) - [xls] | [pdf]
- Summary by City (counties listed in population order) - [xls] | [pdf]

Justice of the Peace Courts
Explanation Of Case Categories

CRIMINAL CASES

TRAFFIC MISDEMEANORS

This category includes all non-jailable misdemeanor violations of the Texas traffic laws and other violations of laws relating to the operation or ownership of a motor vehicle (for example, Speeding, Stop Sign, Red Light, Inspection Sticker, Driver's License, Registration, etc.). Maximum punishment is by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment.

NON-TRAFFIC MISDEMEANORS

This category includes all other Class C misdemeanor criminal violations found in the Texas Penal Code and other state laws (for example, Public Intoxication, Disorderly Conduct, Assault, Theft Under $50, etc.). Maximum punishment is by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment.

CIVIL CASES

SMALL CLAIMS SUITS

This category includes all suits for the recovery of money (damages or debt up to $10,000) brought to the justice of the peace as judge of the Small Claims Court in accordance with Chapter 28 of the Texas Government Code.

FORCIBLE ENTRY AND DETAINER

This category includes all suits for forcible entry and detainer (recovery of possession of premises) brought under authority of Section 27.031, Texas Government Code; Texas Property Code, Section 24.001-24.008; and Rules 738-755, Texas Rules of Civil Procedure.

OTHER CIVIL SUITS

This category includes all other suits within the civil jurisdiction of the justice of the peace court, including those for recovery of money (damages or debt up to $10,000) and for foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction as provided by Section 27.031 of the Texas Government Code.

SECTION 5.02. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.060 to read as follows:

Sec. 27.060. SMALL CLAIMS. (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.

(b) Except as provided by Subsection (c), rules of the supreme court must provide that:

(1) if both parties appear, the judge shall proceed to hear the case;

(2) formal pleadings other than the statement are not required;

(3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;

(4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;

(5) discovery is limited to that considered appropriate and permitted by the judge; and

(6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

(c) The rules of the supreme court must provide specific procedures for an action by:

(1) an assignee of a claim or other person seeking to

bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest; or

(3) a collection agency or collection agent.

(d) The rules adopted by the supreme court may not:

(1) require that a party in a case be represented by an attorney;

(2) be so complex that a reasonable person without legal training would have difficulty understanding or applying the rules; or

(3) require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied except to the extent the justice of the peace hearing the case determines that the rules must be followed to ensure that the proceeding is fair to all parties.

(e) A committee established by the supreme court to recommend rules to be adopted under this section must include justices of the peace.

SECTION 5.03. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.061 to read as follows:

Sec. 27.061. RULES OF ADMINISTRATION. The justices of the peace in each county shall, by majority vote, adopt local rules of administration.

SECTION 5.04. Subchapter E, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0821 to read as follows:

Sec. 15.0821. ADMINISTRATIVE RULES FOR TRANSFER. The

justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

SECTION 5.05. Article 4.12, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.

SECTION 5.06. (a) Chapter 28, Government Code, is repealed.

(b) On the effective date of this section, each small claims court under Chapter 28, Government Code, is abolished.

SECTION 5.07. Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

(1) rules to define cases that constitute small claims cases;

(2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and

(3) rules for eviction proceedings.

SECTION 5.08. (a) Immediately before the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

(b) When a case is transferred as provided by Subsection (a)

of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if originally required to appear before that court.

SECTION 5.09. Sections 5.02 and 5.06 of this article take effect May 1, 2013.

ARTICLE 6. ASSOCIATE JUDGES

SECTION 6.01. Subtitle D, Title 2, Government Code, is amended by adding Chapter 54A to read as follows:

CHAPTER 54A. ASSOCIATE JUDGES

SUBCHAPTER A. CRIMINAL ASSOCIATE JUDGES

Sec. 54A.001. APPLICABILITY. This subchapter applies to a district court or a statutory county court that hears criminal cases.

Sec. 54A.002. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.