



June 18, 2012

To All Members of the Supreme Court Advisory Committee, and Honorable Nathan Hecht and David Medina:

I am writing on behalf of the Fort Worth/Mid-Cities Chapter of the National Association of Residential Property Managers. We are all Realtor members of the largest national association representing landlords, and of its largest state affiliate (Texas). Our chapter has approximately 50 Realtor members and we manage in the neighborhood of 11,000-12,000 rental units in the Fort Worth and Mid-Cities area.

Our members are in shock at many of the proposals your task force proposes affecting landlord-tenant proceedings. **Justice Courts serve the people in ways not always understood by attorneys who specialize in other legal matters, and should be conducted with rules as user-friendly and inexpensive to the public as possible. Under McGlothlin v. Kliebert, 672 S.W. 2d 231.232 (Tex. 1984), a forcible-entry-and-detainer (eviction) proceeding is meant to be a summary, speedy, and inexpensive remedy for the determination of who is entitled to possession of the premises. Your proposals in general are in direct opposition to that reality. As representatives of several thousand landlords who own rental properties in Texas, we offer the following comments:**

(1) Please remember that when a tenant defaults, the landlord is the injured party, not the tenant. The purpose of a court hearing is to see that the injured party is given relief and protection from further injury. Most of your proposals would further injure the owner, in both time and money lost. The tenant in default is draining the owner's resources and money every day he remains in the property; to delay an already long process by even one day would cost our owners collectively thousands of additional dollars. Please do NOT propose any procedure that would or could lengthen the eviction process (see Section 741).

(2) Many landlords are barely making it! Any proposal that would impose additional expense or lost rent on our landlords will encourage more properties going to foreclosure -- owners just can't go any further. We encourage owners daily them to hang on, ensuring them that things will get better. When we see proposals such as the ones you are considering, we ourselves question whether that is true. More and more, we are hearing current and potential investors suggest that real estate investment in Texas may just not be worth the effort.

(3) Proposed Rule 739 - Petition. Obviously, no one supporting this owns rental properties! The basic cost to file for eviction in Tarrant County is \$106; in Dallas County it is \$121. In each county, each additional person named in the suit costs \$75. A writ of possession in Dallas County is \$155, and in Tarrant County \$165. Your proposal appears to require individual filings that will significantly multiply landlord costs for both filing and writs.

Even worse, every obligated resident would be served individually, and not under "all occupants". This assures a longer time for the service process, and opportunity to avoid service by one or more individuals. In a case where one or more parties cannot be served, we assume no court hearing would be permitted. Whatever the means of one or more parties avoiding service, this could be disastrous for owners! At the very least, additional time would be added to the process, increasing injury to the landlord significantly. At the worst, it could potentially negate the filing altogether. **We recommend that Current Rule 741 remain in effect.**

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(4) Changing Rule 740 to proposed Rule 742 (Immediate Possession Bond). This rule is not used often by landlords, but is valuable in decreasing losses in cases where there is ongoing property damage or illegal activity, or where an obstinate tenant obviously has no intention of moving under the terms of the judgment and will force additional legal action and expense. It works well as it stands, and the current Rule 740 has ample safeguards to insure that the tenant is protected from unfair action. **We request that you retain Current Rule 740, and keep this important tool.**

(5) Proposed Rule 743: This unnecessary change, whose purpose has not been explained, would again cause delays and postponements of trial dates, and should remain as stated in the existing rule. **We recommend that the time frame remain "on or before the day assigned for trial" and consistent with the one-day period in Proposed Rule 743a(d).**

(6) Proposed Rule 745 - Demanding a jury trial time frame. Why would this be changed, except as another delaying tactic for the defendant? We have very few requests for a jury trial, and the current notification time has worked. If defendants are permitted to file a request at the last minute, it will once again result in shortened court preparation time and hearing delays, which are costly to the injured plaintiff. **We recommend that current Rule 744 remain in place.**

(7) Proposed Rule 749 - Judgment and Writs. Most owners file a writ of possession when required within a week or two at most. However, there are circumstances (illness, relative of the owner as a tenant, family difficulties, etc.) where a landlord will try to work with the tenant to mitigate the difficulty of a move-out, by allowing longer to move before filing the writ. This limit to 30 days would force us to move them out regardless of their situation. We see no reason for this change. **If you proceed with this proposal, it should be for a longer period, such as 90 days. We object to the requirement that the judge award attorney's fees to the prevailing tenant, and recommend that Section 24.006 of the Texas Property Code be followed in "allowing" the judge to do so.**

(8) Proposed Rules 750a and 750b - To avoid confusion, **any modification of these sections should be consistent with current rules 749a and 749b, which remain in effect.**

(9) Proposed Rule 501 - Justice Court Cases - We are concerned that under this proposal neither the Texas Rules of Civil Procedure nor the Rules of Procedure and Evidence would apply to justice-court cases, including evictions. This would cause inconsistent application in justice-court cases. **We encourage 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.**

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(10) Proposed Rules 502 and 504 - **We recommend that the SCAC eliminate both of these proposals and retain current Rule 523**, which provides that the Texas Rules of Civil Procedure and Evidence will continue to apply to justice-court cases, particularly evictions.

(11) Proposed Rule 505 - Duty of a Judge to Develop Case: Both the tenant's lease and the law state that failure to pay rent is cause for eviction and landlord possession of the property. **In an eviction case, the single issue for consideration is whether the tenant has paid the rent as agreed.** Permitting a judge to consider mitigating circumstances and other outside issues will impact judicial fairness and will delay the eviction process. In combination with Proposed Rule 253, it will also foster "forum shopping," with tenants seeking out precincts and judges they perceive to be favorable to tenant issues over the landlord. **Proposed Rule 505 should be amended to specify that it does not apply to eviction cases.**

(12) Proposed Rules 522 and 523 - Fair Trial Venue Change: In any court case, the judge is presumed to be fair and unbiased toward both the plaintiff and defendant. In some courts, however, it is reality that judges are more sympathetic to a tenant's circumstances, and will rule on those considerations over the law. With only one issue before the court in evictions, non-payment of rent under the lease, that should not happen, but it does. Any rules need to require that non-payment of rent be the only issue before the eviction court, as it has been in the past. With Proposed Rule 505, tenants would be permitted to "shop" their case to courts where they perceive sympathy to their case. This would absolutely delay court procedures, causing further injury to plaintiffs, and would crowd the dockets in those specific courts. **We recommend that Proposed Rules 505, 507, 507.1 522 and 523, if approved, specify that they do not apply to eviction cases.**

(13) Proposed Rule 531 - Pretrial Conference: Under *McGlothlin v. Kliebert*, 672 S.W. 2d 231.232 (Tex. 1984), a forcible-entry-and-detainer (eviction) proceeding is meant to be a summary, speedy and inexpensive remedy for the determination of who is entitled to possession of the premises. To require a pre-trial conference in addition to the existing period of time required for an eviction hearing is a totally unnecessary and inefficient use of the courts. There is a single issue of non-payment for consideration in eviction cases, and nothing to be determined in a pre-trial conference. **We recommend that Proposed Rule 531, if approved, specify that it does not apply to eviction cases.**

(14) Proposed Rule 531a - Alternative Dispute Resolution. **We strongly object to this proposal**, which permits a judge to order any justice-court case to mediation, particularly in the case of evictions. (See findings in *McGlothlin v. Kliebert*, 672 S.W. 2d 231.232 Tex. 1984) Mediation suggests a middle ground where parties may be able to agree with the help of a third party. In eviction cases, there is one issue: the tenant has not paid rent under the lease, and the owner wants possession of the property. The only other issue involves the amount of unpaid rent owed to the owner, which is determined by the judge at the hearing. There is nothing to cover in mediation. This would provide no improvement to the process, but would be another detriment to the injured landlord in postponing the recovery of his property.

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(15) **Proposed Rule 560 - Appeal.** The Existing Rule 571 adequately provides for an appeal in eviction cases. We strongly object to any extension of time permitted for appeal, which would once again increase the loss to the injured landlord. The goal of providing a "quick and efficient resolution" is not met by extending the process an additional 10 days. **We recommend that Rule 571 be retained without change, or that Proposed 560 be modified to retain the five-day time period for appeal in an eviction case.**

(16) **Proposed Rule 564 - New Matter May Be Pleaded.** **We recommend that Rule 574a remain in effect in lieu of this proposal.** The new proposal is clearly designed to favor the defendant over the rights of the injured party, the plaintiff, by not allowing the same provision for pleading new grounds of recovery to each.

OUR CONCLUSION: Our current eviction system works well. Owners, property managers, even many tenants know the current laws. It is swift, efficient, leaves little room for debate, and is fair to all parties. Many of these proposals are drastic, they are very punitive to investors and owners in eviction cases, and would greatly increase the time and cost of eviction hearings across the state. With many owners already suffering from the economy and some nearing the loss of their housing investments, increasing their costs and losses would make Texas real estate investment considerably less appealing.

We have many good, long-standing, reputable property managers across this state who would be happy to give their input if you wish, and I'd be happy to provide their contact information. They have years of experience with the issues you are addressing, and can provide insight not available to those who do not routinely work within the justice court system, and specifically with evictions. To my knowledge, input from the property management community has not been solicited to this point.

I know this is lengthy, but we feel it is extremely important that you have our feedback. Thank you for your consideration.

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