Supreme Court Advisor Committee
Supreme Court of Texas
Austin, TX 78711

October 30, 2008

Committee Members,

I am attaching two documents for your reference related to my request to have the issue of Small Claims procedures included on the upcoming November meeting Agenda. I would be happy to provide any additional documentation or information the Committee may feel is needed, but wanted to include these two letters at least as a beginning.

The first letter is being sent to the County Court Judge explaining the reasons I will be appealing his decision. I honestly appreciate his patience and sincerity in that he appears to be doing what he feels the law requires him to, and has consistently allowed me to voice my arguments and supporting reasoning uninterrupted.

The second letter is what was originally submitted to the JP Judge after the trial requesting the case be re-tried at the JP level as the Court had applied the Rules of Evidence and Rules of Civil Procedure to a case that I felt they were not supposed to be. The Clerk presented the request to the JP Judge but he just denied the request verbally and walked away, leaving me no choice but to appeal the case to County Court.

What seems clear is that as a citizen I filed a Small Claims suit in good faith but because the HOA hired an expensive, experienced attorney I have been denied my right to have the case actually heard according to the guidelines the Law requires. I respectfully request that the Committee consider that it is at least possible that mine is not a singular instance of such an event and it take action to ensure all of the Courts in Texas are familiar with and comply with the requirements of the Small Claims law.

Thank you again for your time and consideration.

Sincerely,

Dr. Thomas J. Ellis

3225 Turtle Creek Blvd. #1208 • Dallas, TX • 75219
PHONE: 214-929-0067 • EMAIL: tellis@ieee.org

October 30, 2008

Judge Ken Tapscott
County Court at Law 4
600 Commerce Street
Dallas, TX 75202

Your Honor:

I write this letter to inform you of my intention to appeal your decision to dismiss my Small Claims suit without it being heard to the Appellate Court. This is not a request for you to reverse your decision; I sincerely appreciate that you have always me to argue my position and that you've treated me with respect - I felt I owed you the same.

I feel I must appeal your Ruling not only because it affects my case, but in general it would affirm that Attorneys throughout the State are free to use legal tricks and procedures to overwhelm a citizen and gain an unfair advantage that the Small Claims statute seems to specifically prohibit. The people who most need such protection are the ones who cannot afford an attorney or the enormous legal fees that often accompany them. The attorney has cost my HOA close to $60,000 so far on this case, with the Board claiming that the attorney has assured them that case law allows them to collect every penny back from me – few citizens can afford to pay $60,000 for an attorney to handle a small claims case worth a few hundred or even a few thousand dollars.

In the hearing to discuss my request, the attorney showed up claiming case-law did not allow my motion to be heard at all, claiming that once you ruled in their favor, the decision could not be changed as it is "final". After looking up that case I was confused; the information in it appeared to support my position, not his.

I am requesting your decision be reviewed not because it was "not the answer I wanted", but because it appears to be inconsistent with the Law and past higher-Court rulings. I base that conclusion on the following:

- The Small Claims case was filed according to Chapter 28 of the Government Code. Section 28.031 indicates the Judge may dismiss the case if the Plaintiff does not appear at the trial. There does not appear to be any other mechanism which allows for an outright dismissal.

- Section 28.033 requires that if both parties appear at the time and place of the trial, the case shall proceed. It does not appear that the County Court has discretion, referring to 28.052(b) which requires the appeal be handled in the same way as Justice Court.

- Section 28.033 further states the hearing is "informal, with the sole objective being to dispense speedy justice between the parties". Applying the complex Rules of Civil Procedure is just not consistent with this requirement, as higher Courts appear to have previously affirmed.

- Referring back to the attorney's "case law" as well as Section 28.053 – the Ruling that a Small Claims case cannot be appealed was based on the 28.053(d) where the Judgment of the County Court on appeal is final, this in spite of 51.012 of the Civil Practice and Remedies Code allowing for appeals of all cases over a set limit. The conflict was resolved by the Court applying the Rule of Statutory Construction in which a specific Statute controls over a more general one. In the present case, 28.053(b) clearly specifies that no further pleadings are required and prevails over the Rules of Civil Procedure that the attorney claims I violated.

I understand your analogy that if a party files a frivolous lawsuit against someone, the defendant should have the means to have it removed quickly, without it "hanging over their head", but I believe Section 28.053 addresses that by dictating the Court "dispose of small claims appeals with all convenient speed". I do not believe the attorney would have been able to successfully file a "No Evidence Summary Judgment" motion in the Small Claims Court at the JP level, nor should he have been able to do it on the appeal in your Court.

What makes this particular case of even more importance is that the attorney in question was able to prevail in the JP Court by convincing the Justice that none of the evidence I submitted during the trial was admissible as I had not followed the proper Rules of Evidence, and since there was "officially" no evidence the case was considered frivolous so the Law required the award of legal fees. Since this is surely going to be their position when the case does finally go to trial, they would have succeeded in wrongfully tricking the Courts into denying me my right to have a Small Claims suit heard fairly according to the law.

As a scientist I constantly second-guess myself in order to be sure the conclusions I reach are sound. In this case I have been concerned I must simply be "missing something" since the Law (in this case) seems quite clear and unambiguous – how could the Court with so much experience with Law miss something so clear? I believe the ironic answer is it is *because* I am unfamiliar with the complex Rules and Procedures usually employed that such a plainly written Law, designed for the average citizen, is so clear.

I will be filing the appeal with no disrespect towards Your Honor, nor do I blame the County Court for being unfamiliar with Small Claims proceedings. The attorneys began this process by professing their expertise in Small Claims matters and as you pointed out previously, the Court cannot possibly be familiar with every Law that exists; it must rely on attorneys to accurately and honestly present facts of law to it. Since this does not appear to be the case in all circumstances, I have also requested that the Supreme Court Advisory Counsel review the present situation and consider what, if any actions, are needed to clarify the Small Claims law and ensure that it is enforced and followed properly throughout all of Texas.

In any case, I thank you for your time and appreciate all the consideration you have given me in this matter. I look forward to the time when all of these issues are fully resolved one way or the other.

Sincerely,

Dr. Thomas J. Ellis

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March 14, 2008

Luis D. Sepulveda, Justice of the Peace
Precinct 5 Place 1, Dallas County Court
410 South Beckley
Dallas, TX 75203

CASE NO: JS-07003860

Request for Retrial

Your Honor:

I wish to respectfully submit this Motion to have the Small Claims case heard before your Court retried. I sincerely appreciated that you took the time to explain your decision and why you reached it. As a similar courtesy, I now ask that I be allowed to explain properly the reasons I am requesting a retrial.

I submit the request based on the following reasons:

Initial Claim:

As I understood, Your honor reached the final decision in part because I did not "submit" any evidence of damages. With all due respect to the Court, I feel I was wrongly kept from having my evidence considered by the Court because of a procedural technicality that Attorney Riddle raised that should not have applied to the proceedings under the "small claims" status. Prior to filing the suit, I did extensive research into the requirements of Small Claims and based on available information on County Court web sites, neither the Rules of Evidence nor the strict procedural requirements of a regular Court case applied. Even though the Defendant chose to retain Counsel, it is my understanding the trial was still "informal". As such, I was not concerned or "on guard" for any strict procedural issue and based on published information, it seemed clear that a Judge would ask for clarification if any was needed so that a fair decision could be reached.

While Attorney Riddle was well versed and able to quote statues by law, in the informal setting my evidence should have been considered as the issue was clearly raised prior to the Court adjourning to consider all of the facts and reach a decision. If I am mistaken, and each individual Court has different Rules, then I apologize but would still ask for the retrial as I feel it was not unreasonable for me to expect the conditions stated above since several different Counties within Texas all publish the same information. I have enclosed two printouts from County Court web sites as reference (Item **A** and Item **B**)

Counter Claim:

Attorney Riddle argued that because my claim was filed under the Texas Uniform Condominium Act, the prevailing party must be paid for Attorney fees. My claim was not filed under this Law, and none of the basis of my arguments involved this law, it is merely one Mr. Riddle uses repeatedly in his line of work. My right to file Suit is clearly defined in the HOA governing documents, my "contract" with the HOA. I have enclosed the page from the HOA Declarations with the relevant portion highlighted (Item **C**) and would respectfully remind the Court that Attorney Riddle used this same document as his basis for defending the HOA. My suit was not frivolous and was filed in good faith; the HOA is not entitled to recover damages had there actually been any (see next item).

More importantly is the claim from Attorney Riddle that he was required to do "extensive research" on the issues of the Building Code and Sound requirements in order to prepare for the case since it was not normally something he handles, accruing 30 hours of his time but being willing to "cap" the bill at 20 hours. I submit that is a knowingly false statement based on the following:

1) Attorney Riddle was first requested to begin investigating the Building Code and Sound requirements by our HOA back in November, 2006 by our HOA president (Item **D**).
2) By July, 2007, Attorney Riddle had done sufficient research to legally advise our Board of Directors that no violation or problem existed (Item **E**).
3) By August, 2007 Attorney Riddle had taken possession of all the documents on my condo, which included all of the "evidence" he presented to the Court (Item **F**).
4) The "research' on the Building Codes and Sound problems was ironically done by myself, at the direct request of Attorney Riddle (Item **G**). I have never been paid for my time.
5) During the remainder of the year, Mr. Riddle regularly interacted with me regarding the problems I had, and in fact insisted that I not contact the HOA for any reason, that any communication would need to go through him. He was intimately involved with this issue for almost a calendar year before I filed suit (item **H** inclusive).
6) Mr. Riddle has already been paid for literally all of the time he has spent on the issues I filed suit for. HOA records show his firm was paid over $50,000 during the 2007 calendar year, with at least $20,000 spent on issues like mine not related to the lawsuit filed against the developer (Item **J**). I requested from the HOA copies of all invoices pertaining to Unit 1208 prior to the trial to show this but the request was refused.

I am sincerely hurt that an Attorney would stand before the Court and make false claims regarding damages in retaliation for a longstanding disagreement we have had. In addition to the retrial, I would ask the Court to consider what Attorney Riddle has done in this instance and take whatever steps Your Honor feels are necessary to keep this from happening to other citizens. I went to Court expecting to be treated fairly and told the whole truth, to the best of my ability; for the defendant's Counsel to claim $5,000 in fees that have mostly been paid for already, and for "research" that I did for the Attorney in a good-faith effort to resolve the matter outside of Court, is unacceptable.

As I stated previously, I am not an attorney, but have tried to form this request to meet the Court's expectations. If I have not met a procedural requirement, or need to supply additional information, I ask that the Court give me the opportunity to respond and correct the oversight.

Thank you for your time and assistance in this matter.

Sincerely,

Dr. Thomas J. Ellis

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