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Marisa Secco  
P.O. Box 12248  
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Ref: Justice Court Rule Changes

Dear Ms Secco

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

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

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

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

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

Respectfully submitted

*John Steinsiek*

John Steinsiek

## Proposed Changes

### **RULE 503. COMPUTATION OF TIME AND TIMELY FILING**

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

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

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

Three judges in the same county have the following requirements before delivery to the premises may be granted. In all three courts the citation has the assigned court date printed on the citation. The officer may receive the citation with the court date that is 6 days away. Therefore the citation is good only for that one day.

Judge #1. The officer shall make two attempts

Judge #2. The officer shall make three attempts on two separate days

Judge #3. The officer shall make four attempts, one before 8am, one after 5 pm and two at any other time and the officer may not submit the request until he has had the citation three days.

An officer receives a citation on Friday. The citation has a court date that only allows service on that day. The service date must be no less than 6 days from the court date (Old Rule 742 – New Rule 743).

Friday is day 1, Saturday is day 2 (court is not open, Sunday is day 3 (court is not open), Monday (a Holiday) is day 4 (court is not open) and the officer has to return the citation to the court for a re date on Tuesday which is day 5. They return the citation to the officer on Wednesday –day 6. Judge 1 may approve the alternate service because 2 attempts were made on Friday.. Judge 2 and 3 would say the 5 day window for delivery to the premises has closed and is no longer available.



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

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

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

#### **RULE 738. COMPUTATION OF TIME FOR EVICTION CASES**

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

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

#### **RULE 742. REQUEST FOR IMMEDIATE POSSESSION**

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

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

#### **RULE 743a. SERVICE BY DELIVERY TO PREMISES**

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

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

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

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

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

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

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