

**Comparison of TAA May 13th draft  
to SCAC Subcommittee May 7th draft of eviction-related rules**

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**(PROPOSED) RULE 4. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays should not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purposes of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rules 739, 740, 742, 742a, 744, 748, 749, 749a, 749b, 749c 750 and 754.

**(PROPOSED) RULE 143a. COST ON APPEAL TO COUNTY COURT**

If the appellant fails to pay the cost on appeal from a judgment of a justice of the peace or small claims court, within twenty (20) days after being notified to do so by the county clerk, the appeal shall be deemed not perfected and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted. Payment of costs on appeal from ~~a forcible entry and detainer action~~ an eviction case are governed by Rules 749, 749b and ~~749c~~ 750.

**(PROPOSED) RULE 190. DISCOVERY LIMITATIONS**

~~Except in forcible entry and detainer cases~~ Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

**(PROPOSED) RULE 216. REQUEST & FEE FOR JURY TRIAL**

- a. Request. No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than thirty days in advance.
- b. Jury Fee. Unless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk

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promptly enter a notation of the payment of such fee upon the court's docket sheet.

- c. This rule does not apply in ~~forcible entry and detainer~~ eviction cases.

**(PROPOSED) RULE 245. ASSIGNMENT OF CASES FOR TRIAL**

The court may set contested cases on written request for any party, or on the court's own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties; provided, however, that when a case previously has been set for trial, the Court may reset said contested case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties. Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time. The forty-five day notice required in the preceding sentence will not apply to cases set for trial in justice court, including ~~forcible entry and detainer~~ eviction cases, nor will it apply to the de novo trial of appeals of ~~forcible entry and detainer~~ eviction cases in county court.

A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pretrial proceedings or of current readiness for trial shall be required in order to obtain a trial setting in a contested case.

**(PROPOSED) SECTION 3 EVICTON  
~~FORCIBLE ENTRY AND DETAINER~~**

**(PROPOSED) RULE 738. JOINDER OF ADDITIONAL CLAIMS**

A ~~suit~~ claim for rent, contractual late charges, and attorney's fees may be joined with an ~~action of forcible entry and detainer~~ eviction suit. If there is no oral or written rental agreement, a claim for rental value may be joined. The court may render judgment in favor of plaintiff for eviction and for rent or rental value and any attorney's fees owed by the defendant to the plaintiff. ~~The court in rendering judgment for possession, may at the same time render judgment for any rent, contractual late charges, and attorney's fees, due the landlord by the renter. The total judgment awarded for rent or rental value shall not exceed the jurisdiction of the justice court.~~ The justice may also award court costs against the unsuccessful party.

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~~RULE 739. CITATION~~  
(PROPOSED) RULE 739. CITATION

~~(a) When an aggrieved party or the party's~~ When a plaintiff or the plaintiff's authorized agent shall file files a written sworn complaint for eviction, the justice shall immediately issue citation directing the defendant ~~or defendants~~ to appear for trial before ~~such~~ the justice at a time, date and place named in ~~such~~ the citation, ~~such time being not~~ on a date not less than six nor more than ten days nor less than six days from the date of service of the citation. ~~The justice shall attach to the citation copies of all documents, and records filed with the complaint by the complainant.~~

If a bond for possession under Rule 740 is filed with the sworn complaint, the citation must designate a trial date on the fifth, sixth, or seventh day after both citation and notice of possession bond are served on the defendant. The citation and the notice of possession bond must be served concurrently.

~~(b) The citation shall inform the parties that, upon timely request~~ defendant that the case shall be heard by a jury only if a request for jury and payment of a jury fee is made one day before the trial date as designated in the citation no later than five days after the defendant is served with citation, the case shall be heard by a jury.

~~RULE 740. COMPLAINANT MAY HAVE POSSESSION~~  
(PROPOSED) RULE 740. POSSESSION BOND

~~(a) The plaintiff may, at the time of filing his complaint, or thereafter prior to trial in the justice court, execute and~~ an eviction suit, file a possession bond to be approved by the justice in such amount as the justice may fix as the probable amount of cost of suit and damages which may result to defendant in the event that the suit has been improperly costs of suit and damages which may result to ~~instituted, and defendant if the suit has been improperly instituted. The bond shall be conditioned that the plaintiff will pay the~~ defendant all ~~such~~ costs and damages as shall be adjudged against plaintiff.

~~(b) The justice court shall notify the defendant that the plaintiff has filed a possession bond. Such notice must be served on a defendant, The notice shall be served on the defendant concurrently with and~~ in the same manner as service of citation in a forcible entry and detainer an eviction suit and shall inform the defendant of all of the following rules and procedures, except that the ~~the~~ procedures in (c) and (d) below. The officer or other authorized person serving the notice of the possession bond shall return such the notice to the justice who issued same within one day after service the notice at least one day before the trial date designated in the citation.

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(c) A trial held under this rule must be a trial by the justice. If the defendant does not appear for trial as directed in the citation, the justice may, on request of the plaintiff, promptly enter a default judgment and issue a writ of possession immediately. If the defendant appears for trial as directed in the citation, the case shall be tried in the same manner as other eviction suits; and any writ of possession may be issued and executed only according to Rule 748.

~~(a) Defendant may remain in possession if;~~

~~(1) defendant executes and files a counterbond prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's bond. Said counterbond shall be approved by the justice and shall be in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to plaintiff in the event possession has been improperly withheld by defendant; or~~

~~(2) defendant within two days of being served with notice of the possession bond, demands a trial which will be held, insofar as practicable, prior to the expiration of six days from the date defendant is served with notice of the filing of the plaintiff's possession bond. In order to obtain a jury trial, the defendant must demand the same within this two day period and pay the jury fee. If, in lieu of a counterbond, defendant demands trial within said six day period, and if the justice of the peace rules after trial that plaintiff is entitled to possession of the property, the justice court may issue a writ of possession after the expiration of five days after such determination by the justice of the peace. If the defendant requests a trial under this rule it will be the only trial held in this cause and will supercede the trial which would have been held under the original citation for forcible entry and detainer.~~

~~(b) If defendant does not file a counterbond or demand a trial be held, the plaintiff may request a writ of possession from the justice court after the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond;~~

~~(e) (d) Whenever a justice court issues a writ of possession under this rule a rule, the defendant may appeal in the same manner as after a traditional forcible entry and detainer trial a defendant may appeal an eviction judgment when a possession bond has not been filed.~~

(PROPOSED) RULE 741. REQUISITES OF COMPLAINT

The sworn complaint shall describe the lands, tenements or premises, the possession of which is claimed, with sufficient certainty to identify the same. It shall also state the facts that entitle the plaintiff to possession and authorize the suit under Chapter 24 of the Texas Property Code. ~~The complaint shall be in writing, on paper measuring approximately 8 1/2 inches by 11 inches, and signed and sworn to by the party, the party's attorney, or the party's authorized agent.~~

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- ~~(a) The complaint must state that the premises at issue is located within the precinct where the complaint is filed.~~
- ~~(b) The complaint must state that the justice court where the complaint is filed has jurisdiction over the suit.~~
- ~~(c) If the complaint seeks judgment for rent and contractual late charges then the complaint must state the frequency with which the rent is paid, the day on which it becomes due, and the amount of rent the tenant is obligated to pay on that day. The complaint must also state the total rent and contractual late charges which are owed when the petition is filed.~~
- ~~(d) The complaint must state facts which entitle the complainant to the possession authorized~~
  - ~~(1) If the suit for possession is based on non payment of rent and contractual late charges, then the complainant must attach to the complaint a copy of any relevant sections of a written lease, if any, including the parties to the lease, the term of the lease, the provisions relating to rent, the signatories to the lease, and any other sections relevant to the suit. In addition, the complainant must attach a copy of any relevant written payment records for the period in dispute.~~
  - ~~(2) If the suit for possession is based on a breach of a lease other than non payment of rent, then the complainant must attach a copy of any relevant sections of a written lease, if any, including the parties to the lease, the term of the lease, any provisions of the lease alleged to have been breached, the signatories to the lease, and any other sections relevant to the suit.~~
  - ~~(3) If the suit for possession is based on the termination of an executory contract, or a foreclosure then the complainant must attach to the complaint a copy of any relevant sections of documents which form the basis for the suit for possession.~~
  - ~~(4) If the suit for possession is based on the tenant's holding over after the termination of the tenant's right to possession then the complainant must attach to the complaint copies of the relevant sections of any written documents which form the basis for the suit for possession.~~
  - ~~(5) If the suit for possession is based on grounds other than 1-4 above then the complainant must attach copies of the relevant sections of any written documents which form the basis for the suit for possession.~~
- ~~(e) The complainant must also provide enough additional copies of documents required by this rule to enable the court to attach those copies to each citation. If the complaint fails to attach any information required by this rule then the trial may be postponed on motion of any party or on the court's own motion, in accordance with Rule 745. Failure by the complainant to attach any information required by this rule is not grounds for the dismissal of the suit.~~
- ~~(f) The grounds under which the complainant is entitled to possession and other damages authorized by Rule 738 is limited by the facts stated in the complaint. The complaint may be amended by the complainant at any time prior to trial. If the complaint is amended the defendant may request a continuance in accordance with Rule 745.~~

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(PROPOSED) RULE 742. SERVICE OF CITATION

(a) Persons Authorized to Serve Citation in Foreible Entry and Detainer Actions Eviction Suits. Persons authorized to serve citation in ~~Foreible Entry and Detainer actions~~ eviction suits include (1) any sheriff or constable ~~[or other person authorized by law or, law, or~~ (2) any person authorized by law or written order of the court who is not less than 18 years of age]. No person who is a party to; or interested in the outcome of a suit ~~shall~~ may serve any process.

(b) Method of Service of Citation.

~~The officer or other person~~ Except as provided in Rule 742a, the officer [or other person] authorized to serve citation shall ~~execute the citation~~ serve it by delivering a copy of it to the defendant, or by leaving a copy thereof with ~~some a~~ some a person over the age of sixteen years; at the premises ~~at issue, in question~~ at issue, in question at least six days before the trial date specified in the citation. If a bond for possession has day as shown on been filed, the citation shall be served at least five days before the trial date specified in the citation. The person serving the citation shall state on the citation when it was served, the manner of service, and the citation shall be signed by the officer or authorized person.

(c) Return of Citation.

The person serving the citation shall return the citation, noting the action taken thereon, to the justice who issued the citation at least one day before the trial day named date designated in the citation.

(PROPOSED) RULE 742a. SERVICE BY DELIVERY TO PREMISES AND MAIL

(a) If the sworn complaint lists the address of the premises at issue as well as any other alternate addresses of the defendant or defendants as contained in a written lease agreement, and if service of citation cannot be effected readily accomplished under Rule 742, then service of citation may be by delivery to the premises at issue as follows and mail under subparagraph (b) of this rule.

(b) If the officer or other person authorized to serve citation in foreible entry and detainer actions eviction suits is unsuccessful in serving citation under Rule 742, the officer or other authorized person shall no later than five days after receiving ~~such the~~ the citation ~~execute a sworn statement sign an affidavit~~ sign an affidavit based on personal knowledge, confirming that diligent efforts have been made to serve ~~such the~~ the 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 county, as~~ stated in the sworn complaint. The affidavit shall state the times and places of attempted service. ~~Such sworn statement~~ The affidavit shall be filed with the justice. After promptly considering the sworn statement affidavit, the justice may then authorize service by written order as follows: according to the following:

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- (a) ~~The~~(1) The officer or other authorized person shall place the citation inside the premises through a door mail chute or by slipping it under the main entry door to the premises; and if neither method is possible or practical, ~~to securely affix the citation~~ shall be securely affixed to the main entry door to the premises; ~~and~~
- (b) ~~The~~(2) The officer or other authorized person shall that same day deposit in the ~~mail a true copy of such~~ United States mail a copy of the citation with a copy of the sworn complaint attached ~~thereto, to it,~~ addressed to the defendant at the premises in question and sent by first class mail; ~~and~~
- (c) ~~The~~(3) The officer or other authorized person shall note on the return of ~~such~~ the citation the date of delivery ~~under (a) above~~ and the date of mailing under (b) above this rule. The return of the citation by an authorized person shall be verified; and
- (d) ~~Such~~(4) The delivery and mailing to the premises under this rule shall occur at least ~~six~~ five days before the trial day ~~as shown on the citation; and at least one day before the trial day named~~ date designated in the citation. The officer or other authorized person accomplishing service shall return ~~such the citation noting the action taken thereon;~~ it to the justice who issued ~~the same~~ it in accordance with Rule 742.

~~It shall not be~~ It is not necessary for the ~~aggrieved party or the party's~~ plaintiff or the plaintiff's authorized agent to make a request ~~for~~ or motion for alternative service ~~pursuant to~~ under this rule.

(PROPOSED) RULE 743. DOCKETED

The ~~cause~~ suit shall be docketed and tried as other cases. If the defendant ~~shall fail to enter an appearance upon the docket in the justice court or file answer before~~ fails to appear when the case is called for trial, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly. If the plaintiff ~~shall fail~~ fails to appear when the case is called for trial, the case may be dismissed for want of prosecution. The justice ~~shall have~~ has authority to issue subpoenas for witnesses to enforce their attendance, and to punish for contempt.

~~Generally, discovery is not appropriate in forcible entry and detainer actions, however, the justice has the discretion to allow reasonable discovery.~~

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~~RULE 744. DEMANDING JURY~~  
(PROPOSED) RULE 744. REQUEST FOR JURY

~~Any party shall have~~ Except for trials when a possession bond has been filed, a party has the right of trial by jury, by making a request to the court and paying the jury fee. ~~In order to have a jury trial, a plaintiff must request a jury and pay the jury fee at the time of filing the sworn complaint; and a defendant must request a jury and pay the jury fee on or before five days from the date the defendant is served with citation, and by paying the jury fee required by law for requesting a jury trial in justice court.~~ within five days after service of citation, as designated in the citation. Upon such request, a jury shall be summoned at the earliest opportunity, in the same manner as in other justice court proceedings, but in no event later than seven days from the date of service. This rule will not apply ~~to~~ in trials conducted under Rule 740.

(PROPOSED) RULE 745. TRIAL POSTPONED

~~For~~ On the court's own motion or upon good cause shown, ~~supported by affidavit of either party,~~ the trial may be postponed by the justice for a period not exceeding seven days. ~~Upon a showing of exceptional circumstances, supported by affidavit of either party, or on the court's own motion, the trial may be postponed for an additional seven day period.~~ The trial may be postponed for a longer period ~~upon the~~ by agreement of all parties ~~provided such~~ if the agreement is ~~made~~ in writing and filed with the court, ~~or if the agreement is made in open court.~~

(PROPOSED) RULE 746. ONLY ISSUE

Except as provided in ~~rule~~ Rule 738, the only issue in ~~a forcible entry and detainer action an~~ an ~~eviction suit under Chapter 24 of the Texas Property Code is the right to actual possession and~~ the possession. The merits of the title shall not be adjudicated.

(PROPOSED) RULE 747. TRIAL

~~If no jury is demanded~~ a jury trial is not timely requested by either party, the justice shall try the case. ~~If a jury is demanded~~ trial is timely requested by either party, ~~the party and is authorized under Rule 744,~~ a jury shall be impaneled and sworn as in other cases, as soon as reasonably possible, but not more than 7 days after the request is filed. After hearing the evidence, the jury shall return its verdict in favor of the plaintiff or the defendant as it shall find. No motions for new trial may be made.



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(PROPOSED) RULE 747a. REPRESENTATION  
BY AGENTS

In ~~foreible entry and detainer~~ 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 any ~~foreible entry and detainer~~ eviction suit in justice court, an authorized agent may file a sworn complaint in any kind of eviction case and may request and requesting or obtaining obtain a default judgment without having to be an attorney need not be an attorney.

(PROPOSED) RULE 748. JUDGMENT AND WRIT

(a) If the judgment or verdict is in favor of the plaintiff, the justice shall ~~give~~ grant judgment for plaintiff for possession of the premises, and ~~costs~~ rent or rental value owed, late fees, and court costs, and shall state the post-judgment interest rate, as appropriate. The justice may also ~~give~~ grant judgment for the plaintiff for ~~back rent, contractual late charges and attorney's fees, if sought and pleaded,~~ established by proof, and ~~provided that such claims are within the jurisdiction of the court~~ authorized by the rental agreement or statute.

(b) If the judgment or verdict is in favor of the defendant, the justice shall ~~give~~ grant judgment for ~~the~~ defendant against the plaintiff for ~~costs and for~~ possession of the premises, and court costs and shall state the post-judgment interest, as appropriate. The justice may also ~~award a defendant who prevails against the plaintiff in the issue of possession, a~~ grant judgment for ~~the~~ defendant for ~~attorney's fees if authorized and fees, if pleaded,~~ established by proof, and ~~provided that such claim is within the jurisdiction of the court. If the judgment is for the plaintiff for possession, the justice must issue a writ of possession except that no writ of possession shall issue until the expiration of five days from the day the judgment is signed~~ authorized by the rental agreement or statute.

(a)(c) ~~A foreible entry and detainer~~ The judgment shall be in writing ~~in a separate document and contain the full names of the parties, as stated in the pleadings, and sworn complaint, and shall state for and against whom the judgment is rendered.~~ The judgment shall recite who is awarded:

- ~~(1) possession of the premises;~~
- ~~(2) back rent, if any, and contractual late charges, if any, and in what amount.~~
- ~~(3) attorney's fees, if any, and in what amount;~~
- ~~(4) court costs and in what amount.~~

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~~(b) A forcible entry and detainer judgment shall contain findings of fact which must include the following:~~

- ~~(1) whether there is an obligation to pay rent on the part of the defendant;~~
- ~~(2) a determination of the rent paying period;~~
- ~~(3) a determination of the day rent is due;~~
- ~~(4) a determination of the amount of rent due each rent paying period, and if the rental agreement provides that all or part of the tenant's rental obligation is subsidized by the government then a determination as to how much rent is to be paid by the tenant and how much rent is to be paid by the federal government;~~
- ~~(5) a determination of the date through which the judgment for back rent, and contractual late charges is calculated.~~

~~(c) — If there is no obligation on the part of the tenant to pay rent then the judge shall make a finding as to the fair market rental value of the premises per month as if there was an obligation to pay rent.~~

(1) possession of the premises;

(2) rent, or rental value, owed, if any, and the amount;

(3) attorney's fees, if any, and the amount;

(4) late fees, if any, authorized by the rental agreement; and

(5) court costs, and the amount.

The judgment shall state the post-judgment interest rate, as appropriate. The judgment shall also state the amount or rent, or rental value if there is no rental agreement that must be initially placed in the justice court registry under Rule 750 to avoid issuance of a writ of possession during any appeal. Any judgment for rent or rental value and attorneys fees shall be within the jurisdiction of the court.

(d) A writ of possession may not be issued until the expiration of five days from the date the judgment is signed, except that (1) the writ may be issued immediately under Rule 740 if a default judgment is granted, and (2) the writ may be issued only in accordance with Section 94.203 of the Texas Property Code, as amended if the defendant is leasing a manufactured home lot. Subject to the provisions of this subparagraph, if a plaintiff is entitled to issuance of a writ of possession, it must be issued without delay.

(e) If the judgment of the justice court is not appealed ~~then it remains~~ it shall remain in force and a prevailing party may enforce their rights under the judgment in the justice court. If the appeal from the justice court is perfected in accordance with Rule 749b, and the county courts jurisdiction is invoked then the justice court may not enforce the judgment. The

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judgment of the justice court will be vacated upon final judgment in the case by the county court. (e) If the judgment of the justice court is not appealed, it shall remain in force and a prevailing party may enforce its rights under the judgment in the justice court. If an appeal from the justice court is perfected in accordance with Rule 749b, the county court's jurisdiction is invoked and the justice court may not enforce the judgment. The judgment of the justice court will be vacated upon final judgment in the case by the county court.

~~(e) ————— The county court may rely on the justice court judgment in determining when and in what amount rent is due to be paid by the appellant into the registry of the county court during the pendency of the appeal. The county court may also rely on the judgment of the justice court in determining whether or not to issue a writ of judgment except under Rule 750.~~

~~possession in the event rents are not timely paid into the registry of the county court. Nothing in this rule prohibits~~(f) This rule does not prohibit the county court from making an independent determination, either on its own motion or on sworn motion of either party, as to the amounts and due dates of rents, rent, or rental value, to be paid into the registry of the county court during the pendency of the appeal.

(PROPOSED) RULE 749. MAY APPEAL

~~(a) All motions to set aside a forcible entry and detainer judgment or for a new trial shall be made within 1 day after the judgment is signed. The filing of a motion to set aside a judgment or for a new trial does not extend the deadline to perfect an appeal under these rules.~~

~~(b)~~(a) Either party may appeal from a final judgment in a forcible entry and detainer an eviction case to the county court of the county in which the judgment is signed.

~~(c) A defendant may appeal by filing with the justice, not more than rendered by doing the following within five days after the judgment is signed:~~

~~(c) signed;~~(1) filing an appeal bond, deposit, or security with one or more sureties, to be approved by said the justice; or depositing with the justice court cash or cash equivalent acceptable to the court, in the amount of the appeal bond; and

~~in an amount equal to the court costs incurred in justice~~(2) depositing with the justice court the amount of the required county court filing fee in accordance with subparagraph (e) of this rule. The filing fee must be made payable to the county clerk of the county in which the case was heard in justice court.

~~(e)~~In lieu of (1) and (2), the defendant may file an affidavit of indigence showing an inability to post the appeal bond or appeal bond deposit and the county court filing fee.

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- (b) The justice shall set the amount of the appeal bond at an amount equal to the court costs incurred in justice court.  
If there are multiple appellants, an affidavit of indigence filed by one appellant does not dispense with the requirement of an appeal bond for the remaining appellants who do not file affidavits of indigence or
- (d) ~~A plaintiff may appeal by filing a written notice of appeal with the justice not more than five days after the day the judgment is signed. The notice of appeal must identify the trial court, plaintiff, defendant and the cause number, and state that the plaintiff desires to appeal. The notice of appeal must be signed by the plaintiff or the plaintiff's authorized agent.~~(e) ~~The party appealing the judgment must also pay to the justice court, the filing fee required by that county to appeal a case to county court. The justice court will forward the filing fee to the county clerk along with all other papers in the case. heard. whose affidavits of indigence are not approved by the court.~~
- (c) The justice court shall immediately forward all papers in the case file to the county clerk, along with (1) the appeal bond, or deposit in lieu of an appeal bond, and the filing fee, or (2) the affidavit of indigence.
- (d) Except as stated in subparagraph (e), an appeal bond must meet the following criteria:
- (1) It must be in an amount equal to the court costs incurred in justice court;
  - (2) It must be made payable to the adverse party;
  - (3) It must be signed by the judgment debtor or the debtor's authorized agent; and
  - (4) It must be co-signed by a sufficient surety or sureties as approved by the court. If an appeal bond is signed by a surety or sureties, then the court may, in its discretion, require evidence of the sufficiency of the surety or sureties prior to approving the appeal bond.
- (e) Instead of filing an appeal bond, a party may deposit the amount of the appeal bond in cash, money order, or other mode of payment acceptable to the court.
- (f) Any motions challenging the sufficiency of the appeal bond may be filed with the county court.
- (g) Within five days following the filing of an appeal bond, the party appealing shall give notice of the filing of the bond, deposit, or affidavit, to the adverse party. No default judgment may be taken by a party in county court without the party showing substantial compliance with this rule.

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(h) If a default judgment has been entered in a case in which a possession bond has been filed, the defendant may still appeal after the writ of possession has been issued and executed, so long as the appeal is filed within five days after the date the judgment is signed.

~~Rule 749a Affidavit of Indigence~~  
(PROPOSED) RULE 749a. AFFIDAVIT OF INDIGENCE

(a) Establishing indigence.

A party who cannot pay the court costs to appeal to the county court, including the county court filing fee, may proceed without ~~advance payment of costs~~ filing an appeal bond and paying the county court filing fee or making a deposit under Rule 749(f) if:

- (1) the party files an affidavit of indigence in compliance with this rule within five days after the justice court judgment is signed; and
- (2) the claim of indigence is not contested or, if contested, the contest is not sustained by a timely written order.

(b) Contents of Affidavit.

The affidavit of indigence must identify the party filing the affidavit and ~~must state what the~~ amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

- (1) the nature and amount of the party's current employment income, government-entitlement income, and other income;
- (2) the income of the party's spouse and whether that income is available to the party;
- (3) real and personal property the party owns other than household furnishings, children's toys and wearing apparel;
- (4) cash or cash equivalent the party ~~holds~~ owns and amounts on deposit that the party may withdraw;
- (5) the party's other assets;
- (6) the number and relationship to the party of any dependents;
- (7) the nature and amount of the party's debts;
- (8) the nature and amount of the party's monthly expenses;

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(9) the party's ability to obtain a loan for court costs;

(10) whether an attorney is providing free or contingent legal services to the party; and

(11) whether an attorney has agreed to pay or advance court costs.

(c) When and Where Affidavit Filed.

An appellant must file the affidavit of indigence in the justice court within five days after the justice court judgment is signed.

(d) Duty of Clerk or Justice of the Peace.

Upon the filing of an affidavit of indigence, the justice of the peace or clerk of the court shall give notice to the opposing party of the filing of the affidavit of indigence within one working day of its filing by written notification accomplished by first class mail.

(e) Contest to Affidavit.

~~Unless a contest is timely filed, no hearing will be conducted, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.~~

The appellee may contest the claim of indigence by filing a contest to the affidavit. The contest must be filed in the justice court within five days after the date when the notice of the filing of the affidavit was mailed by the justice court clerk or justice of the peace to the opposing party. The contest need not be sworn.

~~(e) No contest filed~~

~~Unless a contest is timely filed, no hearing will be conducted, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.~~

(f) No Contest Filed.

If a contest is not timely filed, no hearing will be conducted, the affidavit's allegations will be deemed true, and the party will be allowed to proceed under subparagraph (a) of this rule.

(f) Contest of Affidavit

~~The appellee or county clerk, may contest the claim of indigence by filing a contest to the affidavit. The contest must be filed in the justice court within five days after the date when the notice of the filing of the affidavit was mailed by the justice court clerk or justice of the peace to the opposing party. The contest need not be sworn.~~

(g) Burden of Proof.

If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the party who filed the affidavit is incarcerated at the time the hearing on a contest is held, the affidavit shall be executed by the incarcerated defendant. The affidavit ~~must~~ shall be

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considered as evidence and shall be sufficient to meet the ~~indigent~~ party's burden to present evidence without the party's ~~attending attendance at~~ the hearing.

~~(h) Hearing and decision in the trial court~~

~~— (1) Notice required~~

~~— If the affidavit of indigence is filed in the justice court and a contest is filed, the justice court must set a hearing and notify the parties of the setting.~~

~~— (2) Time for hearing.~~

~~— The justice court must either hold a hearing and rule on the matter or sign an order extending the time to conduct a hearing within five days from the date a contest is filed.~~

~~— (3) Extension of time for hearing.~~

~~— The time for conducting a hearing must not be extended for more than five days from the date the order is signed.~~

~~— (4) Time for written decision; effect.~~

~~— Unless within the period set for the hearing the justice court signs an order sustaining the contest, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.~~

~~(i) Appeal from the justice court order disapproving the affidavit of indigence~~

~~(1) No writ of possession may issue pending the hearing by the county court of the appellant's right to appeal on an affidavit of indigence.~~

~~(2) If a justice of the peace disapproves the affidavit of indigence, appellant may, within five days thereafter, bring the matter before the county court for a final decision, and, on request, the justice shall certify to the county court appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county court shall hold a hearing de novo and rule on the matter within five days from the date the matter is brought to the county court, or within that five day period, sign an order extending the time to conduct a hearing. The time for conducting a hearing must not be extended for more than five days from the date the order is signed. If the affidavit of indigence is approved by the county court, it shall direct the justice to transmit to the clerk of the county court, the transcript, records, and papers of the case. If the county court disapproves the affidavit of indigence, appellant may perfect an appeal by filing an appeal bond, deposit, or security with the justice court in the amount required by this rule within five days thereafter. If no appeal bond is filed within five days thereafter, the justice court may issue a writ of possession.~~

~~(j) Costs defined~~

~~— As used in this rule, costs means:~~

~~(1) a filing fee paid in justice court to initiate the forcible entry and detainer action;~~

~~(2) any other costs sustained in the justice court; and~~

~~(3) a filing fee paid to appeal the case to the county court.~~

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(h) Hearing and Decision in Justice Court.

(1) Notice required.

If the affidavit of indigence is filed in justice court and a contest is filed, the justice court shall set a hearing and notify the parties of the setting.

(2) Time for hearing.

The justice court shall either hold a hearing and rule on the matter or sign an order extending the time to conduct a hearing within five days from the date a contest is filed.

(3) Extension of time for hearing.

The time for conducting a hearing shall not be extended for more than five days from the date the extension order is signed.

(4) Time for written decision; effect.

If the justice court does not timely sign an order sustaining the contest, the affidavit of indigence shall be deemed approved, and the party shall be allowed to proceed under subparagraph (a) of this rule.

(i) Appeal from the Justice Court Order Disapproving the Affidavit of Indigence.

(1) If the justice of the peace disapproves the affidavit of indigence, the appellant may appeal the order disapproving the affidavit by filing within five days thereafter a motion in county court seeking de novo review of the justice court order. On request, the justice shall send to the county court the affidavit of indigence, any written contest, and the justice court's order on the contest. The county court shall hold a de novo hearing and rule on the matter within five days from the date the motion is filed with the county court. If the affidavit of indigence is approved by the county court, it shall direct the justice to send to the clerk of the county court, the complete transcript, records, and papers of the case. If the county court disapproves the affidavit of indigence, appellant may perfect an appeal of the justice court judgment by filing an appeal bond, or, in lieu depositing the amount of the appeal bond in accordance with Rule 749(f), and paying the county court filing fee to the justice court within five days of the date the county court signs the order. If no appeal bond is filed in the justice court within five days, the justice court may issue a writ of possession.

(2) A writ of possession may not issue pending a hearing by the county court on the appellant's right to appeal on an affidavit of indigence.



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~~RULE 749B. APPEAL PERFECTED~~  
(PROPOSED) RULE 749b. APPEAL PERFECTED AND TRANSCRIPT

(a) An appeal of the justice court judgment shall be perfected when appellant timely files:

(1) an appeal bond or deposit in lieu of an appeal bond in conformity with Rule 749, and pays the filing fee required for the appeal of cases to the county court; or

(2) an affidavit of indigence approved in conformity with Rule 749a.

~~When the defendant timely files an appeal bond, deposit, or security in conformity with Rule 749, and the filing fee required for the appeal of cases to the county court is paid, or an affidavit of indigence approved in conformity with Rule 749a, the appeal by the defendant shall be perfected. When the plaintiff timely files a notice of appeal in conformity with Rule 749 and the filing fee required for the appeal of cases to county court is paid, or an affidavit of indigence approved in conformity with Rule 749a, the appeal by the plaintiff shall be perfected.~~

(b) When an appeal has been perfected, the justice court shall make out a transcript of all the entries made on its docket of the proceedings had in the case and immediately file the same, together with the original papers, any money in the court registry pertaining to that case, and the appeal bond, bond or deposit, or security filed in lieu in conformity with Rule 749, and the county court filing fee, or the affidavit of indigence approved in conformity with Rule 749a, with the county clerk of the county in which the case was heard.

(c) The county clerk shall docket the case and the trial shall be de novo. The county clerk shall immediately notify both ~~appellant and appellee~~ plaintiff and defendant of the date of receipt of the transcript and the docket number of the cause. Such notice shall advise the defendant of the necessity for filing a written answer in the county court when there is no written answer on file in the justice court.

(d) The perfection of an appeal in a ~~foreible entry and detainer~~ an eviction case does not suspend enforcement of the judgment. ~~Enforcement of the judgment, may proceed in the county court unless the enforcement of the judgment is suspended in accordance with rule 750. If the appeal is based on the issuance and execution of a writ of possession if a judgment for possession and court is granted for the plaintiff in justice court unless the defendant has complied with Rule 750 costs only, then the tenant's failure to post a supersedeas bond, when required, will allow the appellee to seek a writ of possession, and the issue of possession may not be further litigated in the foreible entry and detainer action in the county court.~~



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NOW, THEREFORE, Appellant(s) \_\_\_\_\_ as principal(s)  
and \_\_\_\_\_, as surety and \_\_\_\_\_  
~~\_\_\_\_\_~~ NOW, THEREFORE, WE \_\_\_\_\_, appellant, as principal, and  
\_\_\_\_\_, as surety at \_\_\_\_\_ (address of surety),  
and \_\_\_\_\_ as surety at \_\_\_\_\_ (address of  
surety); as surety, acknowledge ourselves as bound to pay to \_\_\_\_\_ county  
clerk of \_\_\_\_\_ County, Texas, the sum of \$ \_\_\_\_\_, ~~\_\_\_\_\_~~ appellee,  
the sum of \$ \_\_\_\_\_, conditioned that appellant(s) shall prosecute the appeal with effect and  
will ~~perform an adverse judgment final on appeal~~ pay all costs of court in the event of an adverse  
final judgment on appeal.

“Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.” \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
Signature of Surety

\_\_\_\_\_  
Signature of Surety

Appellant's signature

Surety's signature

Surety's signature

Appellant's telephone number

Surety's printed name

Surety's printed name

Surety's printed address

Surety's printed address

Surety's telephone number

Surety's telephone number

The appeal bond is:

☐ Approved

☐ Disapproved for the following reason: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Justice Presiding

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~~RULE 750. SUSPENDING ENFORCEMENT OF FORCIBLE ENTRY AND DETAINER  
JUDGMENT PENDING APPEAL TO COUNTY COURT~~  
(PROPOSED) RULE 750. POSSESSION PENDING APPEAL  
BY TENANT TO COUNTY COURT

- (a) ~~In a forcible entry and detainer case an appellant who has perfected an appeal under these rules shall be entitled to suspend the enforcement of the judgment and, where applicable, stay in possession of the premises during the pendency of the appeal, by complying with the following procedure:~~
- ~~(1) filing with the justice court a written agreement with the appellee for suspending enforcement of the judgment ; or~~
  - ~~(2) filing with the justice court a good and sufficient supersedeas bond; or~~
  - ~~(3) making a deposit with the justice court in lieu of a supersedeas bond; or~~
  - ~~(4) providing alternate security as ordered by the justice court.~~
- (b) ~~Supersedeas Bonds~~
- ~~(1) must be in an amount required by this rule;~~
  - ~~(2) must be made payable to the judgment creditor of the county in which the case was heard;~~
  - ~~(3) must be signed by the appellant or the appellant's agent;~~
  - ~~(4) must be signed by a sufficient surety or sureties as approved by the justice court.~~
  - ~~(5) the justice court may, in its discretion require evidence of the sufficiency of the surety or sureties prior to approving the supersedeas bond.~~
- (c) ~~Deposit in lieu of supersedeas bond.~~
- ~~— Instead of filing a surety supersedeas bond, a party may deposit with the justice court;~~
- ~~(1) cash;~~
  - ~~(2) a cashier's check payable to the judgment creditor, drawn on any federally insured and federally or state chartered bank or savings and loan association; or~~
  - ~~(3) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state chartered bank or savings and loan association.~~
- (a) ~~Conditions of Liability~~
- ~~— The surety or sureties on a bond, any deposit in lieu of a supersedeas bond, or any alternate security ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor — up to the amount of the supersedeas bond, deposit, or security — if;~~
- ~~(1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the justice court's judgment; or~~
  - ~~(2) the debtor does not perform an adverse judgment final on appeal.~~

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- (e) ~~Effect of supersedeas. Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution or a writ of possession has been issued, the county court will promptly issue a writ of supersedeas.~~
- (f) ~~Amount of supersedeas bond, deposit or security. The amount of the supersedeas bond, deposit or security must be at least in an amount to cover;~~
- ~~(1) the amount of the judgment, and interest on the judgment for the estimated duration of the appeal;~~
  - ~~(2) the amount of attorney's fees awarded for the appellee;~~
  - ~~(3) the amount of rent owed by the appellant for the current rent paying period less any portion of that rent reflected in the judgment, except that if the appellant was the plaintiff in justice court then the supersedeas bond need not include any rent; or~~
  - ~~(4) if there is no obligation on the part of the appellant to pay rent then an amount equal to the fair market value of the rent for the current month.~~
  - ~~(5) Lesser amount. The justice court may order a lesser amount than required by subsections 1-4 above if the justice court finds that;~~
    - ~~(A) posting a supersedeas bond, deposit, or security in the amount required by subsections 1-4 above will irreparably harm the appellant; and~~
    - ~~(B) that posting a supersedeas bond, deposit or security in a lesser amount will not substantially impair the appellee's ability to recover under the judgment after all appellate remedies are exhausted.~~
- (g) ~~Effect of appellant's not paying rent or the amount of fair market value into the registry of the county court.~~
- ~~(1) During the pendency of the appeal an appellant who is a tenant must pay rent, or the amount determined to be a fair market rental value of the premises as set forth in Rule 748, into the registry of the county court as it becomes due. Upon sworn motion filed in county court, either party may contest the findings set forth in the justice court judgment as to rent or fair market rental value. The court may hold a hearing on the motion. If the appellant fails to make timely payments into the registry of the county court as it becomes due, the appellee may file a notice of default in the county court where the cause is pending. Upon sworn motion by the appellee, and a showing of default by the appellant in making payments into the registry of the county court as they become due, the court must issue a writ of possession.~~
  - ~~(2) During the appeal, if a governmental agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the registry of the county court, the landlord may file a motion with the county court requesting that the tenant be required to pay the full amount of the rent into the county court registry as a condition for remaining in possession. After notice and hearing, the court may grant the motion only if the landlord:~~

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- ~~(A) did not cause the agency to cease making the payments; and~~
- ~~(B) is not able to take an action that will cause the agency to resume making payments or to otherwise pay all or part of the rent.~~
- ~~(3) The county court may allow the appellee to withdraw any or all rent or the amount determined to be a fair market rental value from the county court registry upon;~~
- ~~(A) sworn motion and hearing, prior to final determination of the case, showing the right to receive payment;~~
- ~~(B) dismissal of the appeal, or~~
- ~~(C) order of the court upon final hearing.~~
- ~~(4) All hearings and motions under this rule shall be entitled to precedence in the county court.~~

~~(h) When the enforcement of the judgment has been suspended the justice court shall stay all further proceedings on the judgment and shall immediately make out a transcript of all the entries on the court's docket of the proceedings related to the suspension of the judgment; and shall immediately file same, together with the supersedeas bond, deposit, or security with the clerk of the county court. The justice court will immediately issue whatever writs of supersedeas are needed, or take other actions to suspend the enforcement of the judgment.~~

~~(i) Once the appeal has been perfected and five days have expired since the day the judgment was signed, any actions to enforce or suspend the enforcement of the judgment under this rule, or to modify an existing justice court order suspending the enforcement of the judgment, must be filed in the county court where the appeal is pending.~~

~~(j) If the appeal is perfected and the tenant does not pay rent into the registry of the county court as it becomes due, the county court, where the appeal is pending, may issue a writ of possession at any time. The duty of the defendant to pay rent into the registry of the county court as it becomes due exists even if the appeal is perfected by the approval of an affidavit of indigence.~~

~~(k) — If the appeal is perfected by the approval of an affidavit of indigence, the defendant need not post a supersedeas bond, deposit, or security with the justice court in order to remain in possession, or to suspend the enforcement of the judgment.~~

(a) Right of Continued Possession.

A defendant who has perfected an appeal of an eviction case under these rules shall be entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

- (1) filing with the justice court a written agreement with the plaintiff stating the terms under which the defendant may stay in possession; or

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(2) depositing rent or rental value into the justice and county court registry as required by this rule.

(b) Rent Payments.

A defendant shall deposit rent, or rental value if there is no oral or written rental agreement, in the justice or county court registry in the form of cash, money order, or other mode of payment acceptable to the justice;

(c) Initial Deposit of Rent with Justice Court.

(1) A defendant who has perfected appeal by filing an appeal bond or making the required deposit in lieu of the bond and paying the county court filing fee is entitled to stay in possession of the premises by depositing any amount awarded by the justice court for unpaid rent and late fees under the rental agreement, or the amount awarded by the justice court for rental value as determined by the justice court if there is no oral or written rental agreement, within five days of the approval of the appeal bond or the deposit in lieu of the appeal bond.

(2) A defendant who has perfected appeal by filing an affidavit of indigence is entitled to stay in possession of the premises without depositing rent or other amounts into justice court, unless the eviction is for nonpayment of rent. If the defendant perfected appeal by filing an affidavit of indigence and the eviction is for nonpayment of rent, the defendant must deposit any alleged unpaid rent and late fees under the rental agreement, or the alleged unpaid rental value as determined by the justice court if no oral or written agreement, within five days of the filing of the affidavit or the overruling of any contest to the affidavit, whichever is later.

(3) The justice court may order a deposit less than that required under subparagraph (1) or (2) of this rule if the justice court finds that (i) the rent or a portion of the rent has been contracted to be paid to the landlord by third parties, (ii) the plaintiff has received no notice that the third party payments have ceased or will cease, (iii) the plaintiff has received all rent due from the third party under the third party's agreement with plaintiff or defendant, (iv) the plaintiff did not request the third party to cease making such third party's payments, and (v) justice requires a lesser deposit.

(4) If a defendant does not timely file an agreement between the defendant and the plaintiff, or deposit rent or rental value as required by this rule, the justice court shall, after notice to the parties and a hearing, issue a writ of possession pending appeal by the defendant. Except under Rule 740, a writ of possession may not be

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issued until the expiration of five days after the date of the judgment in justice court.

(d) Rent Deposits with County Court.

- (1) During the pendency of the appeal the defendant must pay rent, or if the defendant does not have a rental agreement that requires rent payment, the defendant must pay the value of the fair market rent of the premises as set by the justice court for each month, into the registry of the county court within five days of its due date under a rental agreement, or if there is no rental agreement, the first day of each month thereafter. Upon sworn motion filed in county court, either party may contest the justice court determination of the amount of rent or fair market rental value that must be deposited.

Upon motion by the tenant, the county court may order rent payments to be tendered in an amount less than that required under this rule if the court finds that (i) the rent or a portion of the rent has been contracted to be paid to the landlord by third parties, (ii) the plaintiff has received no notice that the third party payments have ceased or will cease, (iii) the plaintiff has received all rent due, from the third parties under the third party's agreement with plaintiff or defendant or such rent has been tendered to the county court, (iv) the plaintiff did not request the third party to cease making such third party's payments, and (v) justice requires a lesser deposit.

- (2) If the defendant fails to make timely payments into the registry of the county court or breaches the terms of an agreement with the plaintiff allowing the defendant to stay in possession, during the appeal, the plaintiff may file a notice of default in the county court where the cause is pending. Upon sworn motion by the plaintiff, and a showing of defendant's default in making payments into the registry of the county court as they become due, the court may issue a writ of possession to plaintiff after notice to the defendant, and a hearing. No writ of possession may be issued by the county court until the expiration of five days from the date an order is signed, awarding possession to the plaintiff under this rule.

- (3) The county court may allow a party to withdraw deposited amounts from the county court registry upon:

- (i) sworn motion and hearing, prior to final determination of the case, showing the right to receive payment;
- (ii) dismissal of the appeal, or
- (iii) order of the court upon final judgment.



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(5) All hearings and motions under this rule shall be entitled to precedence in the county court.

~~Rule 751 Form of Supersedeas Bond~~  
(PROPOSED) RULE 751. (NONE)

Note: Old Rule 751 entitled "Transcript" has been incorporated, in part into Proposed Rule 749(b).

~~\_\_\_\_\_ The supersedeas bond authorized in the preceding article may be substantially as follows:~~

**SUPERSEDEAS BOND**

~~"The State of Texas"~~  
~~"County of \_\_\_\_\_"~~  
~~"Cause No. \_\_\_\_\_"~~

~~WHEREAS, in the above entitled and numbered forcible entry and detainer in the Justice Court of Precinct \_\_\_\_\_ of \_\_\_\_\_ County, Texas, judgment was signed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in favor of \_\_\_\_\_ (plaintiff/defendant), hereinafter referred to as appellee against \_\_\_\_\_ (plaintiff/defendant), hereinafter referred to as appellant for;~~

~~\_\_\_\_\_ Possession;~~

~~\_\_\_\_\_ Court costs of \$ \_\_\_\_\_;~~

~~\_\_\_\_\_ Back rent and contractual late charges of \$ \_\_\_\_\_;~~

~~\_\_\_\_\_ Attorney's fees of \$ \_\_\_\_\_;~~

~~together with interest thereon from the date of the judgment, at the rate of \_\_\_\_\_ percent per annum, from which judgment appellant has appealed to the county court of \_\_\_\_\_ County, Texas.~~

~~WHEREAS, appellant desires to suspend enforcement of the judgment pending determination of said appeal;~~

~~NOW, THEREFORE, WE \_\_\_\_\_ (appellant), as principal, and \_\_\_\_\_ as surety at \_\_\_\_\_ (address of surety), and \_\_\_\_\_ as surety at \_\_\_\_\_ (address of surety), acknowledge ourselves as bound to pay to \_\_\_\_\_~~

~~(appellee), the sum of \$ \_\_\_\_\_, said sum being at least the amount of the judgment, interest, and costs, plus estimated interest from the date of the judgment until final disposition of the appeal, and any rent, or the fair market value of the property, currently owed during this rent paying period and not reflected in the judgment, conditioned that appellant shall prosecute the appeal with effect; and in case the judgment of the county court be against appellant, appellant shall perform its judgment, sentence or decree, and pay all such damages as the court may award against appellant up to the amount of the bond.~~

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“Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.”

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
Signature of Surety

\_\_\_\_\_  
Signature of Surety

---

(PROPOSED) RULE 752. DAMAGES

On the trial de novo of the cause in the county court ~~the appellant or appellee court~~, the plaintiff or defendant shall 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's fees in the justice and county courts provided, as to attorney's fees, that the requirements of Chapter 24 of the Texas Property Code have been met. Only the party prevailing in the county court shall be entitled to recover damages against the adverse party.

(PROPOSED) RULE 753. DUTY OF CLERK TO NOTIFY PARTIES

The county clerk shall immediately notify all parties to the justice court judgment of the date of receipt of the transcript and the docket number of the cause. Such notice shall 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 and shall advise the defendant that default judgment may be entered unless a timely answer is filed. The style of the case in county court must be the same as in justice court.

(PROPOSED) RULE 753a. JUDGMENT BY DEFAULT IN COUNTY COURT

If the defendant has filed a written answer in the justice court, the same shall be taken to constitute the defendant's 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 fails to file a written answer within ~~ten full~~ eight 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.

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(PROPOSED) RULE 754. TRIAL OF THE CASE IN COUNTY COURT

(a) ~~The trial of a forcible entry and detainer appeal as well as all~~ The trial of an eviction appeal and all related hearings and motions shall be entitled to precedence in the county court.

(b) No jury trial shall be had in any appeal of a ~~forcible entry and detainer, unless a written request for a~~ an eviction case unless, a request for jury trial is filed with and payment of jury fee is made to the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than five days in advance. The fee required by law for requesting a jury trial in county court must be deposited with the county clerk within the time for making a written request for jury trial. The clerk shall promptly enter a notation of any ~~the~~ payment of such fee ~~upon jury fee payment on~~ the court's docket sheet.

~~(c) Generally, discovery is not appropriate in forcible entry and detainer appeals, however, the county court has the discretion to allow reasonable discovery.~~

~~(c) (d) The forcible entry and detainer appeal shall be subject to trial de novo at any time~~ The trial of an eviction case on appeal to county court shall be de novo and may be held any time after the expiration of ten full eight days after the date the justice court transcript is filed in the county court. The county court may set appeals of forcible entry and detainer cases for an eviction trial on written motion request of any party or on the court's own motion, with reasonable notice to the parties of a first setting for trial, or by agreement of the parties. The case shall be docketed in the county court in the name of the plaintiff in the justice court as plaintiff, and in the name of the defendant in the justice court as defendant. Regardless of which party appealed from the judgment in the justice court, only the plaintiff in the county court may take a non-suit. If the county court's jurisdiction is invoked, ~~then it~~ the court must dispose of all parties and issues before the court, including the issue of possession unless the writ of possession has already been issued.

~~(d) (e) On written motion by the appellee a party~~ contesting the sufficiency of the appeal bond or the supersedeas bond, the county court may shall hold a hearing on the appellee's motion. If upon review of the appeal bond or the supersedeas bond, the county court should find the bond to be the judge finds the bond deficient, the court judge may disapprove the bond and allow the appellant appealing party five days from the date the bond is disapproved to correct the deficiencies with the bond. If the deficiencies are corrected then within the five-day period, the bond may be approved. If the deficiencies on the appeal bond are not corrected then within the five-day period, the appeal may be dismissed and the writ of possession shall issue. ~~—If the deficiencies on a supersedeas are not corrected then the appellee may proceed with the enforcement of judgment including a writ of possession.~~

~~(e) (f) When the appellant~~ If the appealing party fails to prosecute the appeal with effect diligence or the county court renders judgment against the appellant, then party, the county court

**Comparison of TAA May 13th draft  
to SCAC Subcommittee May 7th draft of eviction-related rules**

**Underlined language = new in TAA draft**

**Struck-through language = deleted in TAA draft**

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~~must~~ shall also render judgment against the surety or sureties on the ~~appellant's appeal bond or~~ supersedeas bond, for the ~~performance of the judgment~~ costs of court up to the amount of the bond.

(PROPOSED) RULE 755. WRIT OF POSSESSION IN COUNTY COURT

The writ of possession, ~~or execution, or both,~~ shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, ~~as in other cases; and such writ of possession shall not be suspended or superseded or in any case by appeal from such final judgment in the county court unless the premises in question are being used for residential purposes only.~~ A judgment of a county court may not under any circumstances be stayed pending appeal unless, within ten days of signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. However, if the defendant is leasing a manufactured home lot, the writ of possession shall be issued as provided in Section 94.203 of the Texas Property Code, as amended. A writ of possession issued from a county court may not under any circumstances be issued until the expiration of ten days after the signing of the judgment and only if the appellant has not filed a supersedeas bond in an amount set by the county court. The writ of possession shall not be suspended or superseded in any case by appeal from such final judgment in the county court, unless the premises in question are being used for residential purposes only. The county court shall give precedence to the hearing to set the amount of the supersedeas bond necessary to suspend the judgment or the portion of the judgment the appellant elects to supersede.

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