



October 14, 2019

Re: Memorandum Regarding Texas Rules of Civil Procedure in Municipal Courts

Your participation is appreciated. The issue, unfortunately, is one which can become complex. However, the solution may be relatively simple. The Supreme Court Rules Advisory Committee requested that I prepare a memorandum explaining my request that the Court analyze whether the Texas Rules of Civil Procedure need to be implemented in municipal courts when exercising municipal civil jurisdiction. They currently do not apply.

The lack of directly applicable procedural rules for handling the court's civil jurisdiction has caused problems in the past. As a current municipal court judge presiding over civil matters, I've encountered numerous problems where the lack of applicable procedural rules is the root of the confusion. Such wastes the time and effort of the parties. While many municipal courts do not realize they have civil jurisdiction, others utilize it dependent upon the enabling ordinances adopted by their City Councils.

However, a single perspective, such as my own, on the problem is not sufficient to warrant adoption of rule changes. So, your perspectives would be greatly appreciated in analyzing and developing possible solutions to the problem. While the Texas Supreme Court Advisory Committee is made of excellent judges and attorneys, none are currently municipal court judges. As a result, they would appreciate your input in helping them understand the problem for municipal court judges and what options are available.

I. Initial Confusion

The Texas Legislature has granted municipal courts (all municipal courts) a certain level of civil jurisdiction. It has also granted municipal courts of record even greater civil and administrative jurisdiction under Texas Government Code § 30.00005. Essentially, municipal courts of record have concurrent jurisdiction with district courts for certain code enforcement/subject matters. This includes injunctive and declaratory relief along with civil penalties. It is when municipal courts utilize these jurisdictions that judges, and parties have difficulty knowing the proper protocol. Municipal courts also have additional civil jurisdiction separate from that possessed by district courts, including dangerous dog determinations, truancy, etc.

II. Summary of Non-Application

Texas Rule of Civil Procedure 2 excludes municipal courts from its application. And while a Frankenstein piecemeal of interconnections can provide support for a minimal of procedures, numerous gaps exist causing enforcement and control of the docket to be sacrificed. This means the municipal court does not have the same ability to:

- Require civil pleadings
- Allow service (or hold a party to non-compliance)
- Allow discovery
- Acknowledge attorney agreements
- Sanction under the standards applicable to civil contempt
- Properly render civil judgements with a compliant form
- Assert the proper computation of time
- Require signatures of attorneys
- Follow a defined process for issuing injunction
- Issue citations of process (not the criminal complaint process of accepting citations in lieu of arrest)
- And a host of other procedures which are taken for granted when practicing in district or county court.

III. Suggestions

- Add “municipal courts” to the application of Rule 2 to the extent the municipal courts utilize their civil jurisdiction.
- Create some specialized rules, similar to Rule 500 for JP courts, applicable to municipal courts.
- Create a rule stating, essentially, “When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary .”
- Areas where the general application will still have problems and need tweaking include: Truancy, dangerous dog cases, dangerous structures under chapter 214 of the Texas Local Government Code, zoning under chapter 211 of the Texas Local Government Code, junked vehicles and sanitation.

IV. Not Simply a Traffic Court

Most practitioners and many judges think of municipal court as a “traffic” court and, to be fair, traffic violations and Class C misdemeanors make up most of what occurs in municipal court. However, the Texas Legislature has granted all municipal courts a certain level of civil jurisdiction without the accompanying procedural rules for execution. The criminal jurisdiction of the municipal court is also not absolute, but it is more than simply traffic tickets.¹

¹ While probably not necessary to list for most municipal judges, please see Exhibit A for a list of municipal court’s criminal jurisdiction.

V. Municipal Court Civil Jurisdiction

All municipal courts have specific minor civil jurisdiction – examples:

- i. Dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047 (West 2017);
- ii. Civil truancy under Tex. Fam. Code § 65.001 *et. seq.*,
- iii. Bond forfeitures under Tex. Gov't Code §29.003(e) [not civil by default, but must be conducted the same as a civil process],
- iv. Appeals from red light camera determinations under Chapter 707 of the Texas Transportation Code.
- v. Civil enforcement of criminal fines. Tex. Crim. Proc. Code Ann. §45.047 and § 45.203.
- vi. Administrative support. Municipalities may elect to provide for quasi-judicial proceedings in enforcement of health and safety ordinances. Tex. Loc. Gov't Code Ann. § 54.031.

Further, a municipality court of record has concurrent jurisdiction with a district court or a county court at law under Subchapter B of Chapter 54. Tex. Gov't Code Ann. § 30.00005 (West 2017). Many municipalities have situations when a property or person who, despite being given numerous criminal citations, fails to come into compliance with the municipality's ordinances. Since criminal penalties only allow fines the city may be left with little choice but to force compliance through injunctive relief.

The default option for the municipality is to seek enforcement through Tex. Loc. Gov't Code Ann. § 54.001, *et. seq.* If the City has adopted the proper ordinances, it can seek injunctive relief and civil penalties. Tex. Loc. Gov't Code Ann. §§ 54.017, 54.018. Penalties can be assessed against the real property as well, depending on the type of ordinance violation existing on the property. Tex. Loc. Gov't Code Ann. § 54.018(b). Jurisdiction is permitted in district court or the county court at law of the county in which the municipality bringing the action is located. Tex. Loc. Gov't Code Ann. § 54.013.

Texas Government Code § 30.00005 grants municipal courts of record concurrent jurisdiction over the exact same enforcement actions. This includes injunctive relief, declaratory relief, and civil penalties. However, the Texas Rules of Civil Procedure which aide district and county-courts-at-law are not available to municipal courts in the same context.

Utilizing the plain meaning of a similar statute and the cannons of statutory construction, the Texarkana Court of Appeals, in *Miller v. Gregg County*, 546 S.W.3d 410 (Tex. App.—Texarkana 2018, no pet.), held that the term “concurrent jurisdiction” found in Tex. Gov't Code §25.0003 meant the county court at law could hear claims brought under the Texas Public Information Act since it has concurrent jurisdiction with district court for all claims under a certain dollar threshold. The same analysis applied to the statutory language in §30.00005 equates to the municipal court of record having full jurisdiction over Chapter 54 suits, including all relief.²

² For a list of the types of claims which can be brought under a Chapter 54 suit, please see Exhibit B.

Additionally, municipal courts of record have express jurisdiction for certain civil subject matters including:

1. Civil power over junked vehicles. Tex. Gov't Code Ann. § 30.00005; Tex. Transp. Code Chapter 683.
2. Power over dangerous structures. Tex. Gov't Code Ann. § 30.00005; Tex. Loc. Gov't Code Chapter 214.
3. Civil penalties for violations of a city's red-light camera program. Tex. Gov't Code Ann. § 29.003(g); Tex. Transp. Code Chapter 707.
4. Certain Dangerous Dog orders under Tex. Health & Safety Code Ann. § 822.0421(d) or §822.0423 (West 2017).

While not as clearly delineated, the way Chapter 30 of the Government Code works with other statutory authority, the language equates to various additional authorities being conferred upon a municipal court of record.

A. **Nuisance:** A municipality, by ordinance, may adopt regulations to control nuisances, but must, by either separate ordinance or incorporated within the nuisance ordinance, vest its municipal court with the jurisdiction over enforcement. Tex. Gov't Code Ann. § 30.00005; *In re Pixler*, 2018 WL 3580637, at *5, reh'g denied (Aug. 23, 2018), reh'g denied (Aug. 23, 2018). Generalized nuisance authority can be found in Chapter 217 of the Texas Local Government Code.

B. **Zoning:** Section 54.012 does not interconnect the specific statutory references but does expressly list “zoning” as a regulation subject to enforcement under Chapter 54. *City of Dallas v. TCI W. End, Inc.*, 463 S.W.3d 53, 56 (Tex. 2015)(statutes authorizing municipalities to bring civil actions for violations of ordinances provided City authority to bring action against developer for demolishing a historic building in violation of city zoning ordinances).

Tex. Loc. Gov't Code Chapter 211 controls municipal zoning issues. Specifically, §211.012 authorizes a city to “institute appropriate action” to enforce its zoning ordinances including prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate a violation; prevent the occupancy of the building, structure, or land; or prevent an authorized use.

C. **Subdivision Regulations:** Subdivision regulations are primarily controlled by Tex. Loc. Gov't Code Chapter 212. Chapter 54, specifically §54.012(4) authorizes suit to enforce subdivision ordinances. Under §212.018, a municipal attorney may bring a civil action in a “court of competent jurisdiction” to enjoin and enforce the municipalities subdivision ordinances. Tex. Loc. Gov't Code §212.018 (a). Further, §212.003 then provides that the “governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002.” § 212.003(a). This expressly gives all municipalities authority to enforce rules and ordinances within their ETJs. See Tex. Loc. Gov't Code Ann. §§ 212.002 and 212.003(a).



- D. **Sanitation:** A municipality can regulate the sanitation conditions of the city, including refuse, vegetation, and other unsanitary conditions of both commercial and non-commercial properties. The governing body of a municipality may require the inspection of all premises and the regulation of filling, draining, and preventing unwholesome accumulations of stagnant water. Tex. Health & Safety Code Ann. § 342.001 (West 2017). It can impose fines and fees in order to enforce its regulations. *Id.*

The governing body can regulate sewers and privies (Tex. Health & Safety Code Ann. § 342.002); trash, rubbish, filth, carrion, or other impure or unwholesome matter (Tex. Health & Safety Code Ann. § 342.003); weeds, brush, and nuisance level vegetation (Tex. Health & Safety Code Ann. § 342.004). It can adopt criminal (Tex. Health & Safety Code Ann. § 342.005) penalties and can bring a civil suit (potentially in municipal court) to enforce such ordinances. Tex. Loc. Gov't Code §§54.012 & 54.017.

A municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal as long as such rules are not inconsistent with the Solid Waste Disposal Act found in Chapter 361 of the Health and Safety Code. Tex. Health & Safety Code Ann. § 363.111 (West 2017).

If the owner of property in the municipality does not comply with a municipal ordinance on sanitation, the municipality may abate any sanitation issues and charge the cost of the abatement to the property and the property owner. Tex. Health & Safety Code Ann. § 342.006 (West 2017). The city must follow the procedures set forth in Chapter 342 in order to secure a lien against the property for such costs. Tex. Health & Safety Code Ann. § 342.007.

- E. **Animals:** Animal control is not limited to simply dangerous dogs under Tex. Health & Safety Code Ann. § 822.047. A municipality may regulate any aspects regarding animals which is necessary for the health and safety of the community. Tex. Loc. Gov't Code Ann. § 54.001. It can impose a Class C misdemeanor penalty. Tex. Loc. Gov't Code Ann. § 54.001(b). A city may also bring a civil suit to enforce its general animal care and control ordinances. Tex. Loc. Gov't Code Ann. § 54.012.

VI. What Rules Do Not Apply

Texas Rule of Civil Procedure 2 states “[t]hese rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated.” Tex. R. Civ. P. 2. This means the basic rules which procedurally assist lawyers in district and county court are not expressly authorized for use when a municipality is bringing a Chapter 54 suit to enforce an ordinance.

This means Rule 11, Rule 13, the rules on service of process, the rules on discovery (somewhat) and the rules designed to assist protecting the due process rights of all parties cannot be enforced

by a municipal court judge. I believe to the extent the rules of procedure overlap with a jurisdictional element, the court can utilize the rules for establishing jurisdictional questions. But mere procedural questions are not addressed at all.

The Code of Criminal Procedure governs all criminal proceedings. Tex. Code Crim. Proc. Ann. art. 1.02. As a result, its procedures are not applicable to civil matters. The Texas Rules of Appellate Procedure govern procedure in appellate courts and before appellate judges and post-trial procedure in trial courts in criminal cases. Tex. R. App. P. 1.1. Again, such rules, by their express scope, do not apply to civil enforcement matters at the trial court level.

The initial answer may be to add the term “municipal court” to the list under Rule 2. And I believe that is the first place to start. However, municipal courts also have specialized areas of practice, similar to JP courts, which require some tweaks for individual subject matters. Different civil subject matters have different statutory deadlines ranging from five days, to seven days, to ten days, to twenty days, etc.

VII. What Rules Do Apply

Pursuant to Texas Government Code § 30.00023, except as modified by Chapter 30, the Code of Criminal Procedure and the Texas Rules of Appellate Procedure govern the trial of cases before the municipal courts of record. The courts may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the courts that are not inconsistent with law.

For the criminal matters, this direction is all that is required to assist with criminal trials. However, for civil jurisdiction, it becomes problematic. I’ve previously interpreted the second sentence stating that courts “may make and enforce all rules of practice and procedure necessary” to include the fact the municipal court can impose the Texas Rules of Civil Procedure when needed. However, unless a municipal judge signs a local standing order or specific municipal ordinances is passed by the city council to impose the rules for administrative or civil claims, parties do not know if the rules apply or not.

The Texas Code of Criminal Procedure actually incorporates certain civil rules by default. So, the municipal court is not without any direction.

1. The Code of Criminal Procedure requires that “all process” from a municipal court be served by a “policeman or marshal” of the city under the same rules applicable to sheriffs and constables serving JP court. Tex. Crim. Proc. Code art. 45.04 and 45.202. Since JP courts are covered by the TRCP, the rules regarding “process” are also applicable;
2. The Code of Criminal Procedure art. 39.04 states the civil rules applicable to “how” a deposition occurs apply to a criminal case as long as the court has granted permission for the depositions.
3. The Code of Criminal Procedure Chapter 45 specifically articles 45.025 through 45.039 have portions which apply to the set-up of all types of jury trials.
4. The Code of Criminal Procedure Chapter art. 45.047 states that collections on judgments incorporate the TRCP.



5. However, the Code of Criminal Procedure, by its own terms, only applies to criminal matters, not civil matters. So, an argument exists these incorporation provisions do not apply either.

Various gaps exist which can cause blind spots or loopholes. For example, the Texas Code of Criminal Procedure Chapter 27 applies to pleadings initiating a case, but expressly apply only to criminal matters. Pursuant to art. 39.02, depositions can only be taken by filing an application with the court to take such depositions. While that may work for criminal matters, the application of art. 39.02 to a civil case can result in the inability for the parties to conduct discovery the same way had the city-initiated suit in county court at law or district court. Now, art. 39.04 does help some by stating “the rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code.” However, the language seems to indicate it is contingent upon art. 39.02 permission to conduct the depositions. Article 39.14 controls criminal discovery but is inapplicable when trying to conduct civil discovery.

Article 42.01 states a “judgement” is a written declaration of a record showing a conviction or acquittal. Article 45.041 states a judgment and sentence apply in the case of conviction. However, recently, the intermediary courts of appeal have had difficulty explaining the authority to appeal civil matters from a municipal court. In *Wrencher v. State*, 03-15-00438-CV, 2017 WL 2628068, at *1 (Tex. App.—Austin June 16, 2017, no pet.) and *In re Pool*, 03-18-00299-CV, 2019 WL 287940, at *3 (Tex. App.—Austin Jan. 23, 2019, no pet. h.) the courts attempted to make sense of the statutory language apply a civil judgment under the dangerous dog jurisdiction and noting references to the word “judgment” applies only to civil judgments, while appeals of “convictions” apply to criminal appeals.

The Code of Criminal Procedure art. 45.011 states the rules of evidence that govern trial so criminal actions in the district court apply to criminal proceedings in justice or municipal court. However, the rules of evidence are not referenced in relation to any civil or administrative matters.

VIII. Type of Corrections

In the case of *In re Loban*, 243 S.W.3d 827, 829 (Tex. App.—Fort Worth 2008, no pet.), the court struggled with the ability to appeal a dangerous dog determination (under the prior statutory language) when no county court at law with civil jurisdiction existed within the county controlled by the animal control authority. The Fort Worth Court of Appeals ultimately held the right to appeal a dangerous dog determination did not exist in Tarrant County. The court, in dicta, noted :

This gap in the statutory right of appeal is apparently attributable to the fact that municipal courts previously had only criminal jurisdiction. See *City of Lubbock v. Green*, 312 S.W.2d 279, 282 (Tex.Civ.App.-Amarillo 1958, no writ) (stating that an appeal from municipal court “would lie only if the proceedings constituted a criminal case”); see also 23 David Brooks, *Texas Practice: Municipal Law and Practice* § 15.19 (1999) (same). When municipal courts became capable of exercising limited civil jurisdiction, the statutes



authorizing appeals from a municipal court's decision were not correspondingly amended to address appeals generated via this exercise of limited civil jurisdiction. Tex. Gov't Code Ann. § 30.00005(d) (Vernon 2004) (stating that governing body of municipality may provide that municipal court of record may have specified civil jurisdiction); see generally Tex. Att'y Gen. Op. No. GA-0316 (2005) (espousing this conclusion).

In re Loban, 243 S.W.3d 827, 831 (Tex. App.—Fort Worth 2008, no pet.).

While the statutory problem in *In re Loban* has been corrected by the Texas Legislature, the underlying premise remains that certain jurisdictional gaps (which can only be corrected by legislative decree) and certain procedural gaps (which can only be corrected by adoption of civil procedures) remain. To the extent the Texas Supreme Court can help alleviate confusion on the procedures and provide municipal judges with the abilities to support their rulings on procedural grounds, I humbly request it attempt to do so.

Corrections can be as simply as adding the term “municipal court” to the application of Rule 2. It can or could also be corrected by adopting some specialized rules, such as those found in Rule 500 relating to justice courts. However, those specialized rules would simply need to address the extent of any application to the individual areas of subject matter jurisdiction. A specialized rule which simply stated, “When a municipal court of record exercises its civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court to the extent they do not conflict with statutory deadlines or procedural rules.”

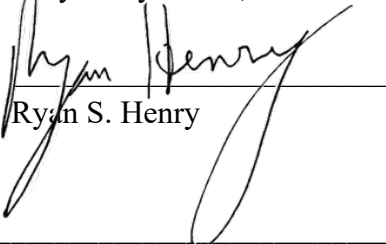
IX. Request for Assistance

In order to examine these issues fully, the Texas Supreme Court Rules Advisory Committee requested names of several municipal court judges and other judges familiar with the potential issues and is asking for comments and assistance. Your name was one of the names suggested to elicit comments. Please let us know if you are willing to help by providing feedback and comments on the issues and possible solutions. You can contact:

- Ryan Henry, ryan.henry@rshlawfirm.com
- Levi Benton, lbenton@levibenton.com

We look forward to hearing from you. If you are unable to assist or participate, please let us know and we will remove your name from the list.

Very Truly Yours,



Ryan S. Henry

Exhibit A

Criminal Jurisdiction

- A. All municipal courts have specific criminal jurisdiction. With a few exceptions, the criminal jurisdiction is for Class C misdemeanors created by state statute. Tex. Crim. Proc. Code Ann. Art. 4.14 (West 2017); Tex. Gov't Code §29.003(a) (West 2017).
- B. Municipal courts also have criminal jurisdiction over ordinance violations which are punishable by fine only. So, new criminal cases can be created by the city council through the use of ordinances.
- C. Municipal courts may have shared criminal jurisdiction within another city's geographic boundaries, depending on whether the cities have passed ordinances adopting shared jurisdiction.
- D. Municipal courts may have concurrent jurisdiction within the entire precinct of a JP, as long as the city passes an ordinance adopting the precinct. Tex. Gov't Code Ann. § 30.00005(c) (West 2017).
- E. Municipal courts of record have additional criminal jurisdiction as set out in Tex. Gov't Code Ann. § 30.00005(b) (West 2017):
 - vii. Tex. Loc. Gov't Code § 215.072 (i.e. dairies and slaughterhouses),
 - viii. Tex. Loc. Gov't Code § 217.042 (nuisances in home-rule),
 - ix. Tex. Loc. Gov't Code § 341.903 (municipal parks and speedways outside city limits), and
 - x. Tex. Loc. Gov't Code § 551.002 (Protection of Streams and Watersheds by Home-Rule Municipality)

Exhibit B

Chapter 54, Subchapter B Claims

A municipality may bring a Chapter 54 civil action:

- for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
- for the preservation of public health or to the fire safety of a building or other structure or improvement;
- for zoning violations.
- subdivision regulations including street width and design, lot size, building width or elevation, setback requirements, or utility regulations;
- implementing civil penalties under its general authority for conduct classified by statute as a Class C misdemeanor;
- relating to dangerously damaged or deteriorated structures or improvements;
- relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
- relating to the interior configuration, design, illumination, or visibility of certain sexually oriented businesses;
- relating to point source effluent regulations;
- relating to animal care and control;
- relating to floodplain control; and
- relating to water conservation measures.

Tex. Loc. Gov't Code Ann. § 54.012 (West 2017)

From: [Ryan Henry](#)
To: [Levi Benton](#)
Cc: [Ashley Tello](#); [Marla Dial](#)
Subject: FW: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules
Date: Thursday, October 24, 2019 2:57:13 PM

Here is Judge Escalante's response and agreement to provide comments. I also already received confirmations from Judge Spelean and Judge Goldstein. I'll keep you posted on the rest.

I'm not sure what your thoughts were on what to do next. I was thinking about starting an collective email with some questions to pick their brains about the exact nature/root of the problem and examples they've encountered due to the lack of application. Then I was going to propose a change or two and see what they say about it. But I'm not sure if you have a different idea about the way to proceed. Whatever you feel we need to do next, just let me know. I'll keep you posted as I hear back from the others.

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

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From: Ryan Henry <ryan.henry@rshlawfirm.com>
Sent: Thursday, October 24, 2019 1:50 PM
To: Julie.Escalante <Julie.Escalante@baytown.org>; Ashley Tello <Ashley.Tello@rshlawfirm.com>; Marla Dial <marla.dial@rshlawfirm.com>
Subject: RE: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Judge Escalante,

Thank you for the response and your willingness to participate. I will mark you down and should start a conversation email in the next week which will have some initial inquiries for the municipal judges. Again, thank you for agreeing the help and we will be in touch soon.

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210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
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From: Julie.Escalante
Sent: Thursday, October 24, 2019 1:15:47 PM
To: Ryan Henry
Subject: RE: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Mr. Henry: This is absolutely the most comprehensive, thorough analysis I have read on the subject. Thank you, thank you, thank you for putting this together. You have so accurately identified the issues that we struggle with re: civil jurisdiction – and I think correctly predicted that municipal courts are likely to see a continued up-tick in civil cases. I was especially interested in the appellate aspects – and have often been questioned as to the availability of a jury trial. We have two dockets a month of “civil” cases including, property seizures, code enforcement abatement issues, substandard buildings, and an occasional dangerous dog. I would be honored and excited to read and comment on anything that comes out of the committee. And again, loud applause for your efforts.

Thank you,



Together We Enrich Lives & Build Community

Julie K. Escalante
Presiding Judge
Baytown Municipal Court of Record
City of Baytown, Texas

(281) 425-1015

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From: Ryan Henry [<mailto:ryan.henry@rshlawfirm.com>]

Sent: Tuesday, October 22, 2019 6:39 PM

To: Ryan Henry

Subject: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Dear Judge,

Your name was given to the Texas Supreme Court's Rules Advisory sub-committee on whether to extend the Texas Rules of Civil Procedure to encompass municipal courts when they are exercising civil/administrative jurisdiction. It was my understanding you had agreed to assist the sub-committee with any questions regarding the topic and to provide comments. The time commitments are not expected to be large as the sub-committee simply does not know some of the trials and tribulations that municipal judge's face when exercising civil/administrative jurisdiction and wanted to hear from several of you. They asked me to prepare the following memorandum trying to get the ball rolling on the discussion.

First, if you would not mind reading the memo and deciding if you could agree to provide comments to the sub-committee on the issue. Then let myself of Judge Benton know you are willing to provide comments. If you believe the memo has missed anything please feel free to add any issues you believe are relevant. This is being sent to several other municipal judges and subject matter experts. Once we hear back from those willing to provide comments, we will forward to sub-committee and create an email exchange with everyone in order to share ideas and comments. I plan on provide several comments and suggestions and would be grateful for any input on stuff. If you have any questions on the issue or the scope of the sub-committee please feel free to give me a call or send me an email. I look forward to hearing from you.

Very Truly Yours,

Ryan Henry

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To: Ryan Henry
Subject: RE: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Mr. Henry: This is absolutely the most comprehensive, thorough analysis I have read on the subject. Thank you, thank you, thank you for putting this together. You have so accurately identified the issues that we struggle with re: civil jurisdiction – and I think correctly predicted that municipal courts are likely to see a continued up-tick in civil cases. I was especially interested in the appellate aspects – and have often been questioned as to the availability of a jury trial. We have two dockets a month of “civil” cases including, property seizures, code enforcement abatement issues, substandard buildings, and an occasional dangerous dog. I would be honored and excited to read and comment on anything that comes out of the committee. And again, loud applause for your efforts.

Thank you,



Together We Enrich Lives & Build Community

Julie K. Escalante
Presiding Judge
Baytown Municipal Court of Record
City of Baytown, Texas

(281) 425-1015

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From: Ryan Henry [<mailto:ryan.henry@rshlawfirm.com>]

Sent: Tuesday, October 22, 2019 6:39 PM

To: Ryan Henry

Subject: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Dear Judge,

Your name was given to the Texas Supreme Court's Rules Advisory sub-committee on whether to extend the Texas Rules of Civil Procedure to encompass municipal courts when they are exercising civil/administrative jurisdiction. It was my understanding you had agreed to assist the sub-committee with any questions regarding the topic and to provide comments. The time commitments are not expected to be large as the sub-committee simply does not know some of the trials and tribulations that municipal judge's face when exercising civil/administrative jurisdiction and wanted to hear from several of you. They asked me to prepare the following memorandum trying to get the ball rolling on the discussion.

First, if you would not mind reading the memo and deciding if you could agree to provide comments to the sub-committee on the issue. Then let myself of Judge Benton know you are willing to provide comments. If you believe the memo has missed anything please feel free to add any issues you believe are relevant. This is being sent to several other municipal judges and subject matter experts. Once we hear back from those willing to provide comments, we will forward to sub-committee and create an email exchange with everyone in order to share ideas and comments. I plan on provide several comments and suggestions and would be grateful for any input on stuff. If you have any questions on the issue or the scope of the sub-committee please feel free to give me a call or send me an email. I look forward to hearing from you.

Very Truly Yours,

Ryan Henry

Law Offices of Ryan Henry, PLLC.

1019 Central Parkway North, Suite 108

San Antonio, Texas 78232

210-257-6357 (phone)

210-569-6494 (fax)

ryan.henry@rshlawfirm.com

www.rshlawfirm.com

From: [Ryan Henry](#)
To: elainecarlson@comcast.net; syelenosky@gmail.com; estevezA@pottercsd.org; Elaine.Marshall@houstontx.gov; bonnie.golstein@dallascourts.org; julie.escalante@baytown.org; espillane@cstx.gov; Michael.Acuna@dallascityhall.com; [Levi Benton](#)
Cc: [Jessica Johnson](#); [Marissa Cardenas](#)
Subject: Civil Rules in Municipal Court
Date: Tuesday, November 5, 2019 4:21:25 PM
Attachments: [Supreme Court Rules Judge Help Memo 10.14.19.pdf](#)

Dear Judges,

Thank you for agreeing to assist the Texas Supreme Court's Advisory Committee, and specifically the sub-committee on exploring the application of the Texas Rules of Civil Procedure to municipal courts in Texas. In order to assist with the analysis, I would like to ask the municipal court judges to provide a few responses to the following questions.

1. Did the memo (attached again for review) accurately reflect a problem faced with municipal courts in Texas?
2. Do you have any real world examples you have experienced which further explain the problem or expand on a facet which is not covered by the memo? If so, can you share? It does not have to be long, but enough so the rest of us know if we are on the right track with any discussion.
3. Where do you suggest we begin with solutions? This is just a starting point, not the end result.

Any comments you can provide to assist with this discussion would be appreciated.

As a way of starting off the discussion, I'm going to try and answer my own three questions as well.

1. Without sounding self-centered about it, I believe the memo identifies probably too many things which could probably be examined as well as probably missed several which other courts may have encountered.
2. A few examples of additional problems as well as situations I've directly encountered include:
 - a. A question on the amount of time to comply with an order was questioned as Rule 4 (regarding computation of time) did not apply so the question became what days to include, whether they were city holidays or weekends, and whether you include the day of the order or not. Rule 4 would have answered all of those questions.
 - b. Two attorneys disputed an agreement, but even though it was in a written letter, since Rule 11 does not apply, one later argued it was unenforceable. The judge was confused and eventually issued her own order in place of an agreement between the parties.
 - c. When a dispute arose which included not only the property owner, but actions performed by a tenant, the case got more complex when there was a dispute over the application of Rules 37-39 (third parties and joinder).
 - d. Claims under chapter 54 get more complex when a defendant property owner does not appear or does appear but does not file an answer. If they provide an oral pronouncement in court, does that constitute an answer if Rule 46 does not apply.

- e. The “notice” pleading requirement technically does not apply if TRCP does not apply to the civil cases presented.
 - f. There is often times confusion by the clerks regarding issuing citation for service as a “citation” on the criminal side is the charging instrument. But some form of citation and notice to the defendant is required else you run into a due process problem. How to issue citation and summons on the civil side are sometimes alien to the clerks since the TRCP don’t apply.
 - g. Execution of judgements are more complex, especially if civil monetary penalties are assessed, when Rules 621-656 don’t apply. Actually, there are no rules for executions if these don’t apply. When someone does not want to pay a judgment they try whatever they can to avoid paying and throwing in a lack of procedural rules for execution is certainly one of them.
 - h. Suits against non-residents who own property within a city (company owner in Nevada and property in Texas suburb) can run into problems since the non-resident pleading requirements under Rule 810-813 don’t apply.
3. I suggest one of the first solutions (which is not a complete fix but is a place to start) would be to amend Rule 2 by adding the following sentence: “These rules apply to municipal courts when exercising civil jurisdiction to the extent these rules do not conflict with federal or state statutes.” However, since numerous cities are bracketed by the Legislature, with different powers, including what their court’s do, I believe a more thorough set of amendments would be better as long as they are adaptable to municipal courts. I’m working on a bit of a more detailed listing of rule adoptions and would like to forward to everyone for comment. But right now, I believe it’s appropriate to start with the above discussion points to make sure we are all going down the same path. I don’t want to waste anyone’s time if the path I’m thinking about is different from my fellow municipal judges.
- 4.
- I look forward to everyone’s responses.

Very Truly Yours,
Ryan Henry
Associate Judge
City of Westlake Hills
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

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From: [Ryan Henry](#)
To: [Acuna, Michael](#)
Cc: [elainecarlson@comcast.net](#); [syelenosky@gmail.com](#); [estevezA@pottercsd.org](#); [Elaine.Marshall@houston.tx.gov](#); [bonnie.golstein@dallascourts.org](#); [julie.escalante@baytown.org](#); [espillane@cstx.gov](#); [Levi Benton](#); [Jessica Johnson](#); [Marissa Cardenas](#)
Subject: Re: Civil Rules in Municipal Court
Date: Wednesday, November 13, 2019 12:30:23 PM

Judge Acuna,

Thank you for the response. And YES we should be mindful of the impact. I compl agree.
For example I doubt many courts have the ability to do electronic filing and many of the other district and CCAL requirements on an admin level. My personal opinion is we need a separate section for municipal courts similar to the one for JPS With specific deadlines which are actually shorter than those for districts and counties. But I also didn't want the subcommittee to bite off too much during the initial discussion.

Thank you for participating. We look forward to your comments and input . I am also working on a more detailed response for rules and hope to circulate soon.

Judge Ryan Henry.

Sent from my iPhone

On Nov 13, 2019, at 10:39 AM, Acuna, Michael
<Michael.Acuna@dallascityhall.com> wrote:

Dear Judge Henry,

I appreciate your invitation to participate in addressing the issues you presented and am interested in doing so.

I am working on a lengthier response dealing with certain specifics you mentioned in your memo and email, but I wanted to send this email to confirm my interest and to raise a concern regarding these issues.

Whether we discuss courts of record or not and different exercises of civil jurisdiction, I believe that the Legislature intended that civil matters in municipal court be handled in an expeditious manner. Serving in a large city municipal court of record, I can unequivocally state that my court does not have the infrastructure and support to apply the Civil Rules of Procedure in the same manner as a district or county court. I do not think we can have lengthy discovery deadlines/depositions, etc. and have cases take up to a year to get to trial or contested hearing. I suspect that other courts may be in the same situation.

For example, I preside over the City of Dallas' Urban Rehabilitation docket. These cases

are commenced by petition and the docket is held 2 days a month. During the last docket which was held this last Monday and Tuesday, I handled 120 cases. You can imagine the enormous strain on the court if every case allowed for depositions and lengthy discovery periods. I offer the additional observation that many city prosecution offices would not be prepared to properly handle cases with full application of the Civil Rules of Procedure. My purpose in raising this concern is not to deprive any party of due process rights but an attempt to protect the municipal courts.

I respectfully request that whatever course our discussion takes, that we be mindful of the limitations we have as municipal courts.

Thank you for your time and consideration,

[<image001.png>](#)

Michael Acuna

Municipal Judge
City of Dallas
Municipal Court Judiciary
2014 Main Street, Suite 331
Dallas, TX 75201
O: (214) 671-9901
michael.acuna@dallascityhall.com

[<image002.png>](#)

[<image003.png>](#)

[<image004.png>](#)

From: Ryan Henry <ryan.henry@rshlawfirm.com>

Sent: Tuesday, November 05, 2019 4:21 PM

To: elainecarlson@comcast.net; syelenosky@gmail.com; estevezA@pottercsd.org; Elaine.Marshall@houstontx.gov; bonnie.golstein@dallascourts.org; julie.escalante@baytown.org; espillane@cstx.gov; Acuna, Michael <Michael.Acuna@dallascityhall.com>; lbenton@levibenton.com

Cc: Jessica Johnson <jessica.johnson@rshlawfirm.com>; Marissa Cardenas <marissa.cardenas@rshlawfirm.com>

Subject: Civil Rules in Municipal Court

External Email!

Dear Judges,

Thank you for agreeing to assist the Texas Supreme Court's Advisory Committee, and

specifically the sub-committee on exploring the application of the Texas Rules of Civil Procedure to municipal courts in Texas. In order to assist with the analysis, I would like to ask the municipal court judges to provide a few responses to the following questions.

1. Did the memo (attached again for review) accurately reflect a problem faced with municipal courts in Texas?
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Any comments you can provide to assist with this discussion would be appreciated.

As a way of starting off the discussion, I'm going to try and answer my own three questions as well.

1. Without sounding self-centered about it, I believe the memo identifies probably too many things which could probably be examined as well as probably missed several which other courts may have encountered.
2. A few examples of additional problems as well as situations I've directly encountered include:
 - a. A question on the amount of time to comply with an order was questioned as Rule 4 (regarding computation of time) did not apply so the question became what days to include, whether they were city holidays or weekends, and whether you include the day of the order or not. Rule 4 would have answered all of those questions.
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 - c. When a dispute arose which included not only the property owner, but actions performed by a tenant, the case got more complex when there was a dispute over the application of Rules 37-39 (third parties and joinder).
 - d. Claims under chapter 54 get more complex when a defendant property owner does not appear or does appear but does not file an answer. If they provide an oral pronouncement in court, does that constitute an answer if Rule 46 does not apply.
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service as a "citation" on the criminal side is the charging instrument. But some form of citation and notice to the defendant is required else you run into a due process problem. How to issue citation and summons on the civil side are sometimes alien to the clerks since the TRCP don't apply.

- g. Execution of judgements are more complex, especially if civil monetary penalties are assessed, when Rules 621-656 don't apply. Actually, there are no rules for executions if these don't apply. When someone does not want to pay a judgment they try whatever they can to avoid paying and throwing in a lack of procedural rules for execution is certainly one of them.
- h. Suits against non-residents who own property within a city (company owner in Nevada and property in Texas suburb) can run into problems since the non-resident pleading requirements under Rule 810-813 don't apply.

- 3. I suggest one of the first solutions (which is not a complete fix but is a place to start) would be to amend Rule 2 by adding the following sentence: "These rules apply to municipal courts when exercising civil jurisdiction to the extent these rules do not conflict with federal or state statutes." However, since numerous cities are bracketed by the Legislature, with different powers, including what their court's do, I believe a more thorough set of amendments would be better as long as they are adaptable to municipal courts. I'm working on a bit of a more detailed listing of rule adoptions and would like to forward to everyone for comment. But right now, I believe it's appropriate to start with the above discussion points to make sure we are all going down the same path. I don't want to waste anyone's time if the path I'm thinking about is different from my fellow municipal judges.

4.

I look forward to everyone's responses.

Very Truly Yours,
Ryan Henry
Associate Judge
City of Westlake Hills
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

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From: [Ryan Henry](#)
To: [Levi Benton](#); [Judge Ana Estevez](#)
Cc: [Elaine Carlson \(elainecarlson@comcast.net\)](#); [ecarlson@stdl.edu](#); [Stephen Yelenosky](#)
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Monday, June 1, 2020 1:31:14 PM

Judge Benton,

Thank you for the information. I would love to call/zoom into the meeting. However, I'm speaking at the Texas City Attorney Association seminar (which is virtual) at 10:00 a.m. until 10:45. So, I don't know what the time period is but will need to look it up. If the meeting is going on during any other times I'd love to attend, even if the item I'm tied to is already passed.

And I do apologize for not having more information to the committee before now. I have some proposed rules, but before I finished working on them life got in the way and I have not gotten back to them. I was also waiting on some proposed language from Judge Spillane from College Station.

The more I worked on this, the more I believe a quick fix is probably not going to help as much. Municipal courts do not electronically file documents or handle many of the things the county court at law or district courts do. They are a strange creature because there courts of record (which fall under chapter 30 and some from 29) and courts of non-record (which fall only under chapter 29). But even the court's of record are not set up to handle many of the procedural aspects such as electronic filing or case designations. The Chapter 29 courts of non-records have very little civil jurisdiction and the code of criminal procedure handles pretty much most of what they do. Court's of record are the one's with expanded civil jurisdiction that face the problem of dealing with discovery and deadlines, etc. But also, because they handle different civil matters than the JP courts, a straight adoption of the JP rules will probably cause more confusion and many will be inapplicable. I don't want to make the situation worse.

So, what I've been working on is a hybrid. Basically, it says "the following rules apply in municipal courts of record" and then cite which JP rules in the 500s apply. That way, the overall problem of non-application is addressed, without messing up the distinctly different aspects of each court. I would then add a few rules which apply specifically to municipal courts of record. But because I have not finished the list, I have not gotten a lot of comments from my fellow municipal judges (although I have gotten some).

I can provide what I've got so far for consideration and could have that to you probably by tomorrow, if that helps. Also, if I could be copied on the zoom link to attend I would greatly appreciate it.

Very Truly Yours,
[Ryan Henry](#)

From: Levi Benton <lbenton@levibenton.com>
Sent: Monday, June 1, 2020 12:39 PM

To: Judge Ana Estevez <EstevezA@pottercscd.org>

Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>; Ryan Henry <ryan.henry@rshlawfirm.com>

Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ana – thanks for offering to host a meeting. If you and others feel a Zoom meeting is necessary, I am fine with that. But let's see first. The entire committee and Ryan Henry are copied above. (Ryan, we are on the agenda for the June 19, 2020 meeting. Hope you might be able to attend or call in.)

Ryan Henry's original memo points out the issue - TRCP 2 does not include an express statement that the Rules of Civil Procedure apply to civil actions in municipal courts. So a practitioner and a party would have to search a municipalities ordinances to determine whether the TRCPs apply. I think we can recommend a quick fix for this and that proposed fix is attached as the redline of current TRCP 2. I have also attached the current version of Texas Government Code 39.00005 with notes taken from Ryan's memo.

I don't yet understand why we need the rule suggested to read as follows: "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code 39.00005, The Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary." I don't think this is necessary because the TRCPs are enforceable as a statute.

Finally, Ryan suggests that maybe we need specialized rules similar to Rule 500 for JP courts applicable to municipal courts. My query, why can't we just amend Part V. of the TRCP and change the title to "Rules of Practice in *Municipal* and Justice Courts"?

Thoughts???

LJB

From: Judge Ana Estevez <EstevezA@pottercscd.org>

Sent: Friday, May 29, 2020 12:14 PM

To: Levi Benton <lbenton@levibenton.com>

Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

From: Walker, Marti <mawalker@jw.com>

Sent: Friday, May 29, 2020 12:08 PM

To: aalbright@adjtlaw.com; 'adawson@beckredde.com'; Babcock, Chip <cbabcock@jw.com>; 'd.b.jackson@att.net'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercsd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'jperduejr@perdueandkidd.com'; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley' <lriley@rustyhardin.com>; 'lisa@kuhnhobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'peter.kelly@txcourts.gov'; 'psbaron@baroncounsel.com'; 'pschenkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'Elaine Carlson' <elainecarlson@comcast.net>; peguesg@gtlaw.com; watsonsg@gtlaw.com; 'Viator, Mary' <MViator@kslaw.com>; Sharon Tabbert (Assistant to B. Dorsaneo <smagill@mail.smu.edu>; judgebillboyce@gmail.com; Dee Dee Jones <dee2jones@ranchwireless.com>; Lisa Verm' <lverm@beckredde.com>; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; david.newell@txcourts.gov; Mike.Hatchell@haynesboone.com; Shirley@namanhowell.com; kent.sullivan@outlook.com; kimberly.phillips@shell.com; jaelyn.daumerie@txcourts.gov; dpeoples36@yahoo.com; LJefferson@jeffersoncano.com; bob@bobpemberton.com; Pauline.Easley@txcourts.gov; Harvey.Brown@LanierLawFirm.com; Jane.Bland@txcourts.gov; bboyce@adjtlaw.com; Isabel.Carrillo@shell.com; syelenosky@gmail.com; nrister@wilco.org; Sharena.Gilliland@Parkercountytx.com; rhwallace1009@yahoo.com

Subject: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To SCAC:

Please see attached the discussion items scheduled for the June 19, 2020 meeting. I have also included the handouts that I currently have for each. Please provide any replacement, additional or new materials no later than Monday, June 15 so that the agenda can be finalized, distributed and posted. Thanks to everyone!

Marti Walker | Legal Administrative Assistant to:

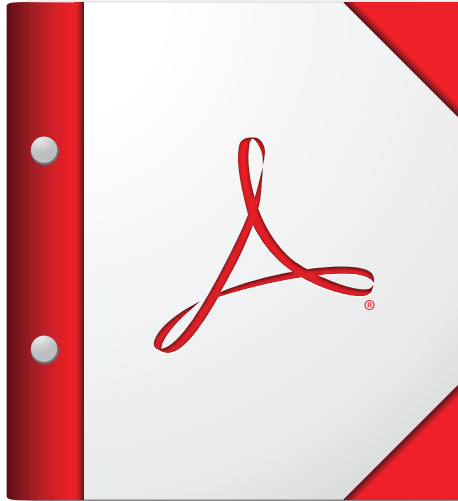
Charles L. Babcock

Harris Huguenard

1401 McKinney Street, Suite 1900 | Houston, TX | 77010

V: (713) 752-4375 | F: (713) 754-6725 | mawalker@jw.com





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Proposed - Rules for Municipal Courts Exercising Civil Jurisdiction

Rule 2. Scope of Rules

These rules shall govern the procedure in the [municipal](#), justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the “List of Repealed Statutes,” such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the “List of Repealed Statutes,” prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

Part V. Rules of Practice in Justice [and Municipal](#) Courts

Rule 500.2 Definitions

(f) “County court” is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice [or municipal](#) court.

(n) “Judge” is a justice of the peace [or a municipal court judge](#).

[Rule 500.3](#)

[\(d-1\) Civil Municipal Case. Any case brought in a municipal court of record exercising its civil jurisdiction under Texas Government Code §30.00005. Civil municipal cases are governed by Rule 11, 13, 500.2\(a\)-\(m\), 500.2\(o\)-\(y\), 500.4-500.9, 501.1- 501.4, 502.1, 502.2\(a\), 502.5, 502.7, 503.1- 503.3, 503.4\(a\)\(1-11\), 503.5, 503.6, 504.1-505.2, 507.2-507.4, and 592-609, 621-693.](#)

[Some special rules would need to be adopted as the parties under the provisions allowed in §30.00005 envision the municipality or the state being the only plaintiffs. No other initiating party is permitted in municipal court, so minor adjustments would need to be made to parties and counter-claim issues. Because the initiating party is usually the municipality or state, no filing fees or costs of suit are usually attached anywhere.

Some form of special rules would be required to address the plenary power of the court, which then ties into a motion for new trial and right to appeal. Appeals for courts of record are dictated by Texas Government Code 30.00014-00022. This area is where I have run into the most difficulty as a judge and was subject to a mandamus arguing about the time period to grant a motion for new trial.

There are special proceedings which apply in all types of municipal courts (record and non-record courts) which are not addressed but those proceedings tend to be addressed (not perfectly, but at least addressed) in the statutory language, such as truancy.]

Proposed additional Rules (I have no idea about the numbering)

Rule * Statutory Deadlines Control.** No provision of these rules is meant to be interpreted or to alter any statutory deadline created by the Texas Legislature. All rules must be read consistent with legislative language.

Rule *– Certificate of Appellate Proceedings.** If the municipal court of record judgment is affirmed, to enforce the judgment the court may:

- (1) forfeit the bond of the defendant;
- (2) issue a writ of capias for the defendant;
- (3) issue an execution against the defendant's property;
- (4) order a refund for the defendant's costs; or
- (5) conduct an indigency hearing at the court's discretion.

Reasons for the proposed change:

Currently, it is unclear if the municipal courts have the authority to do the following when exercising civil jurisdiction:

□□Require civil pleadings

- Allow service (or hold a party to non-compliance)
- Allow discovery
- Acknowledge attorney agreements
- Sanction under the standards applicable to civil contempt
- Properly render civil judgements with a compliant form
- Assert the proper computation of time
- Require signatures of attorneys
- Follow a defined process for issuing injunction
- Issue citations of process (not the criminal complaint process of accepting citations in lieu of arrest)

- And a host of other procedures which are taken for granted when practicing in district or county court.

From: [Ryan Henry](#)
To: [Levi Benton](#); [Judge Ana Estevez](#)
Cc: [Elaine Carlson \(elainecarlson@comcast.net\)](#); [ecarlson@stdl.edu](#); [Stephen Yelenosky](#)
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Tuesday, June 2, 2020 3:51:35 PM

Judge Benton,

I will try to provide a little more clarity in the next 24 hours, but essentially:

1. Courts of record are the courts with expanded civil jurisdiction, so limiting the rules to apply only to them is fine by me. However, just so the committee is aware, there are a few minor points where a court of non-record has civil jurisdiction and could benefit by some guidance, but I'm not sure now is the time to incorporate those as they are also a different animal.
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Very Truly Yours,
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210-257-6357 (phone)
210-569-6494 (fax)
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From: Levi Benton <lbenton@levibenton.com>
Sent: Tuesday, June 2, 2020 10:11 AM
To: Ryan Henry <ryan.henry@rshlawfirm.com>; Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ryan --

Am I correct in understanding that you wish to only address municipal courts that are courts of record?

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LJB

Levi J. Benton
Levi Benton & Associates PLLC
3417 Milam
Houston, Tx. 77002
(713) 521-1717

From: Ryan Henry <ryan.henry@rshlawfirm.com>
Sent: Monday, June 1, 2020 4:48 PM
To: Levi Benton <lbenton@levibenton.com>; Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu;
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Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

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From: Levi Benton <lbenton@levibenton.com>

Sent: Monday, June 1, 2020 12:39 PM

To: Judge Ana Estevez <EstevezA@pottercscd.org>

Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>; Ryan Henry <ryan.henry@rshlawfirm.com>

Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ana – thanks for offering to host a meeting. If you and others feel a Zoom meeting is necessary, I am fine with that. But let's see first. The entire committee and Ryan Henry are copied above. (Ryan, we are on the agenda for the June 19, 2020 meeting. Hope you might be able to attend or call in.)

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Thoughts???

From: [Ryan Henry](#)
To: [Levi Benton](#); [Judge Ana Estevez](#)
Cc: [Elaine Carlson \(elainecarlson@comcast.net\)](#); [ecarlson@stcl.edu](#); [Stephen Yelenosky](#)
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Tuesday, June 2, 2020 4:00:27 PM

Also, certain municipal courts were created for different cities, such as El Paso, which also created their own municipal court of appeals, and have their own appeal procedures in chapter 30. So, any amendment to the rules should apply only to courts of record controlled by Subchapter A (general courts of record) and not by any other subchapter.

Very Truly Yours,
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Sent: Tuesday, June 2, 2020 3:51 PM
To: Levi Benton <lbenton@levibenton.com>; Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
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From: Judge Ana Estevez <EstevezA@pottercscd.org>
Sent: Friday, May 29, 2020 12:14 PM
To: Levi Benton <lbenton@levibenton.com>
Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

From: Walker, Marti <mawalker@jw.com>
Sent: Friday, May 29, 2020 12:08 PM
To: aalbright@adjtlaw.com; 'adawson@beckredde.com'; Babcock, Chip <cbabcock@jw.com>; 'd.b.jackson@att.net'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercscd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'jperduejr@perdueandkidd.com'; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley' <lriley@rustyhardin.com>; 'lisa@kuhnobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'peter.kelly@txcourts.gov'; 'psbaron@baroncounsel.com'; 'pschenkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'Elaine Carlson' <elainecarlson@comcast.net>; peguesg@gtlaw.com; watsonsg@gtlaw.com; 'Viator, Mary' <MViator@kslaw.com>; Sharon Tabbert (Assistant to B. Dorsaneo <smagill@mail.smu.edu>; judgebillboyce@gmail.com; Dee Dee Jones <dee2jones@ranchwireless.com>; Lisa Verm <lverm@beckredde.com>; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; david.newell@txcourts.gov; Mike.Hatchell@haynesboone.com; Shirley@namanhowell.com; kent.sullivan@outlook.com; kimberly.phillips@shell.com; jaclyn.daumerie@txcourts.gov; dpeoples36@yahoo.com; LJefferson@jeffersoncano.com; bob@bobpemberton.com; Pauline.Easley@txcourts.gov; Harvey.Brown@LanierLawFirm.com; Jane.Bland@txcourts.gov; bboyce@adjtlaw.com; Isabel.Carrillo@shell.com; syelenosky@gmail.com; nrister@wilco.org; Sharena.Gilliland@Parkercountytx.com; rhwallace1009@yahoo.com
Subject: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To SCAC:

Please see attached the discussion items scheduled for the June 19, 2020 meeting. I have also included the handouts that I currently have for each. Please provide any replacement, additional or new materials no later than Monday, June 15 so that the agenda can be finalized, distributed and posted. Thanks to everyone!

Marti Walker | Legal Administrative Assistant to:
Charles L. Babcock
Harris Huguenard

From: [Ryan Henry](#)
To: [Judge Ana Estevez](#); [Levi Benton](#)
Cc: [Elaine Carlson \(elainecarlson@comcast.net\)](#); [ecarlson@stdl.edu](#); [Stephen Yelenosky](#)
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Wednesday, June 3, 2020 5:36:29 PM
Attachments: [Civil Jurisdiction of Municipal Courts.docx](#)
[Proposed Definitions for Muni Court Civil Jurisdiction Rules RSH 6.1.2020a.docx](#)

Judge Benton and Judge Estevez,

Attached is something I tried to put together to show why certain JP rules should be adopted and why certain ones should not be adopted. Basically, the statutes create too many different types of municipal courts and the power provided for the different types of civil statutes they can enforce make a "one size fits all" approach impractical. Luckily, many of the JP rules give flexibility to the courts to adjust based on the region, which would allow municipal courts to adjust based on the region and type of court they are. But JP and muni-courts have different specific case subject matter jurisdiction, so adoption of all rules is also not practical. So, the incorporation was selective. As I explained in my last email, the statutes (including Chapter 30 as well as the subject matter specific statutes) have their own rules regarding appeals and extensions of power, so I did not incorporate those rules into the proposal.

There are still various other areas which could use more study and provide more assistance to municipal courts, but I would request those be addressed, perhaps next year. For example, civil truancy applies to all courts and the Legislature declined to give any procedural guidelines, instead expressly stating the Supreme Court can adopt procedures. I'm unaware of any procedures which have been adopted. However, since I have less experience with civil truancy matters and believe it is a specialized area unto itself, I would not want to adopt anything without getting input specifically from courts with a good amount of truancy dockets. But, like I said, I would only want to address those issues perhaps next year, if the Court is so inclined.

Very Truly Yours,
Ryan Henry
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From: Ryan Henry
Sent: Wednesday, June 3, 2020 2:58 PM
To: Judge Ana Estevez <EstevezA@pottercscd.org>; Levi Benton <lbenton@levibenton.com>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

My only conflict is Tuesday from 9 to 10, but otherwise I'm fully available on Monday or Tuesday

Very Truly Yours,
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From: Judge Ana Estevez <EstevezA@pottercscd.org>
Sent: Wednesday, June 3, 2020 2:32 PM
To: Levi Benton <lbenton@levibenton.com>
Cc: Ryan Henry <ryan.henry@rshlawfirm.com>; Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: Re: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Houston, Tx. 77002
(713) 521-1717

From: Levi Benton

Sent: Tuesday, June 2, 2020 10:11 AM

To: Ryan Henry <ryan.henry@rshlawfirm.com>; Judge Ana Estevez
<EstevezA@pottercscd.org>

Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>;
ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>

Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ryan --

Am I correct in understanding that you wish to only address municipal courts that are courts of record?

What is the problem with Rule 505 and 506 that these could not just be made to apply to municipal courts of record? How does Govt. Code 30.00014-00022 conflict with Rule 505 and/or Rule 506?

And is your statement – “...Sec. 30.00005 envision the municipality or the state being the only plaintiffs. No other initiating party is permitted in municipal court...” – is this correct? But then you say “usually”?

LJB

Levi J. Benton
Levi Benton & Associates PLLC
3417Milam
Houston, Tx. 77002
(713) 521-1717

From: Ryan Henry <ryan.henry@rshlawfirm.com>

Sent: Monday, June 1, 2020 4:48 PM

To: Levi Benton <lbenton@levibenton.com>; Judge Ana Estevez
<EstevezA@pottercscd.org>

Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>;
ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>

Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Judge Benton,

Attached is a cleaned up version of my last set of notes and proposed rules. This actually addresses a lot of the issues I've seen. However, I have not finished the proposed rules for parties and for plenary power.

The plenary power issue (and therefore appeal and timetables) is more complex. I may

be too close to that particular issue as I was mandamus'd due to granting a motion for new trial without plenary power in a municipal court civil enforcement matter. Pretty much everyone agreed there are no clear rules on the issue (Plaintiff, defendant, me, the district court judge). I have a proposed set of rules for that, but they intertwine the statutory language. Part of me would like to share the briefs (the mandamus is over so the case is closed) but it's a lot of reading for the committee. So, I can share one version of the plenary power rules, but it has a specific policy behind it and I believe multiple options are actually available. Actually, the proposed rules are meant to incorporate what the district court judge told me she believed was the closest we can get with the current language of the statutes. Please let me know if the committee would prefer simply those extra rules or the briefs and a discussion.

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

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From: Levi Benton <lbenton@levibenton.com>
Sent: Monday, June 1, 2020 12:39 PM
To: Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>; Ryan Henry <ryan.henry@rshlawfirm.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ana – thanks for offering to host a meeting. If you and others feel a

Zoom meeting is necessary, I am fine with that. But let's see first. The entire committee and Ryan Henry are copied above. (Ryan, we are on the agenda for the June 19, 2020 meeting. Hope you might be able to attend or call in.)

Ryan Henry's original memo points out the issue - TRCP 2 does not include an express statement that the Rules of Civil Procedure apply to civil actions in municipal courts. So a practitioner and a party would have to search a municipalities ordinances to determine whether the TRCPs apply. I think we can recommend a quick fix for this and that proposed fix is attached as the redline of current TRCP 2. I have also attached the current version of Texas Government Code 39.00005 with notes taken from Ryan's memo.

I don't yet understand why we need the rule suggested to read as follows: "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code 39.00005, The Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary." I don't think this is necessary because the TRCPs are enforceable as a statute.

Finally, Ryan suggests that maybe we need specialized rules similar to Rule 500 for JP courts applicable to municipal courts. My query, why can't we just amend Part V. of the TRCP and change the title to "Rules of Practice in *Municipal* and Justice Courts"?

Thoughts???

LJB

From: Judge Ana Estevez <EstevezA@pottercscd.org>

Sent: Friday, May 29, 2020 12:14 PM

To: Levi Benton <benton@levibenton.com>

Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

From: Walker, Marti <mawalker@jw.com>

Sent: Friday, May 29, 2020 12:08 PM