

Texas Apartment Association
Concerns with the Proposed Eviction Rules

This is a list of the Texas Apartment Association's main concerns regarding the February draft of the proposed changes by the Supreme Court Advisory Committee Subcommittee to the eviction rules:

1. **DELAY CAUSED BY AN AFFIDAVIT OF INDIGENCE.** The proposed rules do not solve a serious problem facing property owners when tenants delay eviction for three or four weeks by merely appealing non-indigent finding of a Justice of the Peace, forcing property owners to hire an attorney to represent the property owner in county court in appeals based on bad faith affidavits of indigence. Under current rules, when an affidavit of indigence is filed, the owner's best course of action in most cases is to not object and to let the case be appealed to the county court based on the affidavit of indigence. (This process takes two-to-four weeks if all works well.) Contesting the affidavit of indigence ruling will usually cause further delay. The Committee proposal still leaves the door wide open for this kind of abuse by residents in cases where the owner seeks judgment for eviction and for back rent. (See second-to-last paragraph in proposed Rule 749c.)
2. **SETTING TRIAL DATES.** In proposed Rule 739 regarding citation, the Justice of the Peace does not have the choice to either: (1) set a trial date on the sixth to tenth day or (2) set an answer date on the sixth day, with an obligation to set for trial as soon as possible after the sixth day if the tenant answers. (The rules need to allow Justices of the Peace to set an answer date to save property owners the unnecessary expense of hiring an attorney when one may not be required. Setting an answer date rather than a trial date allows owners to obtain a default judgment in nearly all cases without having to extensively prepare for a potential trial or hire an attorney.)
3. **MOTION FOR NEW TRIAL.** In proposed Rule 749, motions for a new trial should not be allowed at all; or if they are to be allowed, more stringent restrictions should be imposed.
4. **UNNECESSARY DELAYS.** In proposed Rule 745, an additional seven day delay for "exceptional circumstances" (in addition to the seven day delay available by affidavit of one of the parties), should not be allowed.
5. **DISCOVERY.** In proposed Rule 743, discovery should not be allowed at all unless: (1) the request is filed before the trial date, (2) no hearing is necessary on the discovery motion; (3) the discovery motion is automatically overruled at beginning of the trial, if the judge has not granted discovery; and (4) the judge has total discretion to grant and limit discovery. In any case, if discovery is allowed, it must be reasonable.
6. **DELAY IN WAITING PERIOD.** In proposed Rule 753 the mandatory trial waiting period (or tenant answer date) in county court should not be expanded from eight days to ten days.
7. **DEFAULT JUDGMENTS.** Proposed Rule 747a should be clarified to indicate that non-lawyers can get a default judgment, regardless of the kind of eviction case.
8. **TENDERING RENTS.** Proposed Rule 750, should require one month's rent to be tendered to the Justice of the Peace court and not county court.
9. **STANDARD TERMINOLOGY.** All the rules need to follow statutory terminology and use the term "eviction" rather than the archaic term "forcible entry and detainer."
10. **SIMPLE LANGUAGE.** All the rules need to be much more simply worded. The proposed rules are too complicated for ordinary lay persons to understand.