

JUDGE DIANE DUPNIK  
JUSTICE OF THE PEACE PCT 1  
JP1@ARANSASCOUNTY.ORG  
PHONE (361)790-0130



2840 HIGHWAY 35 NORTH  
ROOM # 125 ROCKPORT, TX 78382  
WWW.ARANSASCOUNTYTX.GOV/JP1  
FAX (361)790-5402

**If you are NOT filing an Eviction, a Debt Collection case, or a Repair and Remedy cases, it means you are likely in the right place, governed by Rules 500-507.**

## **SMALL CLAIMS**

The complete Rules for Small Claims are significantly different from those used in the past in Texas Justice Courts. Read carefully before you file, and if you are unsure, you should talk to an attorney. Neither the Judge nor the clerks of the court can provide legal advice.

The other types of civil cases (Debt Collection, Eviction cases, and Repair and Remedy cases) are discussed in detail in separate sections. Every Civil Suit must include these documents available for print on the website:

- 1) PETITION FOR SMALL CLAIMS COURT**
- 2) SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT**
- 3) JUSTICE COURT CIVIL CASE INFORMATION SHEET**

In SMALL CLAIMS COURT, you may hire an attorney, but it is not required. You can file for property or damages up to \$20,000, INCLUDING attorney fees, but EXCLUDING court costs and interest. If your claim is for more than \$20,000, and you arbitrarily reduce it to "shoehorn it" into Small Claims court, your case may end up being dismissed.

It is imperative that you file your case in the right Justice of the Peace precinct, or you could end up paying additional filing fees. The General Rule of Venue says:

- 1) A case should be filed in the precinct where all or a substantial part of the events or omissions giving rise to the claim took place.
- 2) In the county and precinct where the defendant resided when the cause of action arose.

You can read more about Venue in Rule 502.4 below.

To prevail in Justice Court, the plaintiff, the person filing the lawsuit, must prove their case "Beyond a Preponderance of the Evidence". Stated another way, the person who proves their case by "the greater weight and degree of credible evidence" will prevail. Judge McGinnis may ask you, the other party, or any witness questions to help develop and understand your case.

The Rules of Civil Procedure and Rules of Evidence do not apply unless:

- 1) The Judge determines a particular rule must be followed to ensure fairness, or
- 2) When otherwise specifically provided for in these rules

**QUESTIONS:**

### 1. Where do I file?

In all cases, the defendant (person being sued) has the right to be sued in the county or precinct where they live. There are some exceptions or optional. It is your responsibility to file in the correct precinct. There could be additional costs and circumstances if you file in the wrong precinct.

### 2. Who do I sue?

It is your burden as a plaintiff to sue the defendant in their proper legal capacity, of which there are typically three. They are as follows:

**Personally:** Where an individual is responsible to you for damages he may have caused you as an individual.

**Proprietor or partnership:** A business that is not incorporated, but does have on file with the County clerk an assumed name e.g. John Smith d.b.a. Greenhouse Supplies. You may also file against the individual and his business, John Smith ind./dba Greenhouse Supplies. To determine whether or not this person has filed an assumed name, you would contact the County Clerk at the Aransas County Courthouse.

**Corporation:** The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. We also need the individual's address. (The authorized agent for service would be listed with the Secretary of State whose phone number is 1-512-463-5555) e.g. Greenhouse, Inc. Serve: John Smith registered agent.

**You are urged to discuss your case with an attorney if you are suing a proprietor, partnership, or corporation. You are responsible for suing the correct party in their correct capacity.**

### 3. How much is all this going to cost me?

The court cost for filing a Civil Suit is \$46.00. Serving Fee for Aransas County Constable is \$125.00 per Defendant. If the Defendant you are suing lives and needs to be served in another county, you will need to contact that County for Serving Fee Information. Each County has their own set serving fee. You may also hire a private process who is Certified by the Supreme Court of Texas or attempt to have the suit served by Certified Mail, return receipt requested. If the Certified Mail is returned unsuccessful you will have to find an alternative method of service. Fee for Certified Mail is \$15.00 per Defendant.

If the defendant upon whom you are filing resides OUTSIDE of Aransas County:

- 1) Call the County Courthouse in the County where the defendant is to be served.
- 2) Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call that office and find out the SERVICE FEE for serving a JUSTICE COURT CITATION.
- 3) Get the address of the Constable or Sheriff who will be serving the citation.

4) Get a money order, payable to the Constable or Sheriff who will be serving the citation and bring it with you when you file your suit.

5) The cost for filing the suit in this Court is \$46.00. (EXAMPLE: If you are filing the suit on one defendant that is to be served in Hill County, you would bring a money order payable to Hill County Sheriff or Constable, the Sheriff's or Constable's address and their fee.)

#### 4. What happens once I file?

Once you have filed, a citation will be served to the defendant notifying him that a suit has been filed against him in this court. The citation will order the defendant to answer this suit on or before the 14th after they are served with notice they have been sued. If he fails to do so, you then become eligible for a default judgment up until the time an answer is filed.

If the defendant answers contesting your suit, a hearing will be set before a Judge or jury, or your case may be referred to mediation if the judge deems it proper.

Should you receive judgment, the court does not collect the judgment. However, you may request an Abstract of Judgment and/or Writ of Execution to help you in collection of this judgment.

If you have other procedural questions, please ask our Civil Department which we will try to answer them. This court may not answer any legal questions.

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**RULE 500.2. DEFINITIONS**

In Part V of these Rules of Civil Procedure:

(a) “Answer” is the written response that someone who is sued must file with the court after being served with a citation.

(b) “Citation” is the court-prepared document required to be served upon a party to inform the party that it has been sued.

(c) “Claim” is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) “Clerk” is a person designated by the judge as a Justice Court Clerk, or the judge if there is no clerk available.

(e) “Counterclaim” is a claim brought by a party who has been sued against the party who filed suit, for example, a defendant suing a plaintiff.

(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 Court.

(g) “Cross-claim” is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, A and B, A can seek relief against B by means of a cross-claim.

(h) “Default judgment” is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff’s claims in the lawsuit.

(i) “Defendant” is someone who is sued, including a plaintiff against whom a counterclaim is filed.

(j) “Defense” is an assertion by a defendant that the plaintiff is not entitled to relief from the

court.

(k) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(l) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(m) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(n) "Judge" is a Justice of the Peace.

(o) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(p) "Jurisdiction" is the authority of the court to hear and decide a case.

(q) "Motion" is a request that the court make a specified ruling or order.

(r) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(s) "Party" is a person involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(t) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(u) "Plaintiff" is someone who sues, including a defendant who files a counterclaim.

(v) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

(w) "Relief" is the remedy a party requests from the court, such as the recovery of money or the return of property.

(x) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(y) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(z) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

### **RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES**

a) *Small Claims Case.* A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than \$10,000 **excluding** statutory interest and court costs but **including** attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(e) *Application of Other Rules.* The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

- (1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or
- (2) when otherwise specifically provided by law or these rules.

(f) *Examination of Rules.* The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

### **RULE 500.4. REPRESENTATION IN JUSTICE COURT CASES**

(a) *Representation of an Individual.* An individual may:

- (1) represent himself or herself;
- (2) be represented by an authorized agent in an eviction case; or
- (3) be represented by an attorney.

(b) *Representation of a Corporation or Other Entity.* A corporation or other entity may:

- (1) be represented by an employee, owner, member, officer, or partner of the entity who is not an attorney;
- (2) be represented by a property manager or other authorized agent in an eviction case; or
- (3) be represented by an attorney.

(c) *Assisted Representation.* The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated.

### **RULE 500.5. COMPUTATION OF TIME; TIMELY FILING**

(a) *Computation of Time.* To compute a time period in these rules:

- (1) exclude the day of the event that triggers the period;
- (2) count every day, including Saturdays, Sundays, and legal holidays; and
- (3) include the last day of the period, but

(A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday;  
or

(B) if the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.

(b) *Timely Filing by Mail.* Any document required to be filed by a given date is considered timely filed if deposited in the U.S. mail on or before that date, and received within 10 days of the due date. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

(c) *Extensions.* The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

#### **RULE 500.6. JUDGE TO DEVELOP THE CASE**

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

#### **RULE 500.7. EXCLUSION OF WITNESSES (The Rule)**

At a party's request, or on its own initiative, the court must order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

- (a) a party who is a natural person or the spouse of such natural person;
- (b) an officer or employee designated as a representative of a party who is not a natural person; or
- (c) a person whose presence is shown by a party to be essential to the presentation of the party's case.

#### **RULE 500.8. SUBPOENAS**

(a) *Use.* A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

(b) *Who Can Issue.* A subpoena may be issued by the Clerk of the Justice Court or an attorney authorized to practice in the State of Texas, as an Officer of the Court.

(c) *Form.* Every subpoena must be issued in the name of the "State of Texas" and must:

- (1) state the style of the suit and its case number;
- (2) state the court in which the suit is pending;
- (3) state the date on which the subpoena is issued;
- (4) identify the person to whom the subpoena is directed;
- (5) state the time, place, and nature of the action required by the person to whom the subpoena is directed;
- (6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;
- (7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and
- (8) be signed by the person issuing the subpoena.

(d) *Service: Where, By Whom, How.* A subpoena may be served at any place within the State of Texas by any Sheriff or Constable of the State of Texas, or by any person who is not a party



and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is party and is represented by an Attorney of Record in the proceeding, the subpoena may be served on the witness's attorney of record. Proof of Service must be made by filing either:

- (1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or
- (2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(e) *Compliance Required.* A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness and must be paid according to statute. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) *Objection.* A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or Motions for Protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) *Enforcement.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a District Court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof of service and proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

#### **RULE 500.9. DISCOVERY**

(a) *Pretrial Discovery.* Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. The discover request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.

(b) *Post-judgment Discovery.* Post-judgment discovery is not required to be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is

upheld, the judge may reform the request or dismiss it entirely.

## **THE 501 SERIES - CITATION AND SERVICE**

### **RULE 501.1. CITATION**

(a) *Issuance.* When a petition is filed with a Justice Court to initiate a suit, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(b) *Form.* The citation must:

- (1) be styled "The State of Texas";
- (2) be signed by the clerk under Seal of Court or by the judge;
- (3) contain the name, location, and address of the court;
- (4) show the date of filing of the petition;
- (5) show the date of issuance of the citation;
- (6) show the file number and names of parties;
- (7) be directed to the defendant;
- (8) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff; and
- (9) notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

(c) *Notice.* The citation must include the following notice to the defendant in boldface type: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

d) *Copies.* The plaintiff must provide enough copies to be served on each defendant. If the party fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

### **RULE 501.2. SERVICE OF CITATION**

(a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a Sheriff or Constable may serve a citation in an eviction case, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. Other citations may be served by:

- (1) a Sheriff or Constable;
- (2) a process server certified under order of the Supreme Court;
- (3) the Clerk of the Court, if the citation is served by registered or Certified Mail; or
- (4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service.* Citation must be served by:

- (1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or
- (2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a sworn statement of inability to pay the fees with the court. If the plaintiff has filed a sworn statement of Inability to Pay, the plaintiff must arrange for the citation to be served by a Sheriff, Constable, or Court Clerk.

(d) *Service on Sunday.* A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation.* If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the Constable, Sheriff, process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

- (1) mailing a copy of the citation with a copy of the petition attached by First Class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or
- (2) mailing a copy of the citation with a copy of the petition attached by First Class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication.* In the event that service of citation by publication is necessary, the process is governed by the rules in County and District Court.

### **RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION**

(a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:

- (1) endorse on the process the date and hour on which he or she received it;
- (2) execute and return the same without delay; and
- (3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

(b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:

- (1) the case number and case name;
- (2) the court in which the case is filed;

- (3) a description of what was served;
- (4) the date and time the process was received for service;
- (5) the person or entity served;

- (6) the address served;
- (7) the date of service or attempted service;
- (8) the manner of delivery of service or attempted service;
- (9) the name of the person who served or attempted service;
- (10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and
- (11) any other information required by rule or law.

(c) *Citation by Mail.* When the citation is served by Registered or Certified Mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.

(e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a Sheriff, Constable, or Clerk of the Court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last) , my date of birth is (Month) (Day), (Year) , and my address is (Street), (City), (State) (Zip Code), (County) . I declare under penalty of perjury that the foregoing is true and correct. Executed in \_\_\_\_\_ County, State of \_\_\_\_\_ , on the \_\_\_\_\_ day of (Month) , (Year) .

\_\_\_\_\_  
Declarant"

(f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 501.2(e), Proof of Service must be made in the manner ordered by the court.

(g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the Clerk of the Court for 3 days, exclusive of the day of filing and the day of judgment.

#### **RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION**

(a) *Method of Service.* Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion,

application to the court for an order, or other form of request, must be served on all other parties in one of the following ways.

(1) In person. A copy may be delivered to the party to be served, or the party's duly authorized agent or attorney of record, in person or by agent.

(2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

(b) *Timing*. If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearing requested by a party must be served on all other parties not less than 3 days before the time specified for the hearing.

(c) *Who May Serve*. Documents other than a citation may be served by a party to the suit, an Attorney of Record, a Sheriff or Constable, or by any other person competent to testify.

(d) *Certificate of Service*. The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is proof of service.

(e) *Failure to Serve*. A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 3 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

## **THE 502 SERIES: INSTITUTION OF SUIT**

### **RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED**

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing.

### **RULE 502.2. PETITION**

(a) *Contents*. To initiate a suit, a petition must be filed with the court. A petition must contain:

(1) the name of the plaintiff:

- (2) the name, address, telephone number, and fax number, if any, of the plaintiff's attorney, if applicable, or the address, telephone number, and fax number, if any, of the plaintiff;
- (3) the name, address, and telephone number, if known, of the defendant;
- (4) the amount of money, if any, the plaintiff seeks;
- (5) a description and claimed value of any personal property the plaintiff seeks;
- (6) a description of any other relief requested;
- (7) the basis for the plaintiff's claim against the defendant; and
- (8) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

(b) *Justice Court Civil Case Information Sheet*. A Justice Court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or the plaintiff's attorney. The Justice Court civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right. The court may not reject a pleading because the pleading is not accompanied by a Justice Court civil case information sheet.

### **RULE 502.3. FEES; INABILITY TO PAY**

(a) *Fees and Statement of Inability to Pay*. On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a sworn statement of inability to pay. Upon filing the statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) *Contents of Statement of Inability to Pay*.

(1) The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

(2) The statement must contain the following: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct."

(c) *IOLTA Certificate*. If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of Inability to Pay accompanied by an attorney's IOLTA certificate may not be contested under (d).

(d) *Contest*. The defendant may file a contest of the statement of Inability to Pay at any time within 7 days after the day the defendant's answer is due. If the statement attests to receipt of government entitlement based on indigence, the statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiff's ability to pay. At the hearing, the burden is on the party who filed the statement to prove its Inability to Pay. The judge may, regardless of whether the defendant contests the statement, examine the statement and conduct a hearing to determine the plaintiff's ability to pay. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

**RULE 502.4. VENUE — WHERE A LAWSUIT MAY BE BROUGHT**

(a) *Applicable Law*. Laws specifying the venue – the county and precinct where a lawsuit may be brought – are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online and for examination during the court's business hours.

(b) *General Rule*. Generally, a defendant in a small claims case as described in Rule 500.3(a) or a debt claim case as described in Rule 500.3(b) is entitled to be sued in one of the following venues:

- (1) the county and precinct where the defendant resides;
- (2) the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;
- (3) the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
- (4) the county and precinct where the property is located, in a suit to recover personal property.

(c) *Non-Resident Defendant; Defendant's Residence Unknown.* If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

(d) *Motion to Transfer Venue.* If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(1) Procedure.

(A) Judge to Set Hearing. If a defendant files a motion to transfer venue, the judge must set a hearing on the motion.

(B) Response. A plaintiff may file a response to a defendant's motion to transfer venue.

(C) Hearing. The parties may present evidence at the hearing. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system.

(D) Judge's Decision. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(E) Review. Motions for rehearing and interlocutory appeals of the judge's ruling on venue are not permitted.

(F) Time for Trial of the Case. No trial may be held until at least the 14th day after the judge's ruling on the motion to transfer venue.

(G) Order. An order granting a motion to transfer venue must state the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay. The plaintiff is not entitled to a refund of any fees already paid. Failure to pay the fee or file a sworn statement of inability to pay will result in dismissal of the case without prejudice.



(e) *Fair Trial Venue Change*. If a party believes it cannot get a fair trial in a specific precinct or before a specific judge, the party may file a sworn motion stating such, supported by the sworn statements of two other credible persons, and specifying if the party is requesting a change of location or a change of judge. Except for good cause shown, this motion must be filed no less than 7 days before trial. If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the County Judge must appoint a visiting judge to hear the case. If the party seeks a change in location, the case must be

transferred to the nearest Justice Court in the county that is not subject to the same or some other disqualification. If there is only one Justice of the Peace precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the County Judge must appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in eviction cases, the only remedy available is a change of judge. A party may apply for relief under this rule only one time in any given lawsuit.

(f) *Transfer of Venue by Consent*. On the written consent of all parties or their attorneys, filed with the court, venue must be transferred to the court of any other Justice of the Peace of the county, or any other county.

#### **RULE 502.5. ANSWER**

(a) *Requirements*. A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. The answer must contain:

- (1) the name of the defendant;
- (2) the name, address, telephone number, and fax number, if any, of the defendant's attorney, if applicable, or the address, telephone number, and fax number, if any, of the defendant; and
- (3) if the defendant consents to email service, a statement consenting to email service and email contact information.

(b) *General Denial*. An answer that denies all of the plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial.

(c) *Answer Docketed*. The defendant's appearance must be noted on the court's docket.

(d) *Due Date*. Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but

- (1) if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and
- (2) if the 14th day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

(e) *Due Date When Defendant Served by Publication*. If a defendant is served by publication, the defendant's answer is due by the end of the 42nd day after the day the

citation was issued, but

- (1) if the 42nd day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; or
- (2) if the 42nd day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

#### **RULE 502.6. COUNTERCLAIM; CROSS-CLAIM; THIRD-PARTY CLAIM**

(a) *Counterclaim.* A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the Justice Court, whether or not related to the claims in the plaintiff's petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of Inability to Pay the fees. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

(b) *Cross-Claim.* A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of Inability to Pay the fees. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

(c) *Third Party Claim.* A defendant seeking to bring another party into a suit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2.

#### **RULE 502.7. AMENDING AND CLARIFYING PLEADINGS**

(a) *Amending Pleadings.* A party may withdraw something from or add something to a pleading, as long as the amended pleading is filed and served as provided by Rule 501.4 not less than 7 days before trial. The court may allow a pleading to be amended less than 7 days before trial if the amendment will not operate as a surprise to the opposing party.

(b) *Insufficient Pleadings.* A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

### **THE 503 SERIES - DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL**

#### **RULE 503.1. IF DEFENDANT FAILS TO ANSWER**

(a) *Default Judgment.* If the defendant fails to file an answer by the date stated in Rule 502.5, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

- (1) *Claim Based on Written Document.* If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true

and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

(2) *Other Cases*. Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

(b) *Appearance*. If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3.

(c) *Post-Answer Default*. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(d) *Notice*. The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

**RULE 503.2. SUMMARY DISPOSITION**

(a) *Motion*. A party may file a sworn motion for Summary Disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

- (1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;
- (2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or
- (3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) *Response*. The party opposing the motion may file a sworn written response to the motion.

(c) *Hearing*. The court must not consider a motion for summary disposition until it has been on file for at least 14 days. By agreement of the parties, the court may decide the motion and response without a hearing.

(d) *Order*. The court may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just.

**RULE 503.3. SETTINGS AND NOTICE; POSTPONING TRIAL**

(a) *Settings and Notice*. After the defendant answers, the case will be set on a pretrial docket or a trial docket at the discretion of the judge. The court must send a notice of the date, time, and place of this setting to all parties at their address of record no less than 45 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.

(b) *Postponing Trial*. A party may file a sworn motion requesting that the trial be postponed. The motion must state why a postponement is necessary. The judge, for good cause, may postpone any suit for a reasonable time.

**RULE 503.4. PRETRIAL CONFERENCE**

(a) *Conference Set; Issues*. If all parties have appeared in a suit, the court, at any party's request or on its own, may set a case for a Pretrial Conference. Appropriate issues for the Pretrial Conference include:

- (1) discovery;
  - (2) the amendment or clarification of pleadings;
  - (3) the admission of facts and documents to streamline the trial process;
  - (4) a limitation on the number of witnesses at trial;
  - (5) the identification of facts, if any, which are not in dispute between the parties;
  - (6) mediation or other alternative dispute resolution services;
  - (7) the possibility of settlement;
  - (8) trial setting dates that are amenable to the court and all parties;
  - (9) the appointment of interpreters, if needed;
  - (10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence;
- and
- (11) any other issue that the court deems appropriate.

(b) *Eviction Cases*. The court must not schedule a pretrial conference in an eviction case if it would delay trial.

**RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION**

(a) *State Policy*. The policy of this state is to encourage the Peaceable Resolution of disputes through Alternative Dispute Resolution, including Mediation, and the Early Settlement of Pending Litigation through voluntary settlement procedures. For that purpose, the judge may order any case to Mediation or another appropriate and generally accepted Alternative Dispute Resolution process.

(b) *Eviction Cases*. The court must not order Mediation or any other Alternative Dispute Resolution process in an eviction case if it would delay trial.

**RULE 503.6. TRIAL**

(a) *Docket Called*. On the day of the trial setting, the judge must call all of the cases set for trial that day.

(b) *If Plaintiff Fails to Appear*. If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.

(c) *If Defendant Fails to Appear*. If the defendant fails to appear when the case is called for trial, the judge may postpone the case, or may proceed to take evidence. If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered against the plaintiff.

**THE 504 SERIES - JURY**

**RULE 504.1. JURY TRIAL DEMANDED**

(a) *Demand*. Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

(b) *Jury Fee*. Unless otherwise provided by law, a party demanding a jury must pay a fee of \$22.00 or must file a sworn statement of Inability to Pay the fee at or before the time the party files a written request for a jury.

(c) *Withdrawal of Demand*. If a party who demands a jury and pay the fee withdraws the demand, the case will remain on the Jury Docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.

(d) *No Demand*. If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

**RULE 504.2. EMPANELING THE JURY**

(a) *Drawing Jury and Oath.* If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

(b) *Oath.* After the draw, the judge must swear the panel as follows: “You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror.”

(c) *Questioning the Jury.* The parties or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

(d) *Challenge for Cause.* A party may challenge any juror for cause. A challenge for cause is an Objection made to a juror alleging some fact, such as a bias or prejudice, that disqualifies the juror from serving in the case or that renders the juror unfit to sit on the jury. The challenge must be made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

(e) *Challenges Not for Cause.* After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.

(f) *The Jury.* After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.

(g) *If Jury Is Incomplete.* If challenges reduce the number of prospective jurors below 6, the judge must direct the Sheriff or Constable to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

(h) *Jury Sworn.* When the jury has been selected, the judge must require them to take substantially the following oath: “You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented.”

**RULE 504.3. JURY NOT CHARGED ...** The judge must not charge the jury.

**RULE 504.4. JURY VERDICT FOR SPECIFIC ARTICLES**

When the suit is for the recovery of specific articles and the jury finds for the plaintiff, the jury must assess the value of each article separately, according to the evidence presented at trial.

**THE 505 SERIES - JUDGMENT; NEW TRIAL**

**RULE 505.1. JUDGMENT**

(a) *Judgment Upon Jury Verdict.* Where a jury has returned a verdict, the judge must

announce the verdict in open court, note it in the Court's Docket, and render judgment accordingly. The judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Case Tried by Judge*. When a case has been tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

(c) *Form*. A judgment must:

- (1) clearly state the determination of the party's rights in the case;
- (2) state who must pay the costs;
- (3) be signed by the judge; and
- (4) be dated the date of the judge's signature.

(d) *Costs*. The judge must award costs allowed by law to the successful party.

(e) *Judgment for Specific Articles*. Where the judgment is for the recovery of specific articles, the judgment must order that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed by the judge or jury with interest at the prevailing post-judgment interest rate.

#### **RULE 505.2. ENFORCEMENT OF JUDGMENT**

Justice Court judgments are enforceable in the same method as in County and District Court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

#### **RULE 505.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL**

(a) *Motion to Reinstate after Dismissal*. A plaintiff whose case is dismissed may file a Motion to reinstate the case no later than 14 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 501.4 The court may reinstate the case for good cause shown.

(b) *Motion to Set Aside Default*. A defendant against whom a Default Judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may set aside the judgment and set the case for trial for good cause shown.

(c) *Motion for New Trial*. A party may file a Motion for a New Trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

(d) *Motion Not Required*. Failure to file a motion under this rule does not affect a party's right to appeal the underlying judgment.

(e) *Motion Denied as a Matter of Law.* If the judge has not ruled on a Motion to Set Aside, Motion to Reinstate, or Motion for New Trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

## THE 506 SERIES - APPEAL

### **RULE 506.1. APPEAL**

(a) *How Taken; Time.* A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of Inability to Pay with the Justice Court within 21 days after the judgment is signed or the Motion to Reinstate, Motion to Set Aside, or Motion for New Trial, if any, is denied.

(b) *Amount of Bond; Sureties; Terms.* A plaintiff must file a bond in the amount determined by the Judge. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Cash Deposit in Lieu of Bond.* In lieu of filing a bond, an appellant may deposit with the Clerk of the Court cash (money order or cashier's check) in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(d) *Sworn Statement of Inability to Pay.*

(1) Filing; contest. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of Inability to Pay. The statement must meet the requirements of Rule 502.3 and may be the same one that was filed with the petition.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the statement was filed.



(3) **Appeal If Contest Sustained.** If the contest is sustained, the appellant may appeal that decision by filing notice with the Justice Court within 7 days of that court's written order. The Justice Court must then forward all related documents to the County Court for resolution. The County Court must set the matter for hearing within 14 days and hear the Contest De Novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the Clerk of the County Court the transcript, records, and papers of the case, as provided in these rules.

(4) **If No Appeal or If Appeal Overruled.** If the appellant does not appeal the ruling sustaining the contest, or if the County Court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) *Notice to Other Parties Required.* If a statement of Inability to Pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule.* The County Court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) *No Dismissal of Appeal Without Opportunity for Correction.* An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

(i) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

#### **RULE 506.2. RECORD ON APPEAL**

When an appeal has been perfected from the Justice Court, the judge must immediately send to the Clerk of the County Court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case.

#### **RULE 506.3. TRIAL DE NOVO**

The case must be tried De Novo in the County Court. A trial De Novo is a new trial in which the entire case is presented as if there had been no previous trial.

#### **RULE 506.4. WRIT OF CERTIORARI**

(a) *Application.* Except in eviction cases, after final judgment in a case tried in Justice Court, a party may apply to the County Court for a Writ of Certiorari.

(b) *Grounds*. An application must be granted only if it contains a sworn statement setting forth facts showing that either:

- (1) the Justice Court did not have jurisdiction; or
- (2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) *Bond, Cash Deposit, or Sworn Statement of Indigency to Pay Required*. If the application is granted, a Writ of Certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a sworn Statement of Indigency that with Rule 145.

(d) *Time for Filing*. An application for Writ of Certiorari must be filed within 90 days after the date the final judgment is signed.

(e) *Contents of Writ*. The Writ of Certiorari must command the Justice Court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the Justice Court, together with the original papers and a bill of costs, to the proper court.

(f) *Clerk to Issue Writ and Citation*. When the application is granted and the bond, cash deposit, or sworn statement of indigency have been filed, the clerk must issue a Writ of Certiorari to the Justice Court and citation to the adverse party.

(g) *Stay of Proceedings*. When the Writ of Certiorari is served on the Justice Court, the court must stay further proceedings on the judgment and comply with the writ.

(h) *Cause Docketed*. The action must be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

(i) *Motion to Dismiss*. Within 30 days after the service of citation on the Writ of Certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond. If the Certiorari is dismissed, the judgment must direct the Justice Court to proceed with the execution of the judgment below.

(j) *Amendment of Bond or Oath*. The affidavit or bond may be amended at the discretion of the court in which it is filed.

(k) *Trial De Novo*. The case must be tried De Novo in the County Court and judgment must be rendered as in cases appealed from Justice Courts. A trial De Novo is a new trial in which the entire case is presented as if there had been no previous trial.

## **THE 507 SERIES - ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL**

### **RULE 507.1. PLENARY POWER**

A Justice Court loses Plenary Power over a case when an appeal is perfected or if no appeal is perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied.

### **RULE 507.2. FORMS**

The court may provide blank forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

**RULE 507.3. DOCKET AND OTHER RECORDS**

(a) *Docket*. Each judge must keep a Civil Docket, in a permanent record containing the following:

- (1) the title of all suits commenced before the court;
- (2) the date when the first process was issued against the defendant, when returnable, and the nature of that process;
- (3) the date when the parties, or either of them, appeared before the court, either with or without a citation;
- (4) a description of the petition and any documents filed with the petition;
- (5) every adjournment, stating at whose request and to what time;
- (6) the date of the trial, stating whether the same was by a jury or by the judge;
- (7) the verdict of the jury, if any;
- (8) the judgment signed by the judge and the date the judgment was signed;;
- (9) all applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date;
- (10) the date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs and, when any execution is returned, the date of the return and the manner in which it was executed; and
- (11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

(b) *Other Records*. The judge must also keep copies of all documents filed; other dockets, books, and records as may be required by law or these rules, and a fee book in which all costs accruing in every suit commenced before the court are taxed.

(c) *Form of Records*. All records required to be kept under this rule may be maintained electronically.

**RULE 507.4. ISSUANCE OF WRITS**

Every writ from the Justice Courts must be in writing and be issued and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance.