



TEXAS JUSTICE COURT JUDGES ASSOCIATION



Excellence and Integrity



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EVICITION RULES REVAMP POSSIBLE NEXT YEAR

Those of you with good memories may remember in August of 2003, when this newsletter first reported a number of substantive eviction revisions proposed by the Supreme Court Advisory Committee.

Those revisions remained on the back burner the last few years, but with last week's recommendations by the State Bar of Texas Court Administration Task Force (see second article below), these changes may also be considered by the legislature next year.

Nothing is set in stone, but informed sources indicate a likelihood that the revisions will resurface for consideration next year.

The Proposed Eviction Rules, if adopted, would substantially change many aspects of eviction cases in your Court.

In addition, the State Bar of Texas has put in their own set of proposed changes. The State Bar proposal is 76 pages long, the Supreme Court Advisory Committee report is just under 40 pages long.

Here are some of the important highlights:

Rule 245 would be amended to **exclude** Justice Court and Eviction cases from the 45 day rule. This is not a surprise for evictions, but note that *Justice Court cases* are also included.

Rule 738 would allow Eviction suits to include *contractual late charges*. Some judges in Texas already allow such late charges if contained within the rental contract. Other Judges strictly adhere to the law and will award only past due rent.

Rule 739 requires an eviction citation to have attached all documents and records required under Rule 741 (below). The citation language will also change to require specific verbiage concerning a request for jury trial and deadlines.

Rule 740 eliminates the **BOND FOR IMMEDIATE POSSESSION** and replaces it with **EMERGENCY POSSESSION**.

Rule 741 Complaints would no longer have to be sworn. Complaints would be required to contain how the notice to vacate was given, and specifics about the amount of rent paid and the due dates, specifics on contractual late charges, and include a copy of the lease. Failure to provide all information can result in a postponement by the Court or any party up to seven days. The complaint must state the property is located within the precinct in which the complaint is filed.

Rule 742 would allow any person 18 years of age or older to serve citations in evictions cases (in *addition* to Constables and Sheriff's officers).

Rule 743 would be amended to allow the Judge to allow reasonable discovery of a limited scope in eviction cases which does not unduly delay the trial. Under notes in this section, it states "Generally, discovery is not appropriate in eviction cases".

Rule 744 for jury demands in evictions requires payment of a jury fee within five dates the defendant is served with citation.

Rule 745 changes postponement of a trial from six to seven days, or more if there are exceptional circumstances. The trial may **not** be postponed unless the parties agree in writing to the Court.

Rule 746 states the only issue in eviction is actual possession and the merits of title shall not be adjudicated. It clarifies that, even if a defendant raises a title issue, the Judge may proceed with the case if the judge feels title is not really an issue in the case.

Rule 748 requires a separate, written judgment and specifically notes counterclaims are not allowed in evictions.

Rule 749, 749a-c, 749b- Appeals, Indigence, and Form of Appeal Bond. This makes some protocol changes for appeal.

Rule 750, 750a- Suspending enforcement of an eviction judgment pending appeal to County Court, Supersedeas Bond.

Rule 751 modifies and clarifies the procedure for paying rent into the County Court registry in appealed cases, and spells out procedures when the rent is not paid.

Rule 752-754 Eviction rules in County Court at Law

Rule 755- Writ of Possession

Rule 4 on the computation of time would be changed

*Note- the Rule changes above are a direct cut and paste from a 2003 newsletter. There have been changes in eviction law since that time that may or may not affect the proposals above.

The Honorable Tom Lawrence was one of the principle authors of these rules, and the only J.P. on the committee.

TASK FORCE MAKES FINAL RECOMMENDATIONS

Last week, the State Bar of Texas Court Administration Task Force met and voted to recommend sweeping reforms to the Texas Justice Court civil system.

RECOMMENDATIONS

- 1) The Task Force will recommend the repeal of Chapter 28 of the Government Code, eliminating small claims court as it currently exists. They will recommend that the Supreme Court appoint a task force to re-write the rules. There will either be one set of rules applying to both courts, or they may draft two sets of rules, with one being more formal.
- 2) They also recommended re-writing the eviction rules. A few years back, the Supreme Court Advisory Committee prepared a draft of the re-written rules. We reported extensively on those proposals in this newsletter. That draft will likely serve as a guide, or at least a starting point, for the new rules.
- 3) They will also recommend allowing the JP courts to adopt local rules and to relax the venue requirements in the Code of Criminal Procedure and the Civil Practices and Remedies Code to allow JP courts within a county to equalize caseload. For example, one court within a county might specialize in license and weight, commercial evictions, deed restriction and juvenile to name a few. It has not yet been determined who will approve the rules and whether or not the county will have to be involved in this process.
- 4) They will also recommend additional educational hours in civil law for J.P.s. At this time, no specific figure for how many additional hours is named, but members seemed to agree that J.P.s need extensive quality education in civil law.

ITEMS WHERE NO ACTION WAS TAKEN

At this time, it appears there will not be action requiring justices of the peace to be licensed attorneys. Also, the idea for a Justice Court of Law is off the table for now.

WHAT IS NEXT

The State Bar Board will take these recommendations up again in September. What they recommend will likely end up as a bill that will be supported both by the State Bar and probably the Texans for Lawsuit reform group. The bill will be similar to Senator Duncan's court reform bill last session and has a good chance of passage.

The recommendations indicate the State Bar board is interested in making sure justices of the peace get better educated in the civil realm. The Justices of the Peace are represented

on the State Bar Board, and hopefully our input will be sought concerning these changes that so dramatically affect our courts.

The Texas Justice Court Judge's Association officers are aware of these changes.

We will apprise you of additional developments as we become aware off them.