

The Supreme Court must adopt rules by May 1, 2013 for Justice Court, as provided by HB 79. This set of proposed rules was submitted March 30, 2012 by a special Task Force to the Supreme Court Rules Committee, who will discuss the proposal at their meeting June 22-23, 2012.

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 through 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 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 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.