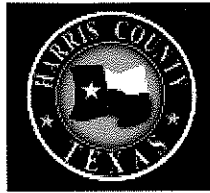


*State
of Texas*



*County
of Harris*

JUDGE HILARY H. GREEN

JUSTICE OF THE PEACE
PRECINCT 7, PLACE 1

June 20, 2012

Justice Dale Wainwright
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711

Dear Justice Wainwright:

Please accept this letter as a detailed outline of both my concerns and recommendations regarding the proposed changes to the Texas Rules of Civil Procedure relating to Justice Courts and Forcible Detainer (Eviction) Cases. I am requesting that the Advisory Committee review the proposed changes with extreme caution and seriously consider feedback from those of us who preside over these cases on a daily basis.

It was my understanding that the changes were proposed in part to merge all civil cases, with the exception of Eviction Cases, into Small Claims Cases. In itself, this attempt at simplification and efficiency is well intentioned and overdue. Having two sets of courts (Small Claims Court and Justice Court) with the same jurisdiction, the same power and the same forms appears to be outdated and complicated at best. Notwithstanding good intentions, it seems at least some of the proposed changes allow for unification of jurisdiction for Justice Court/Small Claim Cases while placing the application and/or the misapplication of rules entirely within the respective Judge's discretion. Please understand that the majority of Plaintiffs who seek justice in the Justice of the Peace courts do so for a number of reasons. In some cases the Plaintiffs want the simplicity of Small Claims Court. In other cases, Plaintiffs wish to conduct written discovery, in addition to having a quick trial date without the expense of hiring an attorney.

It has been the experience of this court that the litigants as well as jurors are becoming more sophisticated and knowledgeable. However, even the most knowledgeable litigant (attorney or non-attorney/Plaintiff or

Defendant) would find themselves ill prepared if they have to engage in what amounts to a guessing game on the application of the rules. Enacting rules for Justice Court which allow for inconsistent application of the rules themselves deviates from the intent of H.B. 79 and thwarts the legislature's goal of simplification and unification.

I have taken the time to dissect the proposed changes and compare them with the current law. In doing so, I also made notes of where the proposed change could be conformed in light of the practical application of the law, policies and procedures in most Justice of the Peace Courts. While I did not make note of every proposed rule (there are approximately 45 proposed rules), my goal was to highlight a few examples of the more egregious proposed changes and give an explanation to enlighten the SCAC on the practical aspects of the Justice of the Peace courts. My observations, concerns and suggestions are listed below.

RULES 502, 504 APPLICATION OF RULES IN JUSTICE COURT

Civil cases in the justice courts shall be conducted in accordance with the rules listed in Rule 501 of the Texas Rules of Civil Procedure. Any other rule in the Texas Rules of Civil Procedure shall not govern the justice courts except where otherwise specifically provided by law or these rules.

Applicable rules of civil procedure shall be available for examination during the court's business hours.

[Observation: Changes which provide for discretionary application of the rules create inconsistencies among the courts and confusion for the parties. It is important for the Advisory Committee to bear in mind that these cases deal with the public's right to possess property and live peaceably. Playing a guessing game on whether the judge will apply a particular rule amounts to a hardship for the litigants and in most cases, would not allow for adequate preparation for trial.]

Having the rules available for review during business hours is a welcomed change and really presents no additional burden for the courts. However, making "the rules" available to the public and then allowing application of the same rules to be wholly within the discretion of the judge seems totally impractical.]

RULE 522 MOTION TO TRANSFER VENUE

- (a) Motion. If a defendant wishes to challenge the venue the plaintiff selected, the defendant may file a motion to transfer venue. This motion must be filed BEFORE the case is set for trial and must

contain a sworn statement that the venue chosen by the plaintiff is improper.

[Observation: The proposed 20th day deadline appears to be arbitrary and does not lend itself to cases filed in Justice Court. Most of the litigants in Small Claims/Justice Court do not learn of venue provisions until long after the defendant's answer is due. More importantly, the majority of defendants in Small Claims/Justice Court DO NOT file answers.]

RULE 531a. ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution should be required in all Civil cases with the exception of Eviction cases unless the parties agree in writing.

RULE 560 APPEAL

[Observation: Generally speaking, the proposed Appeal provisions appear to put a great deal of emphasis and the judges' ability to approve or deny a surety bond. In the absence of any guidelines governing surety bonds themselves, (i.e.: qualifications for sureties, procedures for confirming information provided by the parties, etc.) the proposed changes would allow a judge to approve or deny a surety bond arbitrarily. This hardly seems constitutional given the nature of one's right to appeal.]

RULE 741 CITATION

When the plaintiff or his authorized agent shall file his written sworn petition with such justice court, the court shall immediately issue citation directed to the defendant or defendants commanding them to appear before such judge at a time and place named in such citation, such time being not more than fourteen days and not less than seven days from the date of service of the citation.

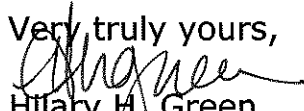
[Observation: The proposed rule allows for appearance before a judge not more than fourteen days and not less than seven days from the date of filing. This particular provision is completely unacceptable in light of the average time period between the date of filing and trial for Eviction cases. As written, the rule does not accurately reflect even a reasonable amount of time for the parties to prepare for trial nor does the rule contemplate the number of substitute/alternative service requests processed on these particular cases. More importantly, the rule as proposed would leave both parties at a severe disadvantage regarding possession and payment issues. Ultimately, a fourteen/seven day trial from the date of filing requirement will compromise service/notice procedures and will result in a majority of Eviction cases being served by posting only.]

In closing, it is my hope that the SCAC understands and appreciates the time and attention both I and other stakeholders have taken to recommend rejection of the proposed rules. I find it important to mention that to my knowledge, at no time has any attorney, group, representative, association nor alliance ever contacted, nor consulted the Justices of the Peace individually to obtain input regarding the proposed changes. Representations made regarding a "collective" approval of the proposed changes are completely misleading and merely amount to the opinions of a few.

As I understand, the entire basis for H.B. 79 was to make all civil cases filed in the Justice of the Peace Courts, with the exception of Eviction cases, Small Claims Cases. While there is much debate about the true basis for H.B. 79, anyone with a thorough working knowledge of the kinds of cases we see would agree that the proposed rules destroy the Small Claims Model and favor more rules and confusion. This court was specifically designed for the public to seek justice with or without an attorney in an efficient and fair manner. Enacting more rules and/or giving unrestrained discretion to judges will only confuse litigants, delay proceedings, increase costs and facilitate unpredictable results. Finally, I urge you to reject the proposed changes and preserve the simplicity, informality and integrity of Small Claims cases in Justice Court.

If you have any questions or concerns, please do not hesitate to give me a call. I truly appreciate your dedication to resolving the issues surrounding H.B. 79 and I look forward to discussing the proposed changes should you need to contact me in the future.

Very truly yours,


Hillary H. Green
Justice of the Peace
Precinct 7, Place 1
Harris County

cc: Justice Wallace Jefferson
Charles "Chip" Babcock
Levi Benton
Howard Bookstaff
Robert L. Levy
Jim M. Perdue
Kent C. Sullivan