



June 13, 2012

Supreme Court Advisory Committee  
Charles Babcock, Chair  
Jackson Walker L.L.P.  
1401 McKinney, Suite 1900  
Houston, TX 77010

Honorable Nathan Hecht  
Supreme Court of Texas  
P.O. Box 12248  
Austin, TX 78711

Dear Supreme Court Advisory Committee and Justice Hecht:

I am writing on behalf of the Texas Association of REALTORS®. In response to the proposed justice court rules drafted by the Task Force for Rules in Small Claims Cases and Justice Court Proceedings, the Texas Association of REALTORS® has prepared a statement, which is included below.

If any member of the committee has questions or concerns, please feel free to contact Texas Association of REALTORS® General Counsel & Vice President of Legal Affairs, Lori Levy.

### **Introduction**

With the passage of House Bill 79, the Texas Legislature directed the Texas Supreme Court to promulgate rules for eviction proceedings.<sup>1</sup> Indeed, the current rules needed to be altered to accommodate the consolidation of the small claims courts with the justice courts and to comply with other legislative changes. To that end, the Task Force for Rules in Small Claims Cases and Justice Court Proceedings ("Task Force") was assembled to adjust the rules as needed.

The Texas Association of REALTORS® (Association) believes the result of many of these alterations goes far beyond what the legislature initially intended and believes many of these proposed rules pose a significant threat to residential and commercial property owners across Texas.

### **The Texas Association of REALTORS® Position**

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<sup>1</sup> Tex. H.B. 79, 82<sup>nd</sup> Leg., C.S. (2011), § 5.07(3).

The Texas Association of REALTORS® is a state-level, membership-driven trade association that represents and advocates on the behalf of more than 80,000 members. Representing members from all facets of real estate, the Association is one of the largest professional membership organizations in the state.

The Texas Association of REALTORS® believes many of the changes to the eviction rules would unfairly disadvantage Texas property owners. Because the rules the Task Force seeks to change apply to both residential *and* commercial property owners, the proposed rules effect on evictions could be profound.

The Texas Association of REALTORS® staunchly opposes certain proposed rules put forth by the Task Force. The Association strongly opposes the proposed rules which seek to: 1) extend the amount of time a tenant could remain in possession of the owner's property after an eviction suit has been filed; 2) remove the immediate bond for possession from the eviction rules; 3) require parties in an eviction proceeding to mediate if a justice so orders; or 4) remove the rules of evidence and civil procedure entirely from the justice courts.

### **The Extension of the Amount of Time a Tenant Remains in Possession of Owner's Property Increases Costs to Property Owners**

Many of the proposed rules, if adopted, would extend the amount of time a tenant remains in possession of the owner's property. For many property owners, this means increased costs—costs not only associated with the legal process and lost rent, but also costs to the property's integrity. Specifically, the following proposed rules have the potential to increase costs to the property owner by keeping the tenant in possession for a longer period:

#### **1. Proposed Rule 739: Petition**

Proposed Rule 739 would require a plaintiff to name all tenants in the petition: "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..." Because additional defendants would be required to be served, service costs would increase dramatically for property owners and unpredictable delays would be endured.

#### **2. Proposed Rule 741: Citation**

Proposed Rule 741 requires that the appearance date be "not more than fourteen days nor less than seven days from the date of the filing of the petition..." This is different from the current rule which states the appearance date be not more than ten days nor less than six days from the date of service of the citation. While ostensibly it appears this might decrease the time currently allotted, the Association believes this will have the opposite effect in some cases. By increasing the total amount of days from 10 to 14, this could

add as much as four days to the process, regardless of the fact that the language was altered from date of service to date of filing because service might be achieved quickly.

3. Proposed Rule 743: Service of Citation & Proposed Rule 743a: Service by Delivery to Premises

Proposed Rule 743 requires that the “constable, sheriff, or other person authorized by written court order receiving such citation...no later than three days before the day assigned for trial shall return such citation...” This is different from the current rules which simply require the citation be returned *on or before* the day assigned for trial.

Similarly, proposed Rule 743a requires that the citation be returned at least one day before the day assigned for trial. The current rules require that the citation be returned on or before the day assigned for trial.

### **Removal of the Immediate Bond for Possession from Rules**

In a note provided in the proposed rules, the Task Force stated that they were evenly split on whether they should eliminate or retain current rule 740 relating to the immediate bond for possession. Task Force members who oppose the current scheme cite concerns over tenants’ due process rights and misuse or misunderstanding by the justice courts. The Texas Association of REALTORS® believes these concerns are ill-founded. With an immediate bond for possession, the owner is only able to obtain a writ of possession if the defendant fails to file a counterbond and a default judgment is granted against the tenant.<sup>2</sup> In addition, the tenant always has the right to appeal. Clearly, the procedural safeguards currently in place are sufficient to allay such concerns.

Additionally, this tool is of immense value in situations where serious property damage has occurred or another calamitous issue has arisen and the property owner needs possession at once. The Texas Association of REALTORS® is strongly opposed to any alteration or deletion of this invaluable provision.

### **Justice-Ordered Alternative Dispute Resolution in Eviction Suits**

Proposed Rule 531a states that the court may order any justice court case, including eviction suits, to mediation. While the Texas Association of REALTORS® recognizes the many beneficial aspects of alternative dispute resolution, eviction proceedings are simply not an arena in which mediation could yield itself helpful. Eviction proceedings typically center around one issue: the tenant has defaulted on the lease and the landlord wants possession. The only effect this provision might have would be to further delay eviction proceedings.

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<sup>2</sup> Tex. Prop. Code § 24.0061(b); Tex. R. Civ. P. 740

## **Removal of the Texas Rules of Evidence and Rules of Civil Procedure from Eviction Suits**

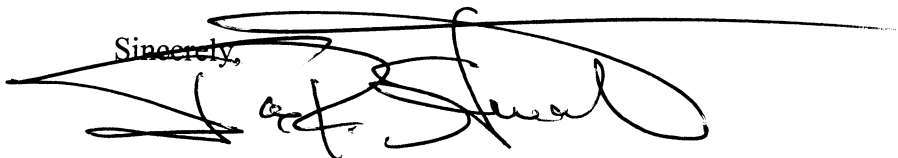
Currently, Rule 523 states that “all rules governing the district and county courts shall also govern the justice courts...” This means that both Texas Rules of Civil Procedure and Rules of Evidence currently apply to justice court proceedings, including evictions. The Task Force seeks to remove the applicability of these rules unless they are specifically found within the proposed rules created, or to the extent the court determines the rule should be followed to ensure fairness to all parties. These rules exist to ensure fairness to all parties. While justice court proceedings may sometimes be more informal than district court proceedings, to completely abolish such rules from a court setting unless a justice decides otherwise, is the antithesis of the result the Task Force is seeking. To ensure consistency and fairness for all parties, the current rule should be retained.

### **Conclusion**

The Texas Association of REALTORS® opposes many of the Task Force’s proposed rules, because they far exceed the intent of the legislature. The legislature did not intend to completely alter the very nature of eviction proceedings in Texas. While certainly changes did need to be made to bring the rules in compliance with recent changes in the law, the proposed rules far exceed this necessity. These proposed rules pose a significant threat to residential and commercial property owners across Texas and the Texas Association of REALTORS® implores the Supreme Court Advisory Committee to recommend the Supreme Court of Texas only make adjustments to the rules as required by law.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Stewart", with a long horizontal line extending to the right.

Joe Stewart  
2012 Chairman of the Board  
Texas Association of REALTORS®

cc: Marisa Secco, Rules Attorney