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June 29, 1998

The Honorable Nathan Hecht
Justice, Supreme Court of Texas
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

RE: Court Rules Committee - Rules 749b, 749c and 751

Dear Justice Hecht:

Enclosed are proposed rule changes to Rules 749b, 749c and 751 which have been approved for submission to the Supreme Court by the Court Rules Committee.

Please have Bob Pemberton call me if there are any questions.

Sincerely,

By: 
O. C. Hamilton, Jr.

OCH/jf
Enclosures

STATE BAR OF TEXAS
COURT RULES COMMITTEE
REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE
TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

Rule 751. TRANSCRIPT

When an appeal has been perfected, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had in the case; and he shall immediately file the same, together with the original papers and any money in the court registry, including sums tendered pursuant to Rule 749b(1), with the clerk of the county court of the county in which the trial was had, or other court having jurisdiction of such appeal. The clerk shall docket the cause, and the trial shall be de novo.

The clerk shall immediately notify both appellant and the adverse party of the date of receipt of the transcript and the docket number of the cause. Such notice shall advise the defendant of the necessity for filing a written answer in the county court when the defendant has pleaded orally in the justice court.

The trial, as well as all hearings and motions, shall be entitled to precedence in the county court.

II. Proposed Rule:

Rule 751. TRANSCRIPT

When an appeal has been perfected, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had in the case; and he shall immediately file the same, together with the original papers and any money in the court registry, including sums tendered pursuant to Rule 749b(1) together with a statement of the amount of one rental period's rent and the due date of such rent, with the clerk of the county court of the county in which the trial was had, or other court having jurisdiction of such appeal. The clerk shall docket the cause, and the trial shall be de novo.

The clerk shall immediately notify both appellant and the adverse party of the date of receipt of the transcript and the docket number of the cause. Such notice shall advise the defendant of the necessity for filing a written answer in the county court when the defendant has pleaded orally in the justice court.

The trial, as well as all hearings and motions, shall be entitled to precedence in the county court.

III. Brief Statements of Reasons for Requested Changes and Advantages to be Served by Them.

These changes come at the request of one or more justices of the peace who have, for some time, wanted changes in the rules to correct abuses on the part of tenants in forcible detainer suits. If a tenant files an appeal bond and appeals the matter to county court, the amount of the bond is governed by Rule 752 and includes an amount to cover loss of rentals during the pendency of the appeal, and the landlord is protected.

If however, the tenant files a pauper's affidavit, the pauper's affidavit perfects the appeal when it is approved. The tenant has five days after judgment in which to file a pauper's affidavit and five days after filing the pauper's affidavit, to pay one rental period's rent into the registry of the court. Thus, the tenant gets ten days of free rent. If the pauper's affidavit is not contested, and therefore, becomes approved, the appeal is then perfected and the tenant may never pay a month's rental into the registry of the justice of the peace court. The tenant then remains in possession during the appeal process and may not pay any money into the registry of the county court. No writ of possession gets issued until the landlord hires a lawyer and files a motion with the county court to have the writ of possession issued. This allows the tenant at least ten and sometimes many more days of free rent, before the landlord can recover possession of the premises.

The changes proposed are designed to expedite restoring possession to the landlord, in a pauper's oath situation, if the tenant fails to pay one rental period's rent, both in the justice court and in the county court.

Rule 749c has been changed to provide that the pauper's oath appeal is not perfected until one rental period's rent is paid into the justice court registry.

Rule 749b requires such payment to be made at the time the pauper's affidavit is filed. This prevents the tenant from filing a pauper's affidavit and continuing to occupy the premises rent free, until the pauper's affidavit gets approved or disapproved. Upon failure of the tenant to pay the one rental period's rent into the registry of the court, the justice of the peace is authorized to issue a writ of possession upon payment of the appropriate fee for the issuance of such writ.

If the appeal gets perfected and the tenant fails to pay the rent as it becomes due under the rental agreement into the registry of the county court, then the landlord only has to notify the court in writing of such default. The county judge verifies the default with the county clerk and the court is then authorized to issue a writ of possession upon payment of the appropriate fees. This eliminates the possible need for a hearing before the county court and the cost and expenses the landlord must incur to hire a lawyer to represent the landlord in the county court.

Rule 751 has also been amended to provide that the transcript must contain a statement of the amount of one rental period's rent and the due date of such rent so that the county court can ascertain whether the tenant is in default in paying the rent as it becomes due in the county court.