

Comparison of Comments From Interested Groups

Prepared by the 700 Series Sub-committee

(Based on Comments Received as of 5-15-02)

JP (Justice of the Peace and Constable Assn of Texas)

TAA (Texas Apartment Assn)

HAA (Houston Apartment Assn)

SAA (San Antonio Apartment Assn)

FUCHS (Travis County Legal Aid)

RULE	JP	TAA	HAA	SAA	Fuchs
4	Supports				
143a				Wants to add language in last sentence to indicate appeals are from JP court	
190	Supports				
216	Supports				
245	Supports				
738	Wants the provision for late charges deleted because there is no standard for reasonableness and because it would take too much trial time to calculate the late charges.	Supports the provision for late charges and wants to allow plaintiff's to sue for rental value even in the absence of a rental agreement. Wants to include that any judgment cannot be in excess of the jurisdictional limit.	Supports and also wants to add a provision for post judgment interest.	Supports and also wants to add a provision for post judgment interest. Wants to substitute the word owner for landlord, and tenant for renter in the 2 nd sentence. Does not think judgments for money, i.e. rent, late fees, attorney's fees, should be limited by the JP or county courts jurisdictional limits.	Opposes late charges but agrees post judgment interest can be included
739	Supports, except for the provision which will require the clerk of the JP court to attach anything to the citation which is filed by the plaintiff under Rule 741	Wants the answer date to be an appearance date with the trial to be set later by the court. Wants to add possession bond citation with required trial date 5,6,or 7 days after service. Wants jury fee paid at least 1 day before trial day.	Supports		Wants the appearance date, at the option of the court, to be either the trial date or an appearance date with a trial to be set later by the court. Also wants some notices on the citation to be in Spanish

RULE	JP	TAA	HAA	SAA	Fuchs
740	Supports version #1	No jury trial. Writ can issue immediately if a default judgment, but if defendant appears writ issues only after 5 days, and chance to appeal. Defendant can appeal even if writ has issued. No counterbond	Does not feel either version allows a landlord to recover possession quickly from a tenant who is a security or safety risk.	Wants to add a requirement that there be 2 good sureties in a (1). In version #1, they feel the setting of a jury trial lacks definiteness. They feel version #2 may be unconstitutional because it denies a jury trial to a tenant	Wants the possession bond trial to be set 6 days after service, and wants to eliminate the counterbond. Also wants the possession bond to be 4 times the rent, and adds a possession bond form
741	Wants the word sworn inserted before complaint in the 1 st sentence so it is consistent with rule 739. Opposes the provisions of this rule which will require the plaintiffs to file additional information with the petition, and require the court to rule on the sufficiency of that material, as well as deal with motions and continuances filed because of the rule.	Opposes all new requirements for expanded pleading and to attach certain documents to the pleadings.			No longer wants documents enclosed with petition or Enhanced pleading requirements
742	They want to limit the service of citation in evictions to the sheriff or constable only	If the citation is for a possession bond the citation must be served at least 5 days before trial date.			Supports
742a	In (a), (b), and (c) they want to limit the service of citation in evictions to the sheriff or constable only		Supports the attempt to clean up the problem of trying to serve tenants at multiple addresses		Wants to retain the requirement that attempts at service be made at all known work addresses, and wants all attempts to be made at least 4 hours apart, and that citations be placed on the top half of the door.
743	Opposes any form of discovery in evictions	Says rules should be silent as to discovery as the existing rules provide for discovery	Opposes any discovery in evictions		Does not see any need to provide for discovery because the current rules already allow discovery

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744	Supports	Plaintiff must request jury trial at time of filing petition, and defendant must request jury within 5 days after service. Jury must be summoned within 7 days after service.	They think earliest opportunity language in line 4 is too vague and will result in delays in setting jury trials		
745	Supports	Opposes the additional 7 day delay in the 2 nd sentence	Opposes the additional 7 day delay in the 2nd sentence		
746	Supports the general position but feels anytime a title dispute is raised it should be determined by a district court, not the JP court				
747		Wants the jury trail to be held within 7 days after the request is filed.			
747a	Supports	Supports			

RULE	JP	TAA	HAA	SAA	Fuchs
748	Supports except wants late charges deleted. Also they want to add the following to the last sentence in the 1 st paragraph “unless an immediate writ was issued under rule 740”	Wants post judgment interest in the judgment. Writ issues after 5 days except for possession bond defaults, which can issue immediately. Provision for writs on manufactured homes evictions. Says writ should issue without delay. Also says JP judgment can be enforced when appeal is perfected in some situations. Eliminates requirement for the JP to find and record in the judgment findings about the rent, due date, etc.			
749	Opposes any motion for new trial. They want an appeal bond for twice the amount of the judgment or 2 months rent plus court costs whichever is greater in order to appeal. They want any hearings on the sufficiency of the bond to be held by the JP court not the county court.	Opposes any motion for new trial, to set aside a default, or a dismissal. Allows a tenant to appeal a default possession bond judgment within 5 days after judgment signed, even if a writ has issued.	Opposes any motion for new trial. They feel the rule is too long and should be broken up into smaller rules.	In (c) they feel the appeal bond should be set at twice the amount of the judgment.	Wants to tighten up the requirements to get a new trial. Wants the defendant to still be able to appeal after a writ is signed on a possession bond case and have the JP withdraw the writ.

Rule	JP	TAA	HAA	SAA	Fuchs
749a	Supports	They feel the proposed rules still do not solve the problem of excessive delays in the appeal of the denial of an affidavit of indigence from JP court to county court. They say the process can take 3 to 4 weeks and we have not changed the timetable for handling these appeals.	They feel the rule should be clarified	In (f) they wonder how the county clerk will receive notice of the filing of an affidavit of indigence so they will know to file a contest. In (i)(2) they feel the language should be filed in county court instead of brought to county court.	Wants to allow 5 days for a contest to the affidavit
749b	They feel an appeal should not be perfected until a defendant who has had an affidavit of indigence approved posts one months rent into the registry of the JP court	The perfection of an appeal does not prevent the JP from issuing a writ unless the defendant complies with their new proposed rule 750	The would like the JP court to enforce the judgment i.e. issue a writ of possession if the tenant fails to post a supersedeas bond	In the last sentence of the 2 nd paragraph, they want to change the word when to if. They also want post judgment interest added to the comment.	
749c	Supports	They want to add location for phone numbers of the sureties	They suggest adding the phone numbers of the sureties.		Wants to add a location for the JP to state why the appeal bond is disapproved so it can be corrected

RULE	JP	TAA	HAA	SAA	Fuchs
750		They want the initial one months rent paid into the registry of the JP court, not the county court. Defendant must pay amount equivalent to the judgment for rent and late fees into the JP registry within 5 days after appeal perfected in order to remain in possession. Defendant who has approved affidavit of indigence does not have to pay rent into court registry if eviction was for a non rent breach. If appeal is perfected and defendant does not pay money into registry of JP court within 5 days, JP can give notice of hearing and issue writ.	They want to know if the suspension of the enforcement of the judgement is based on agreement of the parties and the tenant breaches his part of the agreement of the parties and the tenant breaches his part of the agreement can the landlord still get a writ of possession without going through a full trial at county court? In (d) they want time limits on the debtors performance. They want (h) through (k) in a separate rule.	In (g) they want the tenant to pay rent into the registry of the county court within 5 days of the transcript being filed. In (k) and the comment they want it clear that rent must be paid into the registry of the registry of the court.	Wants to delete the supersedeas bond requirements because once an appeal is perfected the judgment is a nullity and there is nothing to supercede. A defendant would have to pay rent into the registry to remain in possession except an indigent defendant would be exempt from the initial payment if eviction based on rent breach. Wants to give a defendant the right to appeal even if a writ is issued.
751		Deletes it because there will not be a supersedeas bond	They want the phone numbers of the sureties on the bond.	They want the bond to reflect that the judgement includes post judgment interest.	Wants it deleted because there would not be a supersedeas bond
752			They want to add late fees and post judgment interest in paragraph 2.	They want to add late fees and post judgment interest in paragraph 2	
753		They want the time for the defendant to file a written answer to be 8 days not 10			

RULE	JP	TAA	HAA	SAA	Fuchs
753a		They want the time for the defendatnt to file a written answer to be 8 days not 10 days.			
754		They want time after which a trial may be held following the receipt of a transcript at county court to be 8 days not 10 days	They oppose any discovery in eviction appeals to county court. In (d) they want the time period for the case to be able to be set for trial to be 8 days not 10 days.		They want the defendant to have 10 days to request a jury trial after notice of transcript. They do not feel any reference to discovery is necessary since existing rules provide for discovery. Wants to give a defendant 10 days to request a jury trial. Does not believe any reference to discovery is necessary since existing rules provide for discovery.
755		Wants to add writs issued in manufactured housing cases provisions.			