

May 13, 2002 DRAFT by Texas Apartment Association

NOTE: This draft incorporates most of the suggested changes in the preliminary draft of the subcommittee of the Supreme Court Advisory Committee (SCAC). It also contains other changes needed from the standpoint of landlords, tenants, and justices of the peace in the opinion of the Texas Apartment Association (TAA). The bulleted comments discuss the difference between this TAA proposed draft and (1) the current rules and (2) the May 7th draft by the SCAC subcommittee.

The rule numbering follows the numbering system suggested in the Supreme Court Advisory Committee subcommittee May 7th draft. Except where substantive changes have been made, the substance of the text generally follows the proposed May 7th draft by the subcommittee of the Supreme Court Advisory Committee.

Since laypersons have to read and understand these rules, the wording and writing style of the existing rules areas hopefully more user friendly. We have tried to use the Brian Garner (Law Prose) style of simplified legal drafting as much as possible (although it could be better).

A shamrock symbol at the beginning of a commentary on the SCAC May 7th draft pinpoints the difference between the May 13th TAA draft and the May 7th SCAC subcommittee draft.

(PROPOSED) RULE 4. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays should not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purposes of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rules 739, 742, 742a, 744, 748, 749, 749a, 750 and 754.

- **Adds:** *TAA draft adds clarification that Saturdays, Sundays and legal holidays are counted in the following rules to avoid the current problem of 5 days actually being longer than 6 days: Rule 739 (service of citation in bond for possession cases); Rule 742 (service of citation in bond for possession cases); and Rule 742a (alternative service).*
 - ♣ *SCAC draft does not include Rules 739 and therefore Saturdays, Sundays etc would be included in calculating a 5-day setting in a bond for possession case.*
 - ♣ *SCAC draft could result in a delay in the trial setting in alternative service cases since Rule 742a is not included in the SCAC list.*

- ♣ SCAC draft also references Rule 740 (possession bond) as an exception to the “Saturday and Sunday don’t count rule.” TAA draft does not because TAA draft does not include include a counterbond provision.

(PROPOSED) SECTION 3. EVICTION

How TAA draft differs from current rules:

- **Changes** “forcible detainer” and “forcible entry and detainer” to “eviction” terminology throughout the rules in order to parallel statute terminology. The change to “eviction” terminology should also apply to SCAC draft of revisions to Rule 4 (computation of time); Rule 143 (cost on appeal to county court); Rule 190.1 (discovery limitations); Rule 216 (request and fee for jury trial); and Rule 245 (assignment of cases for trial). It is more important to not confuse the laypersons is than to follow old terminology for case law precedent purposes. TAA believes that the lawyers and courts are capable of correctly handling the old terminology in the old case law. The more recent case law will probably be using “eviction” terminology. The lawyers and judges had no problems with the case law when the rules and the statutes changed from the old “writ of restitution” to “writ of possession”.
- ♣ SCAC draft does not use “eviction” terminology. It uses “forcible entry and detainer” instead. Ironically, 98% of eviction cases are “forcible detainer” cases and not “forcible entry and detainer” cases.

(PROPOSED) RULE 738. JOINDER OF ADDITIONAL CLAIMS

A claim for rent, contractual late charges and attorney’s fees may be joined with an eviction suit. If there is no oral or written rental agreement, a claim for rental value may be joined. The court may render judgment in favor of plaintiff for eviction and for rent or rental value and any attorney’s fees owed by the defendant to the plaintiff. The total judgment awarded for rent or rental value shall not exceed the jurisdiction of the justice court. The justice may also award court costs against the unsuccessful party.

How TAA draft differs from current rules:

- **Adds** attorneys fees (which are currently statutorily authorized under TCPRC Section 38.001) (Current rule is silent.)
SCAC draft includes attorney’s fees.
- **Adds** recovery of “rental value” when evicting (1) occupants after tenants are gone or (2) trespassers. (Current rule is silent on whether the term “rent” is broad enough to include rental value if there is no lease.)
SCAC draft allows “rental value” in Rule 748.

- *Adds contractual late charges. (Current rule does not allow.)*
SCAC draft allows inclusion of contractual late charges.
- *Adds recovery of court costs against unsuccessful party. (Current rule is silent.)*
SCAC draft allows recovery of court costs against unsuccessful party.
- *Clarifies that the total judgment of rent (but not attorneys fees or other amounts) must be within court's jurisdictional dollar amount. (Current rule is unclear.)*
SCAC addresses this in Rule 748 and states that rent plus late charges plus attorneys fees must be within the jurisdictional amounts.
- *Clarifies that court costs are not to be included for purposes of jurisdictional amount. (Current rule is silent.)*
♣ SCAC draft doesn't expressly address.

(PROPOSED) RULE 739. CITATION

(a) When a plaintiff or the plaintiff's authorized agent files a written sworn complaint for eviction, the justice shall immediately issue citation directing the defendant to appear for trial before the justice at a time, date and place named in the citation, on a date not less than six nor more than ten days from the date of service of the citation.

If a bond for possession under Rule 740 is filed with the sworn complaint, the citation must designate a trial date on the fifth, sixth, or seventh day after both citation and notice of possession bond are served on the defendant. The citation and the notice of possession bond must be served concurrently.

(b) The citation shall inform the defendant that the case shall be heard by a jury only if a request for jury and payment of a jury fee is made one day before the trial date as designated in the citation.

How TAA draft differs from current rules:

- *Adds: If a bond for possession is filed, the JP must designate the date of the trial in the citation, which must be on the fifth, sixth, or seventh day after service. (Under current rule, JP can set trial before, on, or after 6th day if early trial is requested by the defendant.)*
♣ SCAC draft doesn't expressly address required date of early trial. The current rule and SCAC proposal do not require the JP to set an early trial when tenant requests early trial.
- *Adds: Notice of possession bond must be served concurrently with the citation. (Current rules are silent.)*
♣ SCAC draft doesn't require concurrent service of citation and bond notice.

- ***Deletes:** Any mention of return of the citation since that subject is more appropriately addressed in and has been relocated to proposed Rule 742 regarding “Service of Citation.”*

♣ SCAC draft addresses return date in Rule 739.
but TAA draft does so in Rule 742.

(PROPOSED) RULE 740. POSSESSION BOND

(a) The plaintiff may, at the time of filing an eviction suit, file a possession bond to be approved by the justice in such amount as the justice may fix as the probable costs of suit and damages which defendant may incur if the suit has been improperly instituted. The bond shall be conditioned that the plaintiff will pay the defendant all costs and damages as shall be adjudged against plaintiff.

(b) The justice court shall notify the defendant that the plaintiff has filed a possession bond. The notice shall be served on the defendant concurrently with and in the same manner as service of citation in an eviction suit and shall inform the defendant of the procedures in (c) and (d) below. The officer or other authorized person serving notice of the possession bond shall return the notice to the justice who issued the notice at least one day before the trial date designated in the citation.

(c) A trial held under this rule must be a trial by the justice. If the defendant does not appear for trial as directed in the citation, the justice may, on request of the plaintiff, promptly enter a default judgment and issue a writ of possession immediately. If the defendant appears for trial as directed in the citation, the case shall be tried in the same manner as other eviction suits; and any writ of possession may be issued and executed only according to Rule 748.

(d) Whenever a justice court issues a writ of possession under this rule, the defendant may appeal in the same manner as a defendant may appeal an eviction judgment when a possession bond has not been filed.

How TAA draft differs from current rules:

- ***Adds:** In bond for possession cases, trial must be designated in the citation to be held on 5th, 6th, or 7th day after citation is served. (See Rule 739.) This window requirement is needed to prevent and stop the abuse by some JPs who purposely drag their feet in setting trial date in bond cases. (Current rule doesn’t set a required time window for the “early trial.”)*
♣ SCAC draft doesn’t set a required time window for the “early trial”.
- ***Supports** SCAC Alternative No. 2 of a judge-trial only in bond for possession cases. The reason is that a request for a jury can delay a trial for one to four weeks because of the unavailability of jury panels. In bond for possession cases, the sworn complaint is nearly always based on allegations of serious criminal activity (death threats, rape, molestation, murder, arson attempts, assaults, etc.) drug dealing, ongoing property damage, intolerable noise bothering other tenants, etc. Having a trial delayed because of a jury demand defeats the purpose of an extra speedy*

eviction in those kinds of cases, especially if the jury request is made only for purpose of delay and extracting more free rent. If the tenant is the loser in a bench trial, the tenant can still suspend the writ of possession by the appeal process and have a jury trial in county court.

- ♣ SCAC first alternative draft allows jury trial in bond for possession cases, but SCAC second alternative allows trial by judge only in bond cases.
- ***Removes*** counterbond option for defendant. (Under current rule, defendant has option of counterbond or asking for early trial. Counterbond option is meaningless because a tenant can avoid immediate issuance of the writ by simply asking for early trial under current rules.)
 - ♣ SCAC draft retains option of counterbond (which is seldom, if ever, used since a mere request for early jury trial will defeat immediate issuance of a writ of possession).
- ***Removes*** ability of defendant to avoid immediate writ by simply asking for early trial. (Under current rule, merely asking for early trial avoids early writ issuance.) The current rule states: “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.” [A default judgment hearing would be considered a “trial” under the current rule.]
 - ♣ SCAC draft retains option for early trial request (which defeats early issuance of writ).
- ***Adds:*** Under proposed rule, immediate issuance of a writ is defeated only if defendant **actually attends early trial**. Under current rule, defendant can defeat immediate writ by **merely asking** for early trial since it doesn't require tenant to attend the requested early trial. Current rule says: “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.”
 - ♣ SCAC draft retains tenant option to avoid early writ by posting counterbond or simply asking for early trial but does not require tenant to attend trial in order to avoid early writ.

(PROPOSED) RULE 741. REQUISITES OF COMPLAINT

The sworn complaint shall describe the premises, the possession of which is claimed, with sufficient certainty. It shall also state the facts that entitle the plaintiff to possession and authorize the suit under Chapter 24 of the Texas Property Code.

How TAA draft differs from current rules:

- *No substantive change from current rules.*
 - ♣ *SCAC imposes numerous technical requirements for the sworn complaint, such as specific paper size, requirement to attach “relevant” back up documentation. TAA strongly opposes this increase in complexity. This will create real pitfalls for lay persons trying to represent themselves or their owners since they could lose the case by failing to attach one single, required piece of paper to the petition. Court clerks would be inundated with volumes more paper than they currently deal with.*

(PROPOSED) RULE 742. SERVICE OF CITATION

(a) Persons Authorized to Serve Citation in Eviction Suits.

Persons authorized to serve citation in eviction suits include (1) any sheriff or constable [or other person authorized by law, or (2) any person authorized by law or written order of the court who is not less than 18 years of age]. No person who is a party to or interested in the outcome of a suit may serve any process.

(b) Method of Service of Citation.

Except as provided in Rule 742a, the officer [or other person] authorized to serve citation shall serve it by delivering a copy of it to the defendant, or by leaving a copy with a person over the age of sixteen years at the premises in question at least six days before the trial date specified in the citation. If a bond for possession has been filed, the citation shall be served at least five days before the trial date specified in the citation. The person serving the citation shall state on the citation when it was served, the manner of service, and the citation shall be signed by the officer or authorized person.

(c) Return of Citation.

The person serving the citation shall return the citation, noting the action taken thereon, to the justice who issued the citation at least one day before the trial date designated in the citation.

How TAA draft differs from current rules:

- *TAA neither supports nor objects to Subsection (a) modifications (in brackets) of the existing rules on who can lawfully serve citation. [Currently only an “officer” can serve citation.]*
 - ♣ *SCAC draft in Subsection (a) expands who can serve citation by allowing private process servers to do so.*
- ***Changes:*** *Service date in bond for possession cases is changed to 5 days before trial since under TAA’s proposed Rule 740, the JPs are given the flexibility of holding the trial on the 5th, 6th or 7th day after service.*
 - ♣ *SCAC draft in Subsection (b) says service must be at least 6 days before trial date. TAA draft is*

same except service must be only 5 days before trial date in bond for possession cases.

- **Changes:** *Return date one day before the trial date designated in citation. (Under current rule, there is no deadline for return and therefore citation can be returned on the day of trial.)*

♣ *SCAC draft is same as TAA draft except the TAA draft moves return date from Subsection (b) to a new Subsection (c).*

(PROPOSED) RULE 742a. SERVICE BY DELIVERY TO PREMISES AND MAIL

(a) If the sworn complaint lists the address of the premises at issue as well as any other alternate addresses of the defendant or defendants in a written lease agreement, and if service of citation cannot be readily accomplished under Rule 742, service of citation may be by delivery and mail under subparagraph (b) of this rule.

(b) If the officer or other person authorized to serve citation in eviction suits is unsuccessful in serving citation under Rule 742, the officer or other authorized person shall no later than five days after receiving the citation sign an affidavit based on personal knowledge, confirming that diligent efforts have been made to serve the citation on at least two occasions at all addresses of the defendant in the county, as stated in the sworn complaint. The affidavit shall state the times and places of attempted service. The affidavit shall be filed with the justice. After promptly considering the affidavit, the justice may authorize service by written order according to the following:

- (1) The officer or other authorized person shall place the citation inside the premises through a door mail chute or by slipping it under the main entry door to the premises; and if neither method is possible or practical, the citation shall be securely affixed to the main entry door to the premises;
- (2) The officer or other authorized person shall that same day deposit in the United States mail a copy of the citation with a copy of the sworn complaint attached to it, addressed to the defendant at the premises in question and sent by first class mail;
- (3) The officer or other authorized person shall note on the return of the citation the date of delivery and the date of mailing under this rule. The return of the citation by an authorized person shall be verified; and
- (4) The delivery and mailing to the premises under this rule shall occur at least five days before the trial date designated in the citation. The officer or other authorized person accomplishing service shall return the citation to the justice who issued it in accordance with Rule 742.

It is not necessary for the plaintiff or the plaintiff's authorized agent to make a request or motion for alternative service under this rule.

How TAA draft differs from current rules:

- *Removes requirement of petition stating that all known home and work addresses of defendant be stated in the sworn complaint and substitute leased premises address and any other address in the lease. (Current rules provides for this.)*
SCAC draft is same as TAA draft.

(PROPOSED) RULE 743. DOCKETED

The suit shall be docketed and tried as other cases. If the defendant fails to appear when the case is called for trial, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly. If the plaintiff fails to appear when the case is called for trial, the case may be dismissed for want of prosecution. The justice has authority to issue subpoenas for witnesses to enforce their attendance, and to punish for contempt.

How TAA draft differs from current rules:

- *TAA proposes that eviction rules be silent as to discovery. Defendants already have discovery rights via Rule 523; and attorneys have not had a problem in getting discovery when it is legitimately needed. But mentioning discovery in the eviction rules is going to be an open invitation for tenants to abuse the system by inundating the court with discovery requests, which will result in unnecessary delays and paperwork.*
♣ SCAC draft says “reasonable discovery at JP discretion”.

(PROPOSED) RULE 744. REQUEST FOR JURY

Except for trials when a possession bond has been filed, a party has the right of trial by jury, by making a request to the court and paying the jury fee. In order to have a jury trial, a plaintiff must request a jury and pay the jury fee at the time of filing the sworn complaint; and a defendant must request a jury and pay the jury fee within five days after service of citation, as designated in the citation. Upon such request, a jury shall be summoned at the earliest opportunity, in the same manner as in other justice court proceedings, but in no event later than seven days from the date of service. This rule will not apply in trials conducted under Rule 740.

How TAA draft differs from current rules:

- *Adds: Any jury request must be made **early by each party**: by plaintiff at time of filing, and by defendant prior to the trial date designated in citation. (Current rule says jury demand and jury fee payment must be no later than five days after the defendant is served with citation.)*
SCAC draft continues current rule of jury demand and payment 5 days after service.

- **Adds:** JP must summon jury “at earliest opportunity” but puts an outside limit of 7 days from the date of request for jury. (Current rule is silent on when jury is to be summoned.)
 - ♣ SCAC draft places no outside limit on when jury must be summoned; it just says “at earliest opportunity”. Without the 7-day limit, local jury-panel availability can drag out evictions when a jury trial is requested— sometimes as much as a month.”
- **Removes:** Reference to \$5 jury fee is deleted. (Under current rule, it is in conflict with statute that sets jury fees.)
 - SCAC draft is substantively same as TAA draft.
- **Adds:** Jury trial is not required in bond for possession cases. The time required for getting a jury panel can significantly delay the actual trial and undermine the purpose of a bond for possession. The lack of a waiting period between trial judgment and issuance of the writ in bond for possession cases can be avoided by the defendant by merely showing up for trial in justice court. If the case is appealed, a jury trial will always be available in county court.
 - ♣ SCAC alternative number 2 to Rule 740 provides for bench trials (not jury trials) in bond for possession cases.

(PROPOSED) RULE 745. TRIAL POSTPONED

On the court’s own motion or upon good cause shown by affidavit of either party, the trial may be postponed by the justice for a period not exceeding seven days. The trial may be postponed for a longer period by agreement of all parties if the agreement is in writing and filed with the court, or the agreement is made in open court.

How TAA draft differs from current rules:

- **Adds:** Allows JP to unilaterally postpone trial for up to 7 days on his or her own motion because of conflicts, death in family, sickness, etc., for up to seven days. (Current rule is silent on this.)
 - ♣ SCAC draft allows postponement of additional 7 days **on top of** 7-day postponement by affidavit from the parties. That is too much delay, especially when the defendant is not paying rent or is engaging in harmful or dangerous conduct.
- **Modifies:** Allows JP to postpone trial for up to 7 days for good cause asserted by affidavit of a party since justified discovery would constitute good cause. (Under current rule, JP can postpone trial for only 6 days for good cause established by affidavit of a party.)
 - SCAC draft is substantively same as TAA draft.
- **Adds:** Allows longer postponement by agreement of the parties. (Under current rule, there is no provision for continuance by agreement.)
 - SCAC draft is substantively same as TAA draft.

(PROPOSED) RULE 746. ONLY ISSUE

Except as provided in Rule 738, the only issue in an eviction suit under Chapter 24 of the Texas Property Code is the right to actual possession. The merits of the title shall not be adjudicated.

How TAA draft differs from current rules:

- *No substantive change.*

SCAC draft is substantively same as TAA draft.

(PROPOSED) RULE 747. TRIAL

If a jury trial is not timely requested by either party, the justice shall try the case. If a jury trial is timely requested by either party and is authorized under Rule 744, a jury shall be impaneled and sworn as in other cases, as soon as reasonably possible, but not more than 7 days after the request is filed. After hearing the evidence, the jury shall return its verdict in favor of the plaintiff or the defendant. No motions for new trial may be made.

How TAA draft differs from current rules:

- *Clarifies that jury trials must be held “as soon as reasonably possible” after jury request is made but no later than 7 days after a jury is requested. (Current rules are unclear.)*
 - ♣ *SCAC draft is silent on outer limit of when a jury trial must be held (it simply says “at earliest opportunity”).*
- *Continues prohibition under existing rules against motions for new trial.*
 - ♣ *SCAC draft allows MNTs and motions to set aside in SCAC Rule 749a*

(PROPOSED) RULE 747a. REPRESENTATION BY AGENTS

In eviction cases for nonpayment of rent or holding over beyond the rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent may file a sworn complaint in any kind of eviction case and may request and obtain a default judgment without having to be an attorney.

How TAA draft differs from current rules:

- *Clarifies that authorized, nonlawyer agents of the plaintiff can file **any type of eviction case**. (Current Rule 739 simply allows plaintiff or the plaintiff's authorized agent to file "a sworn complaint".)*

♣ SCAC draft in Rule 739 allows authorized agents to file "sworn complaint". It is not explicitly clear that agents can file sworn complaints that can cover **all types** of evictions. Both SCAC and TAA drafts allow authorized agents to request and obtain default judgments.

(PROPOSED) RULE 748. JUDGMENT AND WRIT

(a) If the judgment or verdict is in favor of the plaintiff, the justice shall grant judgment for plaintiff for possession of the premises, rent or rental value owed, late fees, and court costs, and shall state the post-judgment interest rate, as appropriate. The justice may also grant judgment for the plaintiff for attorney's fees, if pleaded, established by proof, and authorized by the rental agreement or statute.

(b) If the judgment or verdict is in favor of the defendant, the justice shall grant judgment for the defendant against the plaintiff for possession of the premises, and court costs and shall state the post-judgment interest, as appropriate. The justice may also grant judgment for the defendant for attorney's fees, if pleaded, established by proof, and authorized by the rental agreement or statute.

(c) The judgment shall be in writing and contain the full names of the parties, as stated in the sworn complaint, and shall state for and against whom the judgment is rendered. The judgment shall recite who is awarded:

- (1) possession of the premises;
- (2) rent, or rental value, owed, if any, and the amount;
- (3) attorney's fees, if any, and the amount;
- (4) late fees, if any, authorized by the rental agreement; and
- (5) court costs, and the amount.

The judgment shall state the post-judgment interest rate, as appropriate. The judgment shall also state the amount or rent, or rental value if there is no rental agreement that must be initially placed in the justice court registry under Rule 750 to avoid issuance of a writ of possession during any appeal. Any judgment for rent or rental value and attorneys fees shall be within the jurisdiction of the court.

(d) A writ of possession may not be issued until the expiration of five days from the date the judgment is signed, except that (1) the writ may be issued immediately under Rule 740 if a default judgment is granted, and (2) the writ may be issued only in accordance with Section 94.203 of the

Texas Property Code, as amended if the defendant is leasing a manufactured home lot. Subject to the provisions of this subparagraph, if a plaintiff is entitled to issuance of a writ of possession, it must be issued without delay.

(e) If the judgment of the justice court is not appealed, it shall remain in force and a prevailing party may enforce its rights under the judgment in the justice court. If an appeal from the justice court is perfected in accordance with Rule 749b, the county court's jurisdiction is invoked and the justice court may not enforce the judgment except under Rule 750.

(f) This rule does not prohibit the county court from making an independent determination, either on its own motion or on sworn motion of either party, as to the amounts and due dates of rent, or rental value, to be paid into the registry of the county court during the pendency of the appeal.

How TAA draft differs from current rules:

- ***Adds attorney's fees for either party, if appropriate. (Current rule is silent on attorney's fees.)***
SCAC draft is substantively same as TAA draft.
- ***Adds recovery of rental value if no lease. (Current rule allows recovery only for rent; rules are silent on recovery of rental value if no lease.)***
SCAC draft is substantively same as TAA draft.
- ***Adds exception for manufactured housing in Property Code, Section 94.203. (Under current rule, five-day writ issuance conflicts with 30-day writ in statute.)***
♣ SCAC draft does not reflect requirements of the manufactured housing statute.
- ***Adds post-judgment interest, as appropriate. (Current rule is silent on interest. Post-judgment interest is statutorily authorized or all judgments for money by Finance Code, Section 304.001.)***
♣ SCAC draft is silent.
- ***Adds: JP is allowed to determine rent or rental value to be placed in JP court registry if the case is appealed. (Under current rule, no mention of "rental value"; requirement is that "rent" be deposited under Rule 749.)***
SCAC draft is substantively same as TAA draft.
- ***Adds: Writ must be issued without delay once judgment for possession and any required waiting period has expired. There is a problem in some parts of the state where the justices simply drag their feet in issuing the writ for 2 or 3 weeks after the judgment has been entered despite repeated requests by the plaintiff.***
♣ SCAC draft contains no such language.
- ***Removes statement that JP judgment is nullity if appeal is perfected since judgment can still be enforced unless one month's rent (or a lesser amount under some circumstances) is posted with justice court. (Current rules says "nullity" upon perfection of appeal.)***
♣ SCAC draft says if appeal is perfected and the county court jurisdiction is invoked, the JP court cannot enforce the judgment.
- ***Contains no requirements for JP to make multiple findings of fact. None are needed. If JPs are compelled to make findings of fact in each case, it will cause a delay and unnecessary paperwork for them. There are over 100,000 eviction cases per year.***

(Current rules contain no fact finding requirement other than setting the amount of any appeal bond.)

♣ *SCAC draft requires multiple findings of fact by the JP.*

(PROPOSED) RULE 749. MAY APPEAL

(a) Either party may appeal from a judgment in an eviction case to the county court of the county in which the judgment is rendered by doing the following within five days after the judgment is signed:

(1) filing an appeal bond, with one or more sureties, to be approved by the justice; or depositing with the justice court cash or cash equivalent acceptable to the court, in the amount of the appeal bond; and

(2) depositing with the justice court the amount of the required county court filing fee in accordance with subparagraph (e) of this rule. The filing fee must be made payable to the county clerk of the county in which the case was heard in justice court.

In lieu of (1) and (2), the defendant may file an affidavit of indigence showing an inability to post the appeal bond or appeal bond deposit and the county court filing fee.

(b) The justice shall set the amount of the appeal bond at an amount equal to the court costs incurred in justice court. If there are multiple appellants, an affidavit of indigence filed by one appellant does not dispense with the requirement of an appeal bond for the remaining appellants who do not file affidavits of indigence or whose affidavits of indigence are not approved by the court.

(c) The justice court shall immediately forward all papers in the case file to the county clerk, along with (1) the appeal bond, or deposit in lieu of an appeal bond, and the filing fee, or (2) the affidavit of indigence.

(d) Except as stated in subparagraph (e), an appeal bond must meet the following criteria:

- (1) It must be in an amount equal to the court costs incurred in justice court;
- (2) It must be made payable to the adverse party;
- (3) It must be signed by the judgment debtor or the debtor's authorized agent; and
- (4) It must be co-signed by a sufficient surety or sureties as approved by the court. If an appeal bond is signed by a surety or sureties, then the court may, in its discretion, require evidence of the sufficiency of the surety or sureties prior to approving the appeal bond.

(e) Instead of filing an appeal bond, a party may deposit the amount of the appeal bond in cash, money order, or other mode of payment acceptable to the court.

(f) Any motions challenging the sufficiency of the appeal bond may be filed with the county court.

(g) Within five days following the filing of an appeal bond, the party appealing shall give notice of the filing of the bond, deposit, or affidavit, to the adverse party. No default judgment may be taken by a party in county court without the party showing substantial compliance with this rule.

(h) If a default judgment has been entered in a case in which a possession bond has been filed, the defendant may still appeal after the writ of possession has been issued and executed, so long as the appeal is filed within five days after the date the judgment is signed.

How TAA draft differs from current rules:

- ***Reduces:*** Appeal bond only needs to be for the amount of the court costs. (Under current rule, appeal bond must be for “damages”, generally set at two times monthly rent by JPs. The smaller appeal bond for court costs only is not a problem since proposed Rule 750(c) and (d) require payment of rent (or rental value) into court registry during appeal regardless of the kind of eviction case.)

SCAC draft is substantively same as TAA draft.

- ***Adds:*** JP is given express authority to approve or disapprove sureties. (Current rule is silent.)

SCAC draft is substantively same as TAA draft.

- ***Adds:*** Allows payment of appeal bond in cash, cashier’s check, or other mode approved by court. (Current rule is silent.)

SCAC draft is substantively same as TAA draft.

- ***Clarifies:*** Challenge of bond sufficiency must be in county court. (Current rule is silent.)

♣ SCAC draft is substantively same as TAA draft, but the TAA list is shorter because of the all-inclusive “other mode of payment acceptable to the court.”

- ***Adds*** right of tenant to appeal adverse pauper ruling. (Current rule is silent, but constitutionality requires ability to appeal.)

SCAC draft is substantively same as TAA draft.
(Rule 749a)

- ***Adds*** right of tenant to appeal judgment in possession bond case, even if writ is already issued because of default judgment. (Current rule is silent, but constitutionality requires ability to appeal.)

♣ SCAC draft is silent.

- ***Identifies*** parties as “plaintiff” and “defendant” in county court—not appellant or appellee. (Under current rule, “appellant” and “appellee” terminology is used.)

♣ SCAC draft is silent.

(PROPOSED) RULE 749a. AFFIDAVIT OF INDIGENCE

(a) Establishing Indigence.

A party who cannot pay the court costs to appeal to the county court, including the county court filing fee, may proceed without filing an appeal bond and paying the county court filing fee or making a deposit under Rule 749(f) if:

- (1) the party files an affidavit of indigence in compliance with this rule within five days after the justice court judgment is signed; and
- (2) the claim of indigence is not contested or, if contested, the contest is not sustained by a timely written order.

(b) Contents of Affidavit.

The affidavit of indigence must identify the party filing the affidavit and state the amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

- (1) the nature and amount of the party's current employment income, government entitlement income, and other income;
- (2) the income of the party's spouse and whether that income is available to the party;
- (3) real and personal property the party owns other than household furnishings, children's toys and wearing apparel;
- (4) cash or cash equivalent the party owns and amounts on deposit that the party may withdraw;
- (5) the party's other assets;
- (6) the number and relationship to the party of any dependents;
- (7) the nature and amount of the party's debts;
- (8) the nature and amount of the party's monthly expenses;
- (9) the party's ability to obtain a loan for court costs;
- (10) whether an attorney is providing free or contingent legal services to the party; and
- (11) whether an attorney has agreed to pay or advance court costs.

(c) When and Where Affidavit Filed.

An appellant must file the affidavit of indigence in the justice court within five days after the justice court judgment is signed.

(d) Duty of Clerk or Justice of the Peace.

Upon the filing of an affidavit of indigence, the justice of the peace or clerk of the court shall give notice to the opposing party of the filing of the affidavit of indigence within one working day of its filing by written notification accomplished by first class mail.

(e) Contest to Affidavit.

The appellee may contest the claim of indigence by filing a contest to the affidavit. The contest must be filed in the justice court within five days after the date when the notice of the filing of the affidavit was mailed by the justice court clerk or justice of the peace to the opposing party. The contest need not be sworn.

(f) No Contest Filed.

If a contest is not timely filed, no hearing will be conducted, the affidavit's allegations will be deemed true, and the party will be allowed to proceed under subparagraph (a) of this rule.

(g) Burden of Proof.

If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the party who filed the affidavit is incarcerated at the time the hearing on a contest is held, the affidavit shall be executed by the incarcerated defendant. The affidavit shall be considered as evidence and shall be sufficient to meet the party's burden to present evidence without the party's attendance at the hearing.

(h) Hearing and Decision in Justice Court.

(1) Notice required.

If the affidavit of indigence is filed in justice court and a contest is filed, the justice court shall set a hearing and notify the parties of the setting.

(2) Time for hearing.

The justice court shall either hold a hearing and rule on the matter or sign an order extending the time to conduct a hearing within five days from the date a contest is filed.

(3) Extension of time for hearing.

The time for conducting a hearing shall not be extended for more than five days from the date the extension order is signed.

(4) Time for written decision; effect.

If the justice court does not timely sign an order sustaining the contest, the affidavit of indigence shall be deemed approved, and the party shall be allowed to proceed under subparagraph (a) of this rule.

(i) Appeal from the Justice Court Order Disapproving the Affidavit of Indigence.

- (1) If the justice of the peace disapproves the affidavit of indigence, the appellant may appeal the order disapproving the affidavit by filing within five days thereafter a motion in county court seeking de novo review of the justice court order. On request, the justice shall send to the county court the affidavit of indigence, any

written contest, and the justice court's order on the contest. The county court shall hold a de novo hearing and rule on the matter within five days from the date the motion is filed with the county court. If the affidavit of indigence is approved by the county court, it shall direct the justice to send to the clerk of the county court, the complete transcript, records, and papers of the case. If the county court disapproves the affidavit of indigence, appellant may perfect an appeal of the justice court judgment by filing an appeal bond, or, in lieu depositing the amount of the appeal bond in accordance with Rule 749(f), and paying the county court filing fee to the justice court within five days of the date the county court signs the order. If no appeal bond is filed in the justice court within five days, the justice court may issue a writ of possession.

- (2) A writ of possession may not issue pending a hearing by the county court on the appellant's right to appeal on an affidavit of indigence.

How TAA draft differs from current rules:

- ***Adds:*** *Creates comprehensive list for what affidavit of indigence must cover. (Current rule is silent on list; no guidance for parties or court.)*
 - ♣ *SCAC draft list is substantively same as TAA draft except that the TAA draft in Subsection (b)(3) does not require listing of household furnishings, children's toys, and wearing apparel.*
- ***Adds:*** *Requires clerk to notify plaintiff of filing affidavit of indigence within one day after filing. (Current rule is silent; no prohibition against late notice.)*
 - SCAC draft is substantively same as TAA draft.*
- ***Adds:*** *Requires opportunity for hearing on contest of indigence affidavit. (Under current rule, same.)*
 - SCAC draft is substantively same as TAA draft.*
- ***Adds:*** *Requires expeditious county court review of appeal of JP court ruling on non-indigence. (Current rule is silent.)*
 - SCAC draft is substantively same as TAA draft.*

(PROPOSED) RULE 749b. APPEAL PERFECTED AND TRANSCRIPT

- (a) An appeal of the justice court judgment shall be perfected when appellant timely files:
 - (1) an appeal bond, or deposit in lieu of an appeal bond in conformity with Rule 749, and pays the filing fee required for the appeal of cases to the county court; or
 - (2) an affidavit of indigence approved in conformity with Rule 749a.
- (b) When an appeal has been perfected, the justice court shall make out a transcript of all the entries made on its docket of the proceedings had in the case and immediately file the same, together with the original papers, any money in the court registry pertaining to that case, and the appeal bond or deposit, in lieu in conformity with Rule 749, and the county court filing fee, or the

affidavit of indigence approved in conformity with Rule 749a, with the county clerk of the county in which the case was heard.

(c) The county clerk shall docket the case and the trial shall be de novo. The county clerk shall immediately notify both plaintiff and defendant of the date of receipt of the transcript and the docket number of the cause. Such notice shall advise the defendant of the necessity for filing a written answer in the county court when there is no written answer on file in the justice court.

(d) The perfection of an appeal in an eviction case does not suspend the issuance and execution of a writ of possession if a judgment for possession is granted for the plaintiff in justice court unless the defendant has complied with Rule 750.

(e) No factual determination in an eviction case in justice court, including determination of the right to possession, will be given preclusive effect in other suits that may be brought between the parties.

How TAA draft differs from current rules:

- ***Adds:*** *Appeal perfection by appeal bond or affidavit of indigence does not necessarily suspend enforcement of judgment by JP court. (Under current rule, appeal perfection prohibits JP court from enforcing judgment under any circumstances.)*

SCAC draft is substantively same as TAA draft.

(PROPOSED) RULE 749c. FORM OF APPEAL BOND

The appeal bond authorized in the preceding article shall be substantially as follows:

	CAUSE NO. ____	
_____ Plaintiff	§	IN THE JUSTICE COURT
	§	
	§	
v.	§	PRECINCT NUMBER _____
	§	
_____ Defendant	§	_____ COUNTY, TEXAS

Appeal Bond

WHEREAS, in the above entitled and numbered case in the Justice Court of precinct ____ of _____ County, Texas, judgment for eviction was signed on the ____ day of _____, _____ in favor of _____ appellee, and against _____ appellant. Appellant wishes to appeal the judgment to the county court. Appellant, and sureties, covenant that appellant will prosecute the appeal with effect and pay all costs that may be adjudged against

the appellant, except that the sureties shall not be liable in an amount greater than \$_____, such amount being the amount of the bond herein.

NOW, THEREFORE, Appellant(s) _____ as principal(s) and _____, as surety and _____ as surety, acknowledge ourselves as bound to pay to _____ appellee, the sum of \$_____, conditioned that appellant(s) shall prosecute the appeal with effect and will pay of court in the event of an adverse final judgment on appeal.

Given under our hands this _____ day of _____, 20_____.

Appellant's signature

Surety's signature

Surety's signature

Appellant's telephone number

Surety's printed name

Surety's printed name

Surety's printed address

Surety's printed address

Surety's telephone number

Surety's telephone number

The appeal bond is:

☐

Approved

☐

Disapproved for the following reason: _____

Signed this _____ day of _____, 20_____.

Justice Presiding

How TAA draft differs from current rules:

- ***Changes:*** Makes appeal bond for court costs only. (Under current rule, appeal bond is for "damages", usually set at twice one month's rent.)
SCAC draft is substantively same as TAA draft.
- ***Adds:*** Includes lines for printed name and addresses of sureties for better legibility and identity, and the surety's telephone number. Adds telephone number for defendant since the telephone number can sometimes change by this point in the proceeding. (Under current rule, bond only provides for address of surety.)
 - ♣ SCAC draft is substantively same as TAA draft except SCAC does not provide for printed (legible) name and address and does not provide for surety's phone number.
- ***Adds:*** Check boxes are added for approval or disapproval and a blank line is added as a reminder to the JP that the law requires him or her to state reasons for bond denial so the person being denied the bond can possibly cure. (Weeks vs. Hobson,

877 SW2d 478 requires this since parties must be given an opportunity to cure reasons for bond denial.)

♣ SCAC draft does not provide a blank line for the JP to state grounds for denial of bond.

(PROPOSED) RULE 750. POSSESSION PENDING APPEAL
BY TENANT TO COUNTY COURT

(a) Right of Continued Possession.

A defendant who has perfected an appeal of an eviction case 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:

- (1) filing with the justice court a written agreement with the plaintiff stating the terms under which the defendant may stay in possession; or
- (2) depositing rent or rental value into the justice and county court registry as required by this rule.

(b) Rent Payments.

A defendant shall deposit rent, or rental value if there is no oral or written rental agreement, in the justice or county court registry in the form of cash, money order, or other mode of payment acceptable to the justice;

(c) Initial Deposit of Rent with Justice Court.

- (1) A defendant who has perfected appeal by filing an appeal bond or making the required deposit in lieu of the bond and paying the county court filing fee is entitled to stay in possession of the premises by depositing any amount awarded by the justice court for unpaid rent and late fees under the rental agreement, or the amount awarded by the justice court for rental value as determined by the justice court if there is no oral or written rental agreement, within five days of the approval of the appeal bond or the deposit in lieu of the appeal bond.
- (2) A defendant who has perfected appeal by filing an affidavit of indigence is entitled to stay in possession of the premises without depositing rent or other amounts into justice court, unless the eviction is for nonpayment of rent. If the defendant perfected appeal by filing an affidavit of indigence and the eviction is for nonpayment of rent, the defendant must deposit any alleged unpaid rent and late fees under the rental agreement, or the alleged unpaid rental value as determined by the justice court if no oral or written agreement, within five days of the filing of the affidavit or the overruling of any contest to the affidavit, whichever is later.
- (3) The justice court may order a deposit less than that required under subparagraph (1) or (2) of this rule if the justice court finds that (i) the rent or a portion of the rent has been contracted to be paid to the landlord by third parties, (ii) the plaintiff has

received no notice that the third party payments have ceased or will cease, (iii) the plaintiff has received all rent due from the third party under the third party's agreement with plaintiff or defendant, (iv) the plaintiff did not request the third party to cease making such third party's payments, and (v) justice requires a lesser deposit.

- (4) If a defendant does not timely file an agreement between the defendant and the plaintiff, or deposit rent or rental value as required by this rule, the justice court shall, after notice to the parties and a hearing, issue a writ of possession pending appeal by the defendant. Except under Rule 740, a writ of possession may not be issued until the expiration of five days after the date of the judgment in justice court.

(d) Rent Deposits with County Court.

- (1) During the pendency of the appeal the defendant must pay rent, or if the defendant does not have a rental agreement that requires rent payment, the defendant must pay the value of the fair market rent of the premises as set by the justice court for each month, into the registry of the county court within five days of its due date under a rental agreement, or if there is no rental agreement, the first day of each month thereafter. Upon sworn motion filed in county court, either party may contest the justice court determination of the amount of rent or fair market rental value that must be deposited.

Upon motion by the tenant, the county court may order rent payments to be tendered in an amount less than that required under this rule if the court finds that (i) the rent or a portion of the rent has been contracted to be paid to the landlord by third parties, (ii) the plaintiff has received no notice that the third party payments have ceased or will cease, (iii) the plaintiff has received all rent due, from the third parties under the third party's agreement with plaintiff or defendant or such rent has been tendered to the county court, (iv) the plaintiff did not request the third party to cease making such third party's payments, and (v) justice requires a lesser deposit.

- (2) If the defendant fails to make timely payments into the registry of the county court or breaches the terms of an agreement with the plaintiff allowing the defendant to stay in possession, during the appeal, the plaintiff may file a notice of default in the county court where the cause is pending. Upon sworn motion by the plaintiff, and a showing of defendant's default in making payments into the registry of the county court as they become due, the court may issue a writ of possession to plaintiff after notice to the defendant, and a hearing. No writ of possession may be issued by the county court until the expiration of five days from the date an order is signed, awarding possession to the plaintiff under this rule.
- (3) The county court may allow a party to withdraw deposited amounts from the county court registry upon:
 - (i) sworn motion and hearing, prior to final determination of the case, showing the right to receive payment;

- (ii) dismissal of the appeal, or
 - (iii) order of the court upon final judgment.
- (5) All hearings and motions under this rule shall be entitled to precedence in the county court.

How TAA draft differs from current rules:

- ***Adds:*** *Tenant can stay in possession pending appeal by agreement of the parties. (Current rule is silent.)*

SCAC draft is substantially the same.

- ***Adds:*** *During appeal, the tenant can stay in possession only by depositing rent or rental value as follows: after appeal is perfected by affidavit of indigence (for nonpayment of rent cases) or appeal bond (for all cases), the tenant must deposit rent in initial amount of the alleged unpaid rent and late fees; and continue to deposit rent into county court as it becomes due. (Current rule 749b requires deposit of one month's rent in JP court (no matter how much rent is alleged to be due) and requires continued tender of rent into county court of future rent as it becomes due.)*

♣ *SCAC draft uses technical "supersedeas bond" language, which is difficult for laypersons to understand. SCAC draft does not require one month's rent to be initially deposited, it only requires tender of rent to the court as it comes due. The SCAC supersedeas bond must be at least enough to cover the amount of the judgment (rent plus late fees) plus attorneys fees.*

This supersedeas bond approach is problematic because it is infeasible and extremely time consuming for a JP to certify that sureties legitimately are qualified. The supersedeas bond approach opens the door for contested hearings on the financial worth of the surety. It is currently rare that landlords who are successful on appeal are able to collect from sureties.

SCAC rule requires landlord to file a motion with the county court to require defendant to pay full rent if the third party doesn't pay. This is problematic and unfair to landlords because it typically takes two or more weeks to get a hearing in front of the court. In effect, the landlord will be "eating" this loss and unable to collect the county court's judgment for rent, especially the portion that the third party didn't pay for the tenant.

- ***Adds:*** *Justice may reduce the initial rent deposit and future rent deposits to the portion of rent that the tenant would have paid if there had been no eviction case. (Current rule requires deposit of one month's rent; and it is unclear whether that*

means rent owed by tenant or rent owed by tenant plus rent owed by third-party government agency.)

- ♣ SCAC draft is substantively same as TAA draft except SCAC draft uses a supersedeas bond instead of requiring rent awarded the landlord by the JP court to be put up.
- *Adds: If government has not paid the landlord the government's share of rent due at time of appeal, the tenant must post entire month's rent to stop issuance of writ. If government does not pay government share as rent becomes due on appeal, landlord is entitled to issuance of writ upon motion and order of the county court. (Under current rule, there is no such provision.)*
 - ♣ SCAC draft is similar in principle to the TAA draft; but SCAC does not protect landlord in situations where government has not paid or will not be paying the rent.
- *Adds: Plaintiff can withdraw a rent deposit from court prior to final resolution of case. (Under current rule, there is no provision.)*
 - SCAC draft is substantively same as TAA draft.

(PROPOSED) RULE 751. (NONE)

Old Rule 751 entitled "Transcript" has been incorporated, in part into Proposed Rule 749(b).

How TAA draft differs from current rules:

- No current rule.
 - ♣ SCAC draft provides for form of supersedeas bond. TAA draft does not require supersedeas bond; instead TAA draft requires payment of rent into JP court and thereafter in county court. Same result is accomplished as in SCAC draft but without complexity for laypersons who have to read and understand these rules.

(PROPOSED) RULE 752. DAMAGES

On the trial de novo of the case in the county court, the plaintiff or defendant shall be permitted to plead, prove and recover damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and reasonable attorney's fees in the justice and county court provided, as to attorney's fees, that the requirements of Chapter 24 of the Texas Property

Code have been met. Only the party prevailing in the county court shall be entitled to recover damages against the adverse party.

How TAA draft differs from current rules:

- No substantive change.

SCAC draft is substantively same as TAA draft.

(PROPOSED) RULE 753. DUTY OF CLERK TO NOTIFY PARTIES

The county clerk shall immediately notify all parties to the justice court judgment of the date of receipt of the transcript and the docket number of the cause. Such notice shall advise the defendant of the necessity for filing a written answer in the county court when the defendant has pleaded orally in the justice court and shall advise the defendant that default judgment may be entered unless a timely answer is filed. The style of the case in county court must be the same as in justice court.

How TAA draft differs from current rules:

- *Adds: The style of the case in county court must be the same as in justice court. Confusion has resulted whenever a county clerk sets the style as appellant and appellee.*

♣ *Also, SCAC expands 8 days in current rules to 10 days, delaying eviction by two days. TAA draft retains the current 8 days.*

(PROPOSED) RULE 753a. JUDGMENT BY DEFAULT
IN COUNTY COURT

If the defendant has filed a written answer in the justice court, the same shall be taken to constitute the defendant's appearance and answer in the county court, and such answer may be amended as in other cases. If the defendant made no answer in writing in the justice court, and fails to file a written answer within eight days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

How TAA draft differs from current rules:

- *No substantive change.*

♣ *SCAC draft is the same as TAA draft except TAA draft keeps current 8 days for defendant to answer whereas SCAC expands answer date to 10 days.*

(PROPOSED) RULE 754. TRIAL OF THE CASE IN COUNTY COURT

- (a) The trial of an eviction appeal and all related hearings and motions shall be entitled to precedence in the county court.
- (b) No jury trial shall be had in any appeal of an eviction case unless, a request for jury trial is filed and payment of jury fee is made to the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than five days in advance. The clerk shall promptly enter a notation of any jury fee payment on the court's docket sheet.
- (c) The trial of an eviction case on appeal to county court shall be de novo and may be held any time after the expiration of eight days after the date the justice court transcript is filed in the county court. The county court may set an eviction trial on written request of any party or on the court's own motion, with reasonable notice to the parties of a first setting for trial, or by agreement of the parties. Regardless of which party appealed from the justice court, only the plaintiff in the county court may take a nonsuit. If the county court's jurisdiction is invoked, the court must dispose of all parties and issues before the court, including the issue of possession unless the writ of possession has already been issued.
- (d) On written motion by a party contesting the sufficiency of the appeal bond, the county court shall hold a hearing on the motion. If the judge finds the bond deficient, the judge may disapprove the bond and allow the appealing party five days from the date the bond is disapproved to correct the deficiencies with the bond. If the deficiencies are corrected within the five-day period, the bond may be approved. If the deficiencies on the appeal bond are not corrected within the five-day period, the appeal may be dismissed and the writ of possession shall issue.
- (e) If the appealing party fails to prosecute the appeal with diligence or the county court renders judgment against the party, the county court shall also render judgment against the surety or sureties on the appeal bond, for the costs of court up to the amount of the bond.

How TAA draft differs from current rules:

- ***Adds:*** Sets jury request deadline of 5 days before the trial in county court case. (Under current rule, there is no deadline; can be filed on morning of trial.)
SCAC draft is the same as the TAA draft.
- ***Adds:*** Provides procedures for contesting appeal bond. (Under current rule, there are no procedures.)
 - ♣ SCAC draft is substantively same as TAA draft. SCAC draft requires a 10-day waiting period rather than 8 days before the county court case may be heard; therefore, SCAC draft can add two days to the eviction process.

(PROPOSED) RULE 755. WRIT OF POSSESSION IN COUNTY COURT

The writ of possession 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. However, if the defendant is leasing a manufactured home lot, the writ of possession shall be issued as provided in Section 94.203 of the Texas Property Code, as amended. A writ of possession issued from a judgment of a county court may not under any circumstances be issued until the expiration of ten days after the signing of the judgment and only if the appellant has not filed a supersedeas bond in an amount set by the county court. The 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 for residential purposes only. The county court shall give precedence to the hearing to set the amount of the supersedeas bond necessary to suspend the judgment or the portion of the judgment the appellant elects to supersede.

How TAA draft differs from current rules:

- ***Adds:*** *Writs in manufactured housing cases must conform to Section 94.203 of Texas Property Code which requires a delay of 30 days before the writ of possession can issue in such cases. (Current rule is silent.)*
 - ♣ SCAC draft does not contain the statutory exception for evictions in manufactured housing.
- ***Adds:*** *Writ can be issued no sooner than 10 days after county court judgment—which is the deadline for supersedeas bond for appeal to Court of Appeals in Section 24.007 of Texas Property Code. (Under current rule, writ is issued according to “judgment”; and the rule is silent as to tenant’s statutory right to supersede judgment by filing supersedeas bond within 10 days after judgment in county court. Current rule is silent on how soon the writ can issue after county court judgment.)*
 - SCAC draft is substantively same as TAA draft.