



TEXAS APARTMENT ASSOCIATION

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May 31, 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 hand delivery

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

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

I am writing on behalf of the Texas Apartment Association (TAA) concerning the draft justice court rules proposed by the Task Force for Rules in Small Claims Cases and Justice Court Proceedings (Task Force). TAA is the nation’s largest state association representing residential rental housing owners, with more than 10,800 members who own or manage more than 1.8 million rental units in Texas that house more than 4.5 million Texans.

Despite the obvious interest that residential rental housing owners and managers have in this issue, we did not have any direct representation on the Task Force and were only allowed to attend the Task Force’s initial meeting. In the past, the Supreme Court of Texas has invited TAA representatives to sit on task forces that have addressed rules affecting landlord-tenant proceedings.¹ We were honored to serve then, and we would be honored to serve in the future. We appreciate the difficulty in drafting statewide rules and would prefer to voice our concerns during, rather than after, the initial drafting process. We have many concerns regarding the Task Force’s proposals.

When the Legislature directed the Court to promulgate eviction rules, it was in the context of making changes necessary to incorporate small-claims-court duties into the justice-court system, as set forth in House Bill (HB) 79.² TAA appreciates the fact that some additional rules changes are necessary because of the passage of HB 1111.³

¹ Most recently, former TAA General Counsel Wendy Wilson served on the task force to write the new Texas Rule of Civil Procedure 737, which is part of the current Task Force’s package of proposed rules. Previously, former TAA Legal Counsel Larry Niemann served on task forces that considered eviction rules.

² Section 5.07 of HB 79 provides: “Not later than May 1, 2013, the Texas Supreme Court shall promulgate: (1) **rules** to define cases that constitute small claims cases; (2) **rules** of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and (3) **rules** for **eviction** proceedings.” (Emphasis added.)

³ HB 1111, passed during the 82nd Regular Session, relates to a tenant’s failure to pay rent during an appeal of an eviction for non-payment of rent after filing a pauper’s affidavit.

We believe that the Task Force's draft rules go far beyond legislative intent and, if implemented, could slow the eviction process significantly and thereby cost rental housing owners tens of millions of dollars in lost rent. We contacted Representative Tryon Lewis, the author of HB 79, and Senator Robert Duncan, the Senate sponsor of HB 79, to make them aware of our concerns.

While the majority of our concerns relate to those rules specifically impacting the eviction process, we also have significant concerns with some of the proposed general rules. For example, we are concerned with the proposal to make both the Texas Rules of Civil Procedure and the Texas Rules of Evidence inapplicable to justice-court cases, including evictions, unless the judge hearing a case determines those rules should apply or, for the Rules of Civil Procedure, the proposed rules or law specifically provide otherwise. We also are unsure why many rule changes were proposed, as the Task Force provided little to no explanation for most of the changes. In addition, we are concerned about the impact the proposed rules will have on the significant body of case law that is based on the current rules.

The potential for delays and extra costs under the proposed Task Force rules are a major concern for TAA and its members. With rents averaging about \$800 a month, each day the eviction process is delayed can cost a rental housing owner more than \$25. Thus, by way of example, proposed Rule 741 could result in more than \$100 in lost rental income in a case by effectively extending the appearance date by four days. Our reading of the proposed rules also suggests further delays will occur in justice-court cases, including evictions, in which there is a pretrial conference, mediation or a summary proceeding without the requirement of a written response.

With more than 225,000 eviction cases filed in Texas each year, even a one-day delay will collectively cost the rental housing industry nearly \$6 million per year. Anecdotally, we believe that more than 95 percent of eviction cases are default judgments, in which the resident fails to pay the rent, has no intention of paying the rent, has already vacated the unit and does not show up for the trial. Extending the timeline for eviction trials will cause even greater harm to the rental housing owner who not only has to deal with the consequences of the lost rental income from the original resident, but must also wait longer to seek a suitable replacement resident.

Proposed Rule 739—requiring each defendant in an eviction suit to be served individually—could also significantly delay the eviction process and increase costs. For example, in Harris County, the cost of having to serve one additional defendant in a unit is \$70. Extrapolated across the 225,000 eviction cases filed in Texas each year, this would translate to approximately \$15.75 million per year that Texas rental housing owners must spend to recover possession of their property. A single roommate avoiding service could also significantly delay the eviction process.

Beyond the economic impact, we are also concerned about how a longer eviction process will affect attempts by rental housing owners to evict tenants who are a danger to fellow tenants, employees or the property. This is an unfortunately common occurrence in the State of Texas.

We outline our objections to the proposed rules below. We are commenting on only those proposed rules that cause TAA concern. We have also attached a chart (Attachment A)

comparing the proposed rules of concern with the current rules and TAA's recommended language for the rules. Finally, Attachment B contains sections of the Texas Property Code that we cite in this letter.

Section 10. Eviction Cases – Proposed Rules 738-755

Proposed Rule 739 – Petition (page 8 of Attachment A)

TAA opposes proposed Rule 739 and believes current Rule 741 should remain in effect.

Proposed Rule 739 provides that an eviction petition must name as defendants “all tenants obligated under a lease residing at the premises” and that no “writ of possession shall issue or be executed against a tenant . . . who is not named in the petition and not served with citation.” This proposed rule is a significant departure from current Rule 741. The Task Force did not explain why it believes such a drastic change is necessary, nor did it address the consequences of the change. Proposed Rule 739 will result in delays in serving citations. Moreover, if current Rule 742 is removed—as proposed by half of the Task Force—rental housing owners will have no choice but to endure delays caused by defendants evading service, as those defendants will no longer be subject to a writ of possession. Delays in service will erode the efficiency of the eviction process and cause the cost of service to increase dramatically for rental housing owners.

In addition, subdivision (d) of proposed Rule 739 requires the petition to contain the “total amount of rent sought by the plaintiff.” This pleading requirement fails to account for the possibility that additional unpaid rent will accrue after filing and before trial. A plaintiff should not be required to plead a potential unknown. If any version of this pleading requirement is adopted, it should be revised to state, “(d) the total amount of rent due at the time of the filing.”

Proposed Rule 741 – Citation (page 9 of Attachment A)

Under proposed Rule 741, a defendant has up to 14 days “from the date of filing of the petition” to appear before the judge. In contrast, current Rule 741 gives the defendant up to 10 days “from the date of service of the citation” to appear. The Task Force did not explain why the trigger event is changed from the service date to the filing date. This change could increase administrative burdens for justice courts, which will have to amend citations in each case in which defendants are not served within 14 days of the filing date. This change could also be detrimental to defendants who are served near the end of the 14-day window and, as a result, have less time to prepare for their appearance. The proposed rules do not provide a procedure for dealing with situations in which the 7 to 14 day timeline cannot be met. Finally, in some cases, expanding the maximum time period in the rule from 10 days to 14 days could delay the eviction proceedings by as much as four days and thereby increase the income losses that rental housing owners face. As mentioned above, this additional loss could total \$100 or more per case.

Proposed Rule 741 would be detrimental to rental housing owners, tenants and justice courts alike. We recommend that proposed Rule 741 be removed and current Rule 739 remains in effect.

Proposed Rule 742 – Request for Immediate Possession (page 10 of Attachment A)

The Task Force was evenly split on whether to remove current Rule 740. Half of the Task Force wanted to remove it; the other half wanted to adopt a modified rule—proposed Rule 742.

TAA strongly opposes the proposal to remove current Rule 740, relating to an immediate bond for possession, as well as any attempt to modify this important remedy. Both of the Task Force’s proposals are clear examples of the Task Force going far beyond legislative directives in HB 79.

Under the bond-for-possession rule that has existed for many years under Section 24.0061(b) of the Texas Property Code, the justice of the peace has been empowered to issue a writ of possession immediately only if a defendant fails to appear for trial, a default judgment is taken and no counter bond has been filed by the defendant.⁴ In other words, there are procedural protections that guard against the possible abuse that prompted some Task Force members to propose removing current Rule 740, and the remedy therein, altogether. Moreover, while the defendant who fails to appear at the trial in justice court may lose possession of the property, the defendant never loses the right to appeal a default judgment in a trial *de novo* in the county court.

Anecdotally, most rental housing owners who use the possession bond only do so in instances when there are issues with violence or drug crimes by the tenants, occupants or guests. This remedy is very important to protect against the risk of serious bodily harm and ongoing property damage when there is an uncontested complaint alleging such dangers, particularly when the dangers rise to the level of criminal conduct justifying immediate action by the justice system.

Current Rule 740 has been in effect for almost 35 years without any significant problems. We believe its removal is ill-advised and are concerned that the Task Force members urging its removal may not fully appreciate the serious dangers in some evictions that necessitate immediate bonds for possession. We recommend retaining current Rule 740 without modifications.

Proposed Rule 743 – Service of Citation (page 12 of Attachment A)

Under proposed Rule 743, the constable, sheriff or other person ordered by the court to serve the citation must return the citation “no later than three days before the day assigned for the trial.” Extending this time from one day before the trial to three days before the trial will result in delays or postponements of eviction trial dates. The Task Force offered no justification for such delays or postponements, which will—once again—be detrimental to rental housing owners.

TAA recommends that the time for returning the citation to the court remain “on or before the day assigned for trial” as provided in the current rule. This will give those serving the citation maximum time to serve the defendant and return documents to the court so that the eviction trial will take place on its originally set trial date. This will also be consistent with the one-day period the Task Force provided in proposed Rule 743a (d).

Proposed Rule 745 – Demanding Jury (page 12 of Attachment A)

⁴ Attachment B contains the text of section 24.0061 of the Texas Property Code.

Under proposed Rule 745, the time period for a party to request a jury trial has been changed from “on or before five days from the date the defendant is served with citation” (in current Rule 744) to “at least three days before the day set for trial.” This change allows a party to make a last-minute request for a jury trial, resulting in further delays in having an eviction case tried.

TAA recommends that current Rule 744 remain in place, requiring parties seeking a jury trial to make a request within a reasonable time after service so that the eviction trial is not delayed.

Proposed Rule 746 – Trial Postponement (page 12 of Attachment A)

Proposed Rule 746 removes the current requirement for an affidavit supporting a good cause showing to postpone trial. There does not appear to be any justification for this change. TAA recommends retaining the requirement for an affidavit showing a good cause to postpone trial.

Proposed Rule 749 – Judgment and Writ (page 12 of Attachment A)

TAA objects to proposed Rule 749 for two reasons. First, it prevents a writ of possession from being issued more than 30 days after a judgment is signed. This appears to be inconsistent with the law relating to enforceability of judgments. *See, e.g., Tex. Civ. Prac. & Rem. Code § 34.001* (providing that writs of execution may be issued for up to ten years after judgment is rendered). Limiting the time allowed to issue a writ of possession to 30 days does not take into account circumstances in which a delay in issuing a writ is warranted. Second, this proposed rule requires a justice of the peace to award attorney’s fees to a prevailing tenant, a clear departure from Section 24.006 of the Texas Property Code, which allows a justice to award attorney’s fees.⁵

TAA recommends retaining current Rule 748. If the Supreme Court Advisory Committee (SCAC) decides to place a limit on enforcing an eviction judgment, TAA would suggest that any limitation on issuing a writ of possession pursuant to an eviction judgment be extended to 90 days. Additionally, TAA recommends that the portion of proposed Rule 749 that awards attorney’s fees to a prevailing defendant/tenant be removed as it conflicts with Section 24.006 of the Texas Property Code.⁶

Proposed Rules 750a & 750b – Inability To Pay Appeal Costs in Eviction Cases; Payment of Rent During Nonpayment of Rent Appeals (current Rules 749a & 749b – Pauper’s Affidavit) (pages 13-16 of Attachment A)

TAA recognizes that some rule changes are necessary due to the passage of HB 1111 in 2011. This legislation was intended to clarify the pauper’s affidavit process for appealing nonpayment in eviction cases and to provide a remedy to rental housing owners when tenants fail to pay the equivalent of one month’s rent into the court registry within five days of filing a pauper’s affidavit appeal.

⁵ Attachment B contains the text of section 24.006 of the Texas Property Code.

⁶ Attachment B contains the text of section 24.006 of the Texas Property Code.

TAA is concerned, however, that proposed Rules 750a and 750b essentially repeat portions of Sections 24.0052 and 24.0053 of the Texas Property Code and eliminate portions of current Rules 749a and 749b that remain applicable despite the passage of HB 1111.⁷ If current Rules 749a and 749b are eliminated altogether, consistent with the Task Force's proposal, there could be even more confusion about the pauper's affidavit appeal process.

Generally, TAA believes it would be better to take a less specific approach in crafting these rules so that further confusion can be avoided if there are future statutory changes. TAA recommends that proposed Rules 750a and 750b be rewritten to reincorporate aspects of current Rules 749a and 749b. For example, the proposed rules should use a modified version of the language in current Rule 749b(1) that would read: "Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry the amount set forth in the notice delivered to the tenant at the time the tenant filed the pauper's affidavit." TAA's recommended language is on pages 13-16 of Attachment A.

Proposed Rule 755 – Writ of Possession on Appeal (page 18 of Attachment A)

TAA is concerned about the departure of proposed Rule 755 from the current rule and the effect it will have on obtaining a writ of possession when a tenant appeals a county court's judgment. Under the proposed rule, it is not clear whether a pauper's appeal affidavit is intended to constitute a supersedeas bond in an appeal from county court to the court of appeals. The proposed rule states, "The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Texas Property Code 24.007 and the Texas Rule of Appellate Procedure 24." TAA recommends that proposed Rule 755 be revised to state clearly that a pauper's appeal affidavit does not constitute a supersedeas bond when a tenant appeals a county court's judgment.

Section 1. General Rules - Proposed Rules 500-507.1

Proposed Rule 501 – Justice Court Cases

Proposed Rule 501(d) states, "Eviction cases in justice court shall be governed by Section 10 [Rules 738-755], and Part V of these rules of civil procedure. To the extent of any conflict between Part V and Section 10, Section 10 shall apply."

We have strong concerns about the proposed rules in Part V, Section 1, General Rules. These proposed rules appear to apply to *all* justice court cases, unless otherwise specifically provided. TAA is concerned that many general rules are not clear as to whether they apply to eviction proceedings. TAA is also concerned that the Texas Rules of Civil Procedure governing district and county courts will no longer apply generally to justice-court cases, including evictions. Likewise, we are concerned that the Texas Rules of Evidence will no longer apply to justice-court cases, including evictions. Eliminating the general applicability of these rules will very likely cause vague and inconsistent application of procedures in all justice-court cases, including evictions. Thus, we urge the SCAC to retain general applicability of the Rules of Procedure and Evidence and to clarify which general justice-court rules are intended to apply to eviction cases.

⁷ Attachment B contains the text of sections 24.0052 and 24.0053 of the Texas Property Code.

*Proposed Rules 502 and 504 – Application of Rules in Justice Court & Rules of Evidence
(page 1 of Attachment A)*

Under proposed Rules 502 and 504, neither the Texas Rules of Civil Procedure nor the Texas Rules of Evidence will apply to any justice-court proceeding, including eviction cases, except to the extent the judge hearing the case determines that a particular rule must be followed to ensure fairness in the proceedings or, for the Texas Rules of Civil Procedure, the justice-court rules specifically provide otherwise. The lack of predictability and consistency that will stem from these proposed rules will be bad for all parties involved in eviction cases.

We strongly recommend that the SCAC eliminate both of these proposed rules and retain current Rule 523, which will provide that the Texas Rules of Civil Procedure and Evidence will continue to apply to justice-court cases, particularly evictions.

Proposed Rule 505 – Duty of Judge to Develop Case (page 1 of Attachment A)

While justices of the peace are allowed to develop the facts of the case in small-claims cases, permitting this practice in eviction cases will encourage parties to seek a venue and judge who may be favorable to their position. This activity will threaten judicial fairness and delay the eviction process. By combining proposed Rule 505 with proposed Rule 523, a defendant—including a tenant in an eviction case—will have the ability to change venue and choose the precinct of his or her choice. That sort of forum shopping should not be allowed or encouraged.

Proposed Rule 505 should be amended to specify that it does not apply to eviction cases.

Proposed Rules 507 & 507.1 – Pretrial Discovery and Post-Judgment Discovery (pages 1 & 2 of Attachment A)

TAA strongly objects to proposed Rules 507 and 507.1 to the extent they apply to eviction cases. We also object to the application of these rules to other types of justice-court cases. As proposed, any requests for pretrial discovery must be presented to the court by written motion before being served on the other party. Involving the court in the pretrial discovery process will make justice-court cases more expensive and unnecessarily time-consuming, particularly in cases where both parties agree to exchange information.

Discovery should not be applicable in eviction cases, and any discovery necessitated in justice court should be subject to the Rules of Civil Procedure governing district and county courts.

Section 2. Institution of Suit - Proposed Rules 509-524

Proposed Rules 522 and 523 – Fair Trial Venue Change (pages 2- 4 of Attachment A)

TAA strongly objects to proposed Rules 522 and 523 to the extent these general rules of procedure are intended to apply to eviction cases. TAA recommends that the current justice-court rules relating to venue (Rules 527-531) remain in effect.⁸

These proposed rules constitute a significant departure from the current motion-to-transfer-venue procedure (in Rules 527 and 531) and change-of-venue procedures (in Rules 528 and 529), and will spawn forum shopping by a defendant because the defendant will be able to request an alternative precinct for the case to be heard. Under the current justice-court rules, a change of venue is permitted only by filing an affidavit that must be supported by two credible witnesses, at which time the justice of the peace transfers the case to the nearest available justice court in the county. The Task Force did not provide any explanation—and TAA perceives no good reason—for changing the existing procedures that have worked well for many years.

Proposed Rule 526 – Summary Disposition (page 5 of Attachment A)

Proposed Rule 526 creates a summary-disposition proceeding. Though similar to a motion for summary judgment under the Rules of Civil Procedure, this proposed rule does not require a written response from the respondent. Failure to require a written response to a “summary disposition” will permit and encourage a responding party to wait until the hearing date to disclose facts or raise defenses, without notice, for the first time. This will result in judicial inefficiencies and delays in justice-court cases, including eviction cases.

We strongly support the continued use of Rule of Civil Procedure 166a in justice-court cases.

Section 3. Trial - Proposed Rules 526-541

Proposed Rule 531 – Pretrial Conference (pages 5 & 6 of Attachment A)

We are concerned about the use of this proposed rule in eviction proceedings. While other types of justice-court cases may necessitate a pretrial conference under certain circumstances, utilizing this proceeding in eviction cases is unnecessary and judicially inefficient.

It is important to keep in mind that under *McGlothlin v. Kliebert*, 672 S.W. 2d 231, 232 (Tex. 1984), a forcible-entry-and-detainer (*i.e.* eviction) proceeding is meant to be a summary, speedy and inexpensive remedy for the determination of who is entitled to possession of the premises.

We recommend that proposed Rule 531 be amended so that pretrial conferences are not applicable in eviction cases.

Proposed Rule 531a – Alternative Dispute Resolution (page 6 of Attachment A)

We strongly object to proposed Rule 531a, which allows a judge to order any justice-court case to mediation, particularly as it relates to eviction cases. As with proposed Rule 531, the findings in *McGlothlin* should be considered. A judge should not be able to order mediation in an

⁸ Section 24.004 of the Texas Property Code provides that exclusive jurisdiction of an eviction suit is in the justice court of the precinct where all or part of the real property at issue is located. See Attachment B for the text of section 24.004.

eviction case unless it is agreed to by the parties. Any other procedure will create all manner of havoc and delay in eviction cases. Using mediation suggests that there is some middle ground in which the parties may be able to reach agreement with the help of a neutral third party. But nearly all eviction cases are for nonpayment of rent, and the issue is simple: the tenant has not paid the rent according to the contract, and the rental housing owner wants to recover possession of the property. The only other issue involves the amount of unpaid rent owed to the rental housing owner. A rental housing owner generally does not file an eviction except as a last resort, and at that point the remaining issue is recovering lawful possession of the property and recovering any unpaid rent.

Section 6. Appeal - Proposed Rules 560-575

Proposed Rule 560 – Appeal (pages 6 & 7 of Attachment A)

TAA urges the SCAC to retain current Rule 571, or as an alternative modify the Proposed Rule 560 to retain the five-day time period for a party to appeal an eviction case. Under proposed Rule 560, the goal of providing a quick and efficient resolution will simply be stymied if the time to appeal is expanded from 10 days to 20 days after the judgment is signed.

Proposed Rule 564 – New Matter May Be Pleaded (page 8 of Attachment A)

Instead of adopting the proposed rule, TAA recommends that current Rule 574a remain in effect. Although the title of the proposed rule states that new grounds of recovery may be plead, it clearly states that “no new ground of recovery may be plead by the plaintiff.” This is contrary to current Rule 574a, which provides that “either party may plead any new matter in the county or district court which was not presented in the court below.”

Conclusion

The current eviction process works smoothly and efficiently. We strongly urge the SCAC to recommend to the Court only those changes that are necessary to respond to the abolition of small-claims courts and necessary due to HB 1111, and to avoid making wholesale changes that exceed legislative intent and dramatically change the way eviction cases are handled in Texas.

TAA representatives will attend the June 22-23 SCAC meeting and welcome the opportunity to provide comments or answer any questions the SCAC has about our concerns and proposals.

We will be available at any point to work with the SCAC and the Court’s rules attorney to help ensure the eviction process is fair for all parties while maintaining a residential rental housing owner’s ability to timely obtain possession of a rental unit from an individual who has failed to pay the rent.

Thank you for your consideration of our concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George B. Allen". The signature is fluid and cursive, with the first name "George" being the most prominent.

George B. Allen, CAE
Executive Vice President

cc: Marisa Secco

JUSTICE COURT RULES OF PROCEDURE SIDE-BY-SIDE

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
SECTION 1. GENERAL RULES		
RULE 502. 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: (a) to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or, (b) 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.	RULE 523. DISTRICT COURT RULES GOVERN 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 these rules.	Retain existing Rule 523. Do not adopt proposed Rule 502.
RULE 504. RULES OF EVIDENCE The Texas Rules of Evidence do not apply to justice courts except to the extent the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties.		Retain existing Rule 523. Do not adopt proposed Rule 504.
RULE 505. DUTY OF THE JUDGE TO DEVELOP THE CASE The judge may develop the facts of the case, and for that purpose may question a witness or party and may summon any person or party to appear as a witness as the judge considers necessary to ensure a correct judgment and speedy disposition of the case.		Amend proposed Rule 505 to specify that it does not apply to eviction cases.
RULE 507. PRETRIAL DISCOVERY Any requests for pretrial discovery must be presented to the		Do not adopt Rule 507.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
court by written motion before being served on the other party. The discovery request shall not be served upon the other party until the judge issues a signed order approving the discovery request. The court shall permit such pretrial discovery that the judge considers reasonable and necessary for preparation for trial, and may completely control the scope and timing of discovery. Failure to comply with the judge's order can result in sanctions, including sanctions that may prove fatal to a party's claim.		
RULE 507.1. POST-JUDGMENT DISCOVERY Post-judgment discovery need not be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.		Do not adopt Rule 507.1.
SECTION 2. INSTITUTION OF SUIT		
RULE 522. MOTION TO TRANSFER VENUE (a) <i>Motion</i> . 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 no later than the 20th day after the day the defendant's answer is filed under Rule 516, and must contain a sworn statement that the venue chosen by the plaintiff is improper. The motion must also contain a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to do so, the court must inform the defendant of the defect and allow the defendant 10 days to cure the defect. If	RULE 527. MOTION TO TRANSFER A motion to transfer filed in the justice court shall contain the requisites prescribed in Rule 86; and in addition shall set forth the precinct to which transfer is sought. RULE 531. ORDER OF TRANSFER The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear	Retain current Rules 527 and 531. Do not adopt proposed Rule 522.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
<p>the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.</p> <p>(b) <i>Hearing.</i></p> <p>(1) <i>Procedure.</i></p> <p>(A) <i>Judge to Set Hearing.</i> In response to a motion to transfer venue, the judge shall set a hearing at which the motion will be considered.</p> <p>(B) <i>Response.</i> A plaintiff may file a response to a defendant’s motion to transfer venue.</p> <p>(C) <i>Evidence and Argument.</i> The parties may present evidence and make legal arguments at the hearing. The defendant presents evidence and argument first. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system. Written documents offered by the parties may also be considered by the judge at the hearing</p> <p>(2) <i>Judge’s Decision.</i> The judge must either grant or deny the motion to transfer venue. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.</p> <p>(3) <i>Further Consideration of Judge’s Ruling.</i></p> <p>(A) <i>Motions for Rehearing.</i> Motions for rehearing of the judge’s ruling on venue are not permitted.</p> <p>(B) <i>Appeal.</i> No interlocutory appeal of the judge’s ruling on venue is permitted.</p> <p>(4) <i>Time for Trial of the Case.</i> No trial shall be held until at least the 15th day after the judge’s ruling on the motion to transfer venue.</p> <p>(c) <i>Order.</i> If the motion to transfer venue is granted, the court must issue an order of transfer stating the reason for the transfer</p>	<p>before such court at its next ensuing term.</p>	

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the cause, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the cause, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and that the plaintiff has 10 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay, as described in Rule 509. Failure to do so will result in the case being dismissed without prejudice.		
<p>RULE 523. FAIR TRIAL VENUE CHANGE</p> <p>If a party believes they cannot get a fair trial in a specific precinct or before a specific judge, they may file a sworn statement stating such, and specifying if they are requesting a change of location or a change of judge. This statement must be filed no less than seven days before trial, unless the sworn statement shows good cause why it was not so filed. If the party seeks a change in presiding judge, the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. If the party seeks a change in location, the case shall be transferred to any other precinct in the county requested by the defendant.</p> <p>If no specific precinct is requested, it shall be transferred to the nearest justice court in the county. If there is only one justice of the peace precinct in the county, then the judge shall exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge shall appoint a visiting judge to hear the case. In cases where</p>	<p>RULE 528. VENUE CHANGED ON AFFIDAVIT</p> <p>If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.</p> <p>RULE 529. "NEAREST JUSTICE" DEFINED</p> <p>By the term "nearest justice," as used in this section, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.</p>	Retain current Rules 528 and 529. Do not adopt proposed Rule 523.

PROPOSED RULES	CURRENT RULES	TAA RECOMMENDATION
exclusive jurisdiction is within a specific precinct, as in Eviction Cases, the only remedy available is a change in presiding judge. A party may apply for relief under this rule only one time in any given lawsuit.		
SECTION 3. TRIAL		
<p>RULE 526. SUMMARY DISPOSITION</p> <p>(a) <i>Motion</i>. A party may file a motion with the court requesting judgment in its favor without a need for trial. A plaintiff's motion for summary disposition should state that there is no genuine dispute of any material fact in the case, and that it is therefore entitled to judgment as a matter of law. A defendant's motion for summary disposition should state that the plaintiff has no evidence of one or more essential elements of its claim against the defendant.</p> <p>(b) <i>Hearing</i>. If a summary disposition motion is filed, the judge must hold a hearing, unless all parties waive the hearing in writing. Parties may respond to the motion orally at the hearing, unless the court orders them in writing to reduce their responses to writing, which may or may not be sworn, at the discretion of the court.</p> <p>(c) <i>Order</i>. The court may enter judgment after the hearing as to an entire claim, or parts of a claim, as the evidence requires. The court should deny the motion if any material factual dispute exists.</p>		Instead of adopting proposed Rule 526, continue to use Rule 166a of the Texas Rules of Civil Procedure to address this issue.
<p>RULE 531. PRETRIAL CONFERENCE</p> <p>If all parties have appeared in a suit, any party may request, or the court may order a pretrial conference. Appropriate issues for this setting include:</p> <p>(a) Discovery issues;</p>		Amend proposed Rule 531 to make clear it does not apply in eviction cases.

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<p>(b) The need for amendment or clarification of pleadings;</p> <p>(c) The admission of facts and documents to streamline the trial process;</p> <p>(d) Limitation on the number of witnesses at trial;</p> <p>(e) Identification of facts, if any, which are not in dispute between the parties.</p> <p>(f) Ordering the parties to mediation or other alternative dispute resolution services;</p> <p>(g) The possibility of settlement;</p> <p>(h) Trial setting dates that are amenable to the court and all parties;</p> <p>(i) Appointment of interpreters, if needed;</p> <p>(j) Any other issue that the court deems appropriate.</p>		
<p>RULE 531a. ALTERNATIVE DISPUTE RESOLUTION</p> <p>It is the policy of this state to encourage the peaceable resolution of disputes thru alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. It is the responsibility of judges and their court administrators to carry out this policy and develop an alternative dispute resolution system to encourage peaceable resolution in all justice court suits. For that purpose the judge may order any justice court case to mediation or another appropriate and generally accepted alternative dispute</p>		<p>Amend proposed Rule 531a to explicitly prohibit the use of ADR in eviction cases, unless all parties agree.</p>

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resolution process.		
<p>RULE 560. APPEAL</p> <p>(a) <i>Plaintiff's Appeal.</i> If the plaintiff wishes to appeal the judgment of the court, the plaintiff or its agent or attorney shall file a bond in the amount of \$500 with the judge no later than the 20th day after the judgment is signed or the motion for new trial, if any, is denied. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy such costs if judgment or costs be rendered against it on appeal.</p> <p>(b) <i>Defendant's Appeal.</i> If the defendant wishes to appeal the judgment of the court, the defendant or its agent or attorney must file a bond with the judge no later than the 20th day after the judgment is rendered or the motion for new trial, if any, is denied. This bond is calculated by doubling the amount of the judgment rendered in justice court. The bond must be supported by such surety or sureties as are approved by the judge, or cash in lieu of surety, must be payable to the appellee, and must be conditioned that the appellant will prosecute its appeal to effect and will pay off and satisfy the judgment which may be rendered against it on appeal.</p> <p>(c) <i>Appeal Perfected.</i> When such bond has been filed with the court, the appeal will be held to be perfected. The appeal will not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same. This notice will be given by the court to which</p>	<p>RULE 571. APPEAL BOND</p> <p>The party appealing, his agent or attorney, shall within ten days from the date a judgment or order overruling motion for new trial is signed, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal; or if the appeal is by the plaintiff by reason of judgment denying in whole or in part his claim, he shall file with the justice a bond in the same ten-day period, payable to the appellee, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the costs incurred in the justice court and estimated costs in the county court, less such sums as may have been paid by the plaintiff on the costs, conditioned that he shall prosecute his appeal to effect and shall pay off and satisfy such costs if judgment or costs be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed.</p> <p>Within five days following the filing of such appeal bond, the party appealing shall give notice as provided in Rule 21a of the filing of such bond to all parties to the suit who have not filed such bond.</p> <p>No judgment shall be taken by default against any party in the court to which the cause has been appealed without first</p>	<p>Retain current Rule 571 instead of adopting proposed Rule 560, or modify the proposed rule to retain the current timeframe. It should be made clear that the rule does not apply to eviction cases.</p>

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<p>the cause has been appealed.</p> <p>(d) <i>Notice Required.</i> Within five days following the filing of such appeal bond, the party appealing must give notice as provided in Rule 515 of the filing of such bond to all parties to the suit who have not filed such bond. No judgment may be taken by default against any party in the court to which the cause has been appealed without first showing compliance with this rule.</p>	<p>showing that this rule has been complied with. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same.</p>	
<p>RULE 564. NEW MATTER MAY BE PLEADED No new ground of recovery may be set up by the plaintiff, nor may any set-off or counterclaim be set up by the defendant which was not pleaded in the justice court.</p>	<p>RULE 574a. NEW MATTER MAY BE PLEADED Either party may plead any new matter in the county or district court which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff, nor shall any set-off or counterclaim be set up by the defendant which was not pleaded in the court below. The pleading thereof shall be in writing and filed in the cause before the parties have announced ready for trial.</p>	<p>Retain current Rule 574a. Do not adopt proposed Rule 564.</p>
<p>SECTION 10. EVICTION CASES</p>	<p>SECTION 3. FORCIBLE ENTRY AND DETAINER</p>	
<p>RULE 739. PETITION A petition in an eviction case must be sworn to by the plaintiff, and must contain:</p> <p>(a) A description of the premises that the plaintiff seeks possession of;</p> <p>(b) A description of the facts and the grounds for eviction;</p> <p>(c) A description of when and how notice to vacate was</p>	<p>RULE 741. REQUISITES OF COMPLAINT The complaint shall describe the lands, tenements or premises, the possession of which is claimed, with sufficient certainty to identify the same, and it shall also state the facts which entitled the complainant to the possession and authorize the action under Sections 24.001 - 24.004, Texas Property Code.</p>	<p>Retain current Rule 741. Do not adopt proposed Rule 739. If any version of the proposed Rule 739 (d) is adopted, subsection (d) should read: “(d) The total amount of rent due at the time of the filing.”</p>

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<p>delivered;</p> <p>(d) The total amount of rent sought by the plaintiff, if any;</p> <p>(e) Attorney’s fees, if applicable, if any.</p> <p>The petition must be filed in the precinct where the property is located. If it is filed in a precinct other than the precinct where all or part of the property is located, the judge shall dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.</p> <p>A plaintiff must name as defendants in a petition all tenants obligated under a lease residing at the premises who plaintiff seeks to evict. No judgment or writ of possession shall issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and not served with citation pursuant to these rules, except that a writ may be executed against occupants not obligated under a lease but claiming under the tenant or tenants.</p>		
<p>RULE 741. CITATION</p> <p>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 nor less than seven days from the date of filing of the petition. The citation shall include a copy of the sworn petition and all documents filed by the plaintiff, and shall inform the parties that, upon timely request and payment of a</p>	<p>RULE 739. CITATION</p> <p>When the party aggrieved or his authorized agent shall file his written sworn complaint with such justice, the justice shall immediately issue citation directed to the defendant or defendants commanding him to appear before such justice at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of the citation.</p> <p>The citation shall inform the parties that, upon timely request and payment of a jury fee no later than five days after the</p>	<p>Retain current Rule 739. Do not adopt proposed Rule 741.</p>

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<p>jury fee no later than three days before the date set for trial in the citation, the case shall be heard by a jury, and must contain all warnings provided for in Chapter 24 of the Texas Property Code. Additionally, it should include the following statement: “For additional assistance, consult Rules of Civil Procedure 500-575 and 738-755. These rules may be viewed at www.therules.com and are also available at the court listed on this citation.”</p>	<p>defendant is served with citation, the case shall be heard by a jury.</p>	
<p>RULE 742. REQUEST FOR IMMEDIATE POSSESSION</p> <p>(a) <i>Request for Immediate Possession.</i> The plaintiff, at the time of filing the petition, may additionally file a sworn statement requesting immediate possession, alleging specific facts that should entitle the plaintiff to possession of the premises during any appeal. If the plaintiff files this statement it must also post a bond, in cash or surety, in an amount approved by the judge. The surety may be the landlord or its agent.</p> <p>(b) <i>Calculation of Bond.</i> The judge shall determine the amount of the bond. This may be done with an ex parte hearing with the landlord, and should cover defendant’s damages if a writ of possession is issued, and then later revoked upon appeal. The amount could include moving expenses, additional rent, loss of use, attorney fees, and court costs.</p> <p>(c) <i>Notice to Defendant.</i> The defendant must be served a notice of the plaintiff’s Request for Immediate Possession, including a copy of this statement in 12 point bold or underlined print: “A request for immediate possession has been filed in this case. If judgment is rendered against you, you may only have 24 hours to move from this property after judgment. To preserve your right to remain in the property during an appeal, if any, you must post a counterbond in an amount set by the court. Contact the court IMMEDIATELY if you wish to post a</p>	<p>RULE 740. COMPLAINANT MAY HAVE POSSESSION</p> <p>The party aggrieved may, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute and file a possession bond to be approved by the justice in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against plaintiff.</p> <p>The defendant shall be notified by the justice court that plaintiff has filed a possession bond. Such notice shall be served in the same manner as service of citation and shall inform the defendant of all of the following rules and procedures:</p> <p>(a) Defendant may remain in possession if 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;</p>	<p>Retain current Rule 740 to allow a bond for immediate possession in accordance with Texas Property Code Sec. 24.061 (b).</p>

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<p>counterbond. If this request has been improperly filed, you may be entitled to recover your damages from the plaintiff.”</p> <p>(d) <i>Counterbond.</i> If the defendant seeks to post a counterbond, the court should set it in an amount that will cover the plaintiff’s damages if the defendant maintains possession of the property during appeal. If the defendant posts a counterbond, in cash or in surety approved by the court, the case will proceed in the usual manner for eviction cases.</p> <p>(e) <i>Default Judgment.</i> 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).</p> <p>(f) <i>Contested Hearing.</i> If the defendant appears for trial, and plaintiff is awarded judgment for possession, the judge shall proceed to hear evidence and argument from all parties regarding the issue of immediate possession. If it is determined that the plaintiff’s interests will not be adequately protected during the normal appeal procedure, the judge may require that a defendant post a bond if the defendant wishes to remain in possession of the premises during appeal, if any. This bond can be a counterbond as described above in subsection (d), or an appeal bond as described by Rule 750. Unless the defendant posts a counterbond or perfects an appeal with a bond as described by Rule 750, the writ of possession shall be issued after the expiration of five days upon request of the plaintiff and payment of the applicable fees.</p> <p>(g) <i>Forfeiture of Original Bond.</i> If the defendant is dispossessed of the property and subsequently is awarded possession at the county court, the defendant will be entitled to recover</p>	<p>(b) Defendant is entitled to demand and he shall be granted a trial to be held prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff’s possession bond;</p> <p>(c) If defendant does not file a counterbond and if defendant does not demand that trial be held prior to the expiration of said six-day period, the constable of the precinct or the sheriff of the county where the property is situated, shall place the plaintiff in possession of the property promptly after the expiration of six days from the date defendant is served with notice of the filing of plaintiff’s possession bond; and</p> <p>(d) 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 constable or sheriff shall place the plaintiff in possession of the property five days after such determination by the justice of the peace.</p>	

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actual damages resulting from its exclusion, which damages may be awarded from a forfeiture of the plaintiff's original bond. If the defendant posts a counterbond and remains in possession, the county court will make a determination of the plaintiff's damages, if any, which may be awarded from a forfeiture of the defendant's counterbond.		
RULE 743. SERVICE OF CITATION The constable, sheriff, or other person authorized by written court order receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person, other than the plaintiff, over the age of sixteen years, at his usual place of abode, at least six days before the day set for trial; and no later than three days before the day assigned for trial he shall return such citation, with his action written thereon, to the court who issued the same.	RULE 742. SERVICE OF CITATION The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same.	Change the term "no later than three days before the day assigned for the trial" to "on or before the day assigned for trial," similar to the timeframe in current Rule 742.
RULE 745. DEMANDING JURY Any party shall have the right of trial by jury, by making a request to the court at least three days before the day set for trial, and by paying a jury fee. Upon such request, a jury shall be summoned as in other cases in justice court.	RULE 744. DEMANDING JURY Any party shall have the right of trial by jury, by making a request to the court on or before five days from the date the defendant is served with citation, and by paying a jury fee of five dollars. Upon such request, a jury shall be summoned as in other cases in justice court.	Retain current Rule 744. Do not adopt proposed Rule 745.
RULE 746. TRIAL POSTPONED For good cause shown by either party, the trial may be postponed not exceeding seven days. A continuance may exceed seven days if both parties agree in writing.	RULE 745. TRIAL POSTPONED For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days.	Amend proposed Rule 746 to require a trial postponement to be "supported by an affidavit of either party."
RULE 749. JUDGMENT AND WRIT If the judgment or verdict be in favor of the plaintiff, the judge will give judgment for plaintiff for possession of the premises,	RULE 748. JUDGMENT AND WRIT If the judgment or verdict be in favor of the plaintiff, the justice shall give judgment for plaintiff for possession of the	Retain current Rule 748. Do not adopt proposed Rule 749. As an alternative, extend the timeframe for issuing a writ of possession to 90 days and remove the proposed rule

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<p>costs, attorney’s fees, and back rent, if any; and he must award a writ of possession upon demand of the plaintiff and payment of any required fees. If the judgment or verdict be in favor of the defendant, the judge will give judgment for defendant against the plaintiff for costs and attorney’s fees, if any. No writ of possession may issue until the expiration of five days from the time the judgment is signed, except as provided by Rule 742.</p> <p>A writ of possession may not be issued after the 30th day after a judgment for possession is signed, and a writ of possession expires if not executed by the 30th day after the date it is issued. If the 30th day falls on a Saturday, Sunday, or legal holiday, for the purpose of satisfying this rule, it will become the next day that is not a Saturday, Sunday or legal holiday.</p>	<p>premises, costs, and damages; and he shall award his writ of possession. If the judgment or verdict be in favor of the defendant, the justice shall give judgment for defendant against the plaintiff for costs and any damages. No writ of possession shall issue until the expiration of five days from the time the judgment is signed.</p>	<p>language that reads “and attorney’s fees, if any.”</p>
<p>RULE 750a. INABILITY TO PAY APPEAL COSTS IN EVICTION CASES</p> <p>(a) <i>Contents of Statement.</i> If a party wishes to appeal, but is unable to pay the costs of appeal, or secure adequate sureties, it may appeal by filing a sworn statement of its inability to pay the costs of appeal no later than the fifth day after the judgment was rendered. The justice court must make available a form that a person may use to comply with these requirements. Notice of this statement must be given by the court to the other party no later than the next business day. The statement must contain the following information:</p> <p>(1) the tenant's identity;</p> <p>(2) the nature and amount of the tenant's employment income;</p> <p>(3) the income of the tenant's spouse, if applicable and</p>	<p>RULE 749a. PAUPER'S AFFIDAVIT</p> <p>If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of the court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. Upon the filing of a pauper's affidavit the justice of the peace or clerk of the court shall notice the opposing party of the filing of the affidavit of inability within one working day of its filing by written notification accomplished through first</p>	<p>TAA suggests that the Court not adopt proposed Rule 750a and instead amend current Rule 749a to read as follows:</p> <p>RULE 749A PAUPER’S AFFIDAVIT</p> <p>If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of the court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. Upon the filing of a pauper's affidavit the justice of</p>

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<p>available to the tenant;</p> <p>(4) the nature and amount of any governmental entitlement income of the tenant;</p> <p>(5) all other income of the tenant;</p> <p>(6) the amount of available cash and funds available in savings or checking accounts of the tenant;</p> <p>(7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;</p> <p>(8) the tenant's debts and monthly expenses; and</p> <p>(9) the number and age of the tenant's dependents and where those dependents reside</p> <p>(b) <i>IOLTA Certificate</i>. If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.</p> <p>(c) <i>Contest</i>. The sworn statement is presumed to be true and will be accepted to allow the appeal unless the opposing party files a contest within five days after receiving notice of the statement. If the opposing party contests a statement not</p>	<p>class mail. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. When a pauper's affidavit is timely contested by the appellee, the justice shall hold a hearing and rule on the matter within five days.</p> <p>If the justice of the peace disapproves the pauper's affidavit, appellant may, within five days thereafter bring the matter before the county judge for a final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county judge shall set a day for hearing, not later than five days, and shall hear the contest de novo. If the pauper's affidavit is approved by the county judge, he shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case.</p> <p>A pauper's affidavit will be considered approved upon one of the following occurrences: (1) the pauper's affidavit is not contested by the other party; (2) the pauper's affidavit is contested by the other party and upon a hearing the justice determines that the pauper's affidavit is approved; or (3) upon a hearing by the justice disapproving of the pauper's affidavit the appellant appeals to the county judge who then, after a hearing, approves the pauper's affidavit. No writ of possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in</p>	<p>the peace or clerk of the court must: (1) deliver notice the opposing party of the filing of the affidavit of inability within one working day of its filing by written notification accomplished through first class mail, and (2) provide the tenant any notice required under Chapter 24 of the Texas Property Code.</p> <p>It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. When a pauper's affidavit is timely contested by the appellee, the justice shall hold a hearing and rule on the matter within five days.</p> <p>If the justice of the peace disapproves the pauper's affidavit, appellant may, within five days thereafter bring the matter before the county judge for a final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county judge shall set a day for hearing, not later than five days, and shall hear the contest de novo. If the pauper's affidavit is approved by the county judge, he shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case.</p> <p>A pauper's affidavit will be considered approved upon one of the following occurrences: (1) the pauper's affidavit is not contested by the other party; (2) the pauper's affidavit is contested by the other party and upon a hearing the justice determines that the pauper's affidavit is approved; or (3) upon</p>

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<p>accompanied by an IOLTA certificate, the judge shall hold a hearing no later than the fifth day after the contest is filed. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge should make a written finding as to the inability of the appellant to pay. If the judge rules that the statement is denied, the party who filed it may appeal that decision by filing, within five days, a written contest with the justice court, which will then forward the matter and related documents to the county court for resolution, or the party may post an appeal bond complying with Rule 750 with the justice court within one day from the date the order denying the pauper's affidavit is signed.</p> <p><i>(d) Appeal of Decision.</i> If the decision is appealed, the judge shall send all papers to the county court. The county court shall set a day for a hearing, not later than five days after the appeal, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice of the peace to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules. If the county court denies the appeal, the party will have one day to post an appeal bond that satisfies Rule 750 in order to perfect its appeal.</p>	<p>the amount as required by Rule 749 within five days thereafter. If no appeal bond is filed within five days, a writ of possession may issue.</p>	<p>a hearing by the justice disapproving of the pauper's affidavit the appellant appeals to the county judge who then, after a hearing, approves the pauper's affidavit. No writ of possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in the amount as required by Rule 749 within five days thereafter. If no appeal bond is filed within five days, a writ of possession may issue.</p>
<p>RULE 750b. PAYMENT OF RENT DURING NONPAYMENT OF RENT APPEALS</p> <p><i>(a) Notice to Pay Rent into Registry.</i> If a tenant files a pauper's affidavit in an eviction for nonpayment of rent, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:</p>	<p>RULE 749b. PAUPER'S AFFIDAVIT IN NONPAYMENT OF RENT APPEALS</p> <p>In a nonpayment of rent forcible detainer case a tenant/appellant who has appealed by filing a pauper's affidavit 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:</p> <p>(1) Within five days of the date that the tenant/appellant files</p>	<p>TAA suggests that the Court not adopt proposed Rule 750b and instead amend current Rule 749b to read as follows:</p> <p>RULE 749b. PAUPER'S AFFIDAVIT IN NONPAYMENT OF RENT APPEALS</p> <p>In a nonpayment of rent forcible detainer case a tenant/appellant who has appealed by filing a pauper's</p>

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<p>(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;</p> <p>(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;</p> <p>(3) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within five days of the date the tenant files the pauper's affidavit;</p> <p>(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and</p> <p>(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.</p> <p>(b) <i>Failure to Pay Rent.</i> If a tenant fails to do comply with the notice in subsection (a), the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which will issue immediately and without hearing. The appeal will then be sent up to county court in the usual manner for cases with perfected appeals.</p> <p>(c) <i>Payment of Rent During Appeal.</i> If an eviction case is based on nonpayment of rent, and the tenant appeals by pauper's affidavit, the tenant must pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal. During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days</p>	<p>his pauper's affidavit, he must pay into the justice court registry one rental period's rent under the terms of the rental agreement.</p> <p>(2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days of the due date under the terms of the rental agreement.</p> <p>(3) If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of restitution.</p> <p>(4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing.</p> <p>(5) All hearings and motions under this rule shall be entitled to precedence in the county court.</p>	<p>affidavit 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:</p> <p>(1) Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry the amount set forth in the notice delivered to the tenant at the time the tenant filed the pauper's affidavit. If the tenant/appellant fails to pay the designated amount into the justice court registry within five days and the transcript has not been transmitted to the county clerk, the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court will issue immediately and without hearing.</p> <p>(2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the designated amount into the county court registry within five days of the rental due date under the terms of the rental agreement.</p> <p>(3) If the tenant/appellant fails to pay the designated amount into the court registry within the time limits prescribed by these rules the landlord may file a notice of default in county court. Upon sworn motion by the landlord and a showing of default to the judge, the court shall issue a writ of possession.</p> <p>(4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing.</p> <p>(5) All hearings and motions under this rule shall be entitled to precedence in the county court.</p>

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<p>of the due date under the terms of the rental agreement. If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).</p> <p>(d) <i>Contest of Amount Paid by Tenant.</i> If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.</p> <p>(e) <i>Objection to Ruling.</i> If the tenant objects to the justice court's ruling under Subsection (d) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court. (e) <i>Contests at Same Hearing.</i> If either party files a contest under Subsection (d) and the tenant files a pauper's</p>		

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<p>affidavit that is contested by the landlord, the justice court shall hold the hearing on both contests at the same time.</p> <p>(f) <i>Remedies in County Court.</i> Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing. If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of possession. All hearings and motions under this rule shall be entitled to precedence in the county court.</p>		
<p>RULE 755. WRIT OF POSSESSION ON APPEAL</p> <p>The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Texas Property Code 24.007 and Texas Rule of Appellate Procedure 24.</p>	<p>RULE 755. WRIT OF POSSESSION</p> <p>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 in any case by appeal from such final judgment in the county court, unless the premises in question are being used as the principal residence of a party.</p>	<p>Clarify proposed Rule 755 to state that the pauper’s affidavit appeal does not constitute a supersedeas bond.</p>

Attachment B
Statutes Referenced in TAA's Letter to the Supreme Court Advisory Committee

V.T.C.A., Property Code § 24.004

§ 24.004. Jurisdiction; Dismissal

(a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

V.T.C.A., Property Code § 24.0052

§ 24.0052. Tenant Appeal on Pauper's Affidavit

(a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

- (1) the tenant's identity;
 - (2) the nature and amount of the tenant's employment income;
 - (3) the income of the tenant's spouse, if applicable and available to the tenant;
 - (4) the nature and amount of any governmental entitlement income of the tenant;
 - (5) all other income of the tenant;
 - (6) the amount of available cash and funds available in savings or checking accounts of the tenant;
 - (7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;
 - (8) the tenant's debts and monthly expenses; and
 - (9) the number and age of the tenant's dependents and where those dependents reside.
- (b) The justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c) The justice court shall promptly notify the landlord if a pauper's affidavit is filed by the tenant.

(d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the

parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e) If the justice court approves the pauper's affidavit of a tenant, the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a).

V.T.C.A., Property Code § 24.0053

§ 24.0053. Payment of Rent During Appeal of Eviction

(a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

(a-1) If a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 appeal an eviction for nonpayment of rent, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit is filed that contains the following information in bold or conspicuous type:

- (1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
- (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (3) the calendar date by which the initial deposit must be paid into the justice court registry;
- (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and
- (5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure.

(b) If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).

(c) If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.

(d) If the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e) If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the landlord under Section 24.0052(d), the justice court shall hold the hearing on both contests at the same time.

V.T.C.A., Property Code § 24.006

§ 24.006. Attorney's Fees and Costs of Suit

(a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

(b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

(c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

(d) The prevailing party is entitled to recover all costs of court.

V.T.C.A., Property Code § 24.0061

§ 24.0061. Writ of Possession

(a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8 ½ by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and

(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(e) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to

applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.