



JUDGE TOM LAWRENCE

JUSTICE OF THE PEACE
HARRIS COUNTY
PRECINCT FOUR, POSITION TWO

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Justice Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2248

Mr. Charles Babcock
Chairman, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Dear Justice Hecht and SCAC Members,

I am writing to comment on the proposed changes to small claims cases and justice court rules. Rather than offer lengthy comments about each of my concerns with these proposed rules I would like to make several general comments. I was a member of the State Bar of Texas Task Force on Court Reorganization and was involved in the draft of the final report dealing with the proposed changes to Justice Courts. I was also involved with the predecessor legislation to HB 79 in 2009, so I have some background as to the intent of HB 79.

Repeal of Chapter 28 Government Code

This was intended to solve several problems with the existing statutory framework. It is sometimes difficult to amend the small claims rules because real or perceived political considerations interfere in the process and these rules are not always given a priority by the legislature. Also the existing rules allow too much leeway in interpretation so judges interpret the rules differently, sometimes from case to case but certainly from court to court. Lastly, it was felt it would be better to give the rule making power for small claims cases to the Supreme Court so the small claims rules could be amended more easily by a body familiar with trial rules. It was not intended that the existing justice court civil rules be repealed and that we only have one set of trial rules but that we would continue to have both small claims and justice court civil rules just as we do now. The small claims rules would be simpler and designed for the pro se while the justice court civil rules and eviction rules would be governed by more formal rules and the rules of evidence. These proposed rules create one set of trial rules with a one size fits all mentality. I suggest that two distinct sets of trial rules would be better and the Task Force go back to the drawing board.

Eviction Rules

HB 79 requires that the Supreme Court promulgate eviction rules although it was intended that the Supreme Court only review and amend the existing eviction rules where needed. Many of you may remember that the SCAC spent about a year and a half revising the eviction rules and submitted a final version to the Supreme Court in 2002. There has never been any action taken on those proposed rules but that would have been a good place for the Task Force to start. These proposed eviction rules do not solve many of the biggest problem areas identified by the SCAC in 2002 and may create some new problems.

Proposed Rule 502 and Rule 504

Procedural rules should promote certainty and consistency not uncertainty and inconsistency, which is exactly what Rules 502 and 504 will accomplish. Although current Rule 523 is sometimes difficult to apply in practice these two new rules seem to encourage judges to apply whatever rules they think appropriate on a case by case basis. Litigants and attorneys who practice in justice of the peace courts will not find the same interpretation of the rules from court to court and from case to case. Inconsistency and arbitrary interpretations will invariably follow.

Proposed Rule 523

What we need is a good recusal and disqualification rule for justice courts similar to Rules 18a and 18b. This proposed rule is a revision of current Rule 528 but it allows a party to select the precinct to which the case would be transferred. It also ignores procedures for transferring a case that may be established by local rules in a particular county.

Proposed Rule 540

Justices of the peace have been charging the jury in criminal jury trials for a number of years so I am not sure why a civil jury shouldn't be charged. It is difficult for a jury to understand comparative negligence, offsets, and jurisdictional limits without some explanation. There are also some instances where the legislature has provided that a jury be charged in some specific manner in certain cases and this would still conflict with that requirement. Surely we can draft a rule that would allow some type of basic jury charge.

Proposed Rules 576-578 Debt Claim Cases

Normally a case filed in justice court would have somewhat relaxed rules compared to a similar case filed in county and district court but you would not expect an entirely different set of rules. For example a car wreck case would typically have the same pleadings and defenses regardless where it was filed. These proposed rules would establish a different set of procedural rules for debt collection cases filed in justice court. A case valued at \$9,500.00 filed in justice court would require different pleadings and default judgment procedures from a case valued at \$20,000.00 filed in county or district court.

Appeals in Small Claims cases and Evictions

Rule 560 requires a defendant to appeal by posting a bond in double the amount of the judgment in a small claims case. Rule 750 allows a judge wide discretion to set a bond in an eviction case and there is really no limit to the amount of the bond. Isn't it time to institute a rule for appeals in all justice court cases where a party may appeal by posting a minimal bond and then post a supersedeas bond to prevent the execution of the judgment? This was discussed in great detail in 2002 by the SCAC when it considered the revisions to the eviction rules and it was generally agreed that the principles espoused in *Dillingham v. Putnam* are as applicable in justice court as they are in county and district court.

Proposed Rule 749

In many of the eviction cases filed after a foreclosure a mortgage company will allow a defendant more time to move out after a foreclosure recognizing the difficulty in moving a household after years of living in a home. It is not uncommon for a defendant to be given more than 30 days to move but this proposed rule would essentially require a mortgage company to get the writ of possession and evict the defendant within 30 days so they don't have to file a new eviction action and start over. I am sure the Task Force had a reason why they proposed this rule but there is an unintended consequence.

There are many other comments I could offer on specific proposed rules but I would hope that the SCAC would consider whether or not we are really better off with these proposed rules.

Yours truly,

A handwritten signature in black ink that reads "Tom Lawrence". The signature is fluid and cursive, with the first name "Tom" and last name "Lawrence" clearly distinguishable.

Tom Lawrence
Judge