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June 12, 2012

Via email and regular mail

Charles (“Chip”) Babcock
Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Via email and regular mail

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

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

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

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

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

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

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

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

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

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

2. **Discontinuance of Rules of Procedure.** Rule 523 currently provides that all rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or the rules. Proposed Rule 502 provides that no other rules apply unless the judge determines they should. If there needs to be separate rules governing the cases that used to be in small claims courts, there should be a rule stating that. However, it is not workable for judges in any justice court case, including eviction cases, to have discretion of which rules of procedure apply. Additionally, this rule needs to be read in conjunction with Rule 501. Read together, the proposed Rules 501 and 502 indicate that if a matter is not covered by the forcible rules (Rules 738 through 755), you only look to the justice court rules (Rules 500 through 578). If a matter is not covered by either the forcible rules or the justice court rules, what other rules, if any, apply are up to the judge. This will result in vague and inconsistent applications of procedural rules.
3. **Discontinuance of Rules of Evidence.** Pursuant to the proposed Rule 504, the Texas Rules of Evidence do not apply to justice courts except to the extent the judge determines that a particular rule must be followed to insure fair proceedings. Pursuant to the proposed Rule 501(d), eviction actions are governed by Section 10, Part V (including this Rule). Since Section 10 does not provide for what rules of evidence apply, Rule 504 would mean that we do not know what rules of evidence would apply in any given justice court case, including any given eviction proceeding.
4. **Motions for Summary Judgment.** The proposed Rule 526 attempts to reinvent the summary judgment rules that currently exist. Pursuant to subsection (b), parties may respond to the motion orally at the hearing. In other words, the party filing the motion is not entitled to receive a response to the motion (written or oral) prior to the hearing. This will lead to more expensive and complicated hearings. Like many of the proposed rules, there does not appear to be a rational for the change. The reinvention of rules will render old case law meaningless to attempt to interpret the rule. This will lead to inconsistent interpretations and applications by the judge.
5. **Will a judge impose alternative dispute resolution in eviction proceedings?** The proposed Rule 531a provides that it is the responsibility of the judge and their court administrators to carry out the state’s policy of encouraging alternative dispute resolution. Once again, since there is no specific forcible rule regarding alternative dispute resolutions, could a judge construe this rule as meaning that alternative dispute resolutions should be also encouraged in eviction proceedings? This would obviously be unworkable since the issue of possession is often disputed and cannot be mediated. A request for, or a requirement of, mediation will delay what should be an expedited process.
6. **Timing of eviction trial.** The proposed Rule 741 provides that the defendants must appear not more than 14 days nor less than 7 days from the date of filing of the petition. Current Rule 739 provides for the appearance date to be not more than 10 days nor less

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

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

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

Thank you for your attention and service.

Very truly yours,

HOOVER SLOVACEK LLP

A handwritten signature in black ink, appearing to read "Howard M. Bookstaff".

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

HMB:dm/