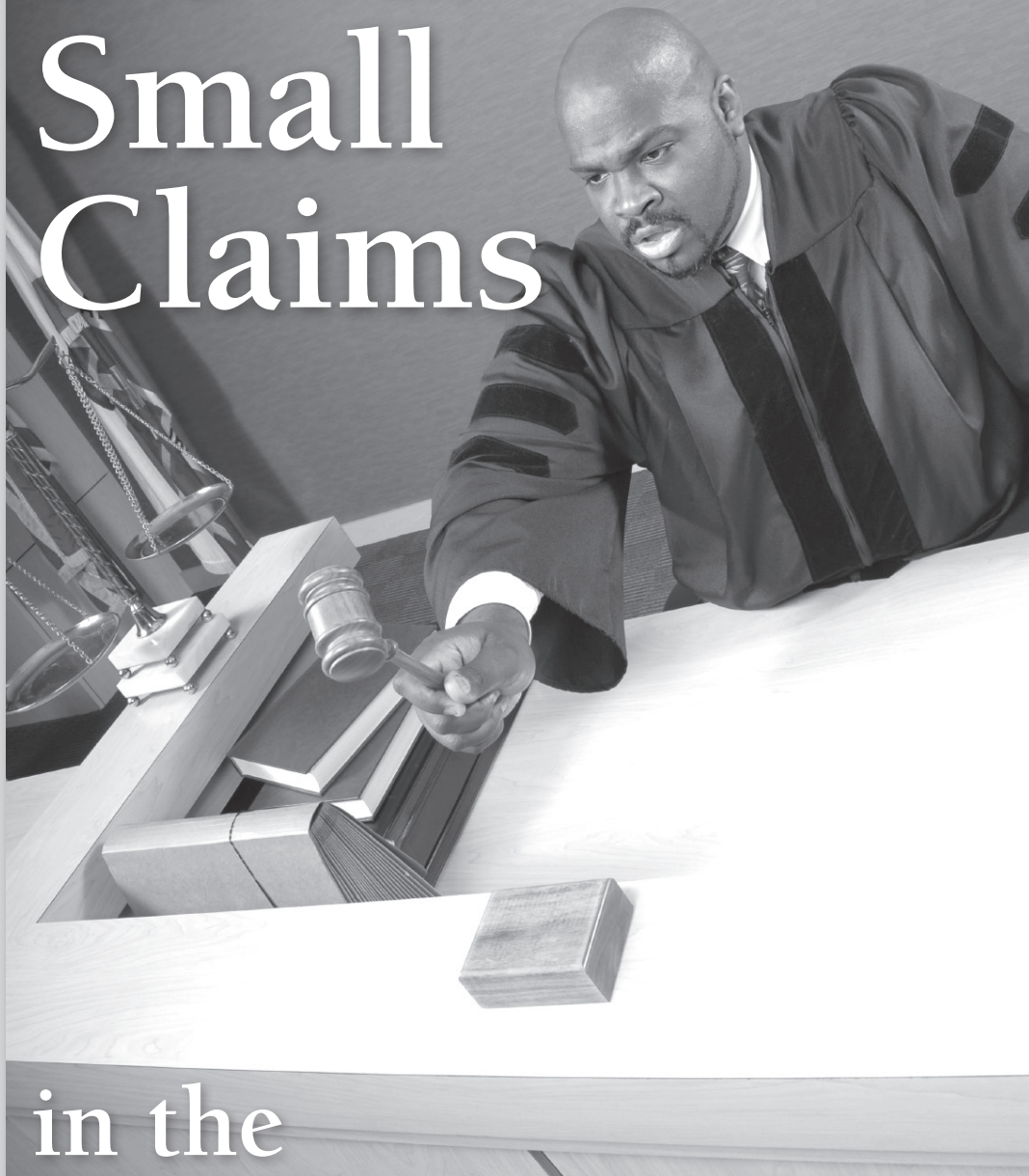


# Breaking Down Small Claims



in the

# New Justice Court

By Robert B. Johnson\*

# Today, Texas “small claims court” is a thing of the past.

## I. Introduction

On June 29, 2011, the Texas legislature abolished small claims court with the passing of House Bill 79<sup>1</sup>, and later House Bill 1263<sup>2</sup>, which directed the Texas Supreme Court to include all cases within justice court, define small claims cases, and promulgate special rules of civil procedure applicable to such cases.<sup>3</sup> In accordance with the legislative directive, the Texas Supreme Court created new rules governing justice court, specifically defining four types of cases and establishing Texas Rules of Civil Procedure 500 to 510. Today, Texas “small claims court” is a thing of the past.<sup>4</sup> The former branch of justice court has been completely absorbed into the court’s general jurisdiction. Justice court now hears all claims up to \$10,000. Cases previously heard in small claims court are now one of four types of cases filed in justice court.<sup>5</sup>

The move to a unified justice court system isn’t the only change effectuated by the legislature. All cases in justice court will now operate under a new, but uniform, set of rules that deviate substantially from the rules for small claims court formerly found in Texas Government Code Section 28 and the old justice court rules formerly found in Texas Rules of Civil Procedure 523 to 591. Although the new rules are designed to streamline practice within justice court, it is still especially important for practicing attorneys to be familiar with the intricate details of and dramatic changes to the rules.

Under the new law, justice court still has jurisdiction over all cases involving an amount in controversy of less than \$10,000. However, justices of the peace will no longer take a bifurcated approach to handling cases. Although the rules have been modified to provide more uniformity, certain types of cases will be subject to additional rules unique to the type of case. Small claims cases, debt claim cases, repair and remedy cases, and eviction cases will now be governed by the same general set of rules, with debt claim cases, repair and remedy cases, and eviction cases also operating under an additional set of rules unique to the case type.<sup>6</sup> From the introduction of non-lawyer representation to new deadlines and due dates, this is a new look justice court that may please some but aggravate others.

This article discusses the current position of small claims cases within justice court. As necessary, it includes references to the old rules governing small claims court found in the Texas Government Code.<sup>7</sup> Additionally, the old rules governing justice court will be used as a point of reference. The comparisons to both sections are important for having a complete understanding of the new rules, which now govern all cases heard by justices of the peace.

## II. Justice Court Overview

Historically, justices of the peace presided over both small claims and justice court but applied different rules to each.<sup>8</sup> Although differentiated by two unique sets of rules, both small claims court and justice court handled cases involving an amount in controversy of less than \$10,000. Relief in small claims court was limited to the recovery of money damages.<sup>9</sup> Because the courtroom was treated as informal and the rules of evidence did not apply, small claims court was popular among both attorneys and pro se plaintiffs and defendants as an economical court.<sup>10</sup> The real “People’s Court.” On the other hand, justice court was functionally similar to district or county court. Justice court handled other civil matters, debt collection, and eviction cases and justices formally applied the rules of procedure and evidence.

Following the implementation of the new rules, justice court will now hear four types of cases: (1) small claims cases, (2) debt

claim cases, (3) repair and remedy cases, and (4) eviction cases. A lawsuit for money damages, civil penalties, or property may be brought as a “small claims case.” An action to recover money owed from the extension of credit may be brought as a “debt claim case.” A tenant may enforce a landlord’s duty as a “repair and remedy case.” And, a landlord may bring a case to recover possession of real property as an “eviction case.” The justice of the peace will hear all cases and apply the same general rules to each, except that particular rules apply to debt cases, repair and remedy, and eviction actions as prescribed by Texas Rules of Civil Procedure 508 to 510.<sup>11</sup>

### A. Small Claims Case

Much like the old small claims court, a plaintiff may bring a cause of action to recover money damages and civil penalties in the new justice court.<sup>12</sup> Significantly, a plaintiff also may now bring an action to recover personal property, so long as the value of the property does not exceed \$10,000, including attorneys’ fees.<sup>13</sup> Texas Rules of Civil Procedure 500.3(a) states:

A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorneys fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.<sup>14</sup>

Ultimately, the new rule encapsulates the spirit of the old small claims court, while also allowing a plaintiff to now also retrieve personal property. Further, note that while the new rule excludes interest and court costs, it includes attorney fees. It is unclear whether this provision looks to the amount of fees requested at the time of filing, or those awarded. For instance, the rule fails to detail the consequence of filing a case requesting a small amount for attorney fees that later escalates beyond the jurisdictional amount. Accordingly, to avoid jurisdictional problems, the amount in controversy should be determined at the date of filing and should not be affected by subsequent increases in attorney fees.

### B. Debt Claim Case<sup>15</sup>

A financial institution, debt collector, or other person or entity primarily engaged in lending money may not bring a small claims case to collect on a debt. Instead, the person, entity, or institution must bring a debt claim case. The plaintiff must follow specific rules for proving up damages based on the type of debt. The rules distinguish credit accounts, personal and business loans, ongoing interest accounts, and assigned debt:

A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent any conflict between Rule 508 and the rest of Part V, Rule 508 applies.<sup>16</sup>

It is important to note that a debt claim lawsuit can’t be brought as a small claims case. Further, Texas Rules of Civil Procedure 508 has built in protections that require a plaintiff to prove up a case before a judgment is rendered, regardless of the defendant’s presence in court.<sup>17</sup> Due to some ambiguity in the rule, there is a possibility that some consumers may mistakenly file

a debt claim case instead of a small claims case. The implications of such actions are unclear, as a liberal reading of the rule may actually allow such an action. Ultimately, debt collection actions will have a new look under Texas Rules of Civil Procedure 500 to 508, especially with the changes to discovery.

### C. Repair and Remedy Case

Where a tenant wants to enforce the landlord's obligation to fix a condition that materially affects the health or safety of an ordinary tenant, the tenant may bring a repair and remedy case in justice court.<sup>18</sup> The law states:

A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.<sup>19</sup>

A repair and remedy case allows a residential tenant to enforce a landlord's duty to repair conditions that materially affect the health and safety of an ordinary tenant. The rules found in former Texas Rules of Civil Procedure 737 for representation and discovery have been replaced, and the rules governing citation and appeal are notably different.<sup>20</sup> Accordingly, Landlords, tenants, and attorneys representing both sides should carefully review the requirements set forth in Texas Rules of Civil Procedure 500 to 507 and 509.

### D. Eviction Case

When a tenant has breached a lease and the landlord has followed proper notice guidelines, a landlord may bring an eviction case in justice court. The new rule states:

An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rule 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

The rules governing evictions are different in many significant ways. For instance, the contents of the petition, appearance date, and rules governing default judgments have all changed.<sup>21</sup> Although this article won't focus on the changes, landlords and tenants will face a new and unique set of challenges as they become acclimated with the new rules governing eviction proceedings.

## III. Pre-Trial Procedure in Small Claims Cases

There are many significant changes to the rules governing small claims cases within justice court. The introduction of non-lawyer representation, an alteration to the due order of pleadings,



## One of the most interesting new rules allows for non-attorney assisted representation.

a written pleading requirement, some changes to important dates, and a longer time to appeal are just some of the changes that arise out of the new rules.

Superficially, small claims cases may not seem substantially different when compared to the previous guidelines. However, a closer examination of the details reveals rule changes that could lead attorneys astray if not closely studied and followed.

### A. Non-Lawyer Representation

Problems have always existed with self-representation in small claims court. There are numerous reasons a person may have trouble representing him or herself. For example, public speaking tops the list of worst human fears.<sup>22</sup> There also may be barriers based on language or physical limitations. Against a more refined or sophisticated opponent, especially an attorney, effective communication could make or break a case.

One of the most interesting new rules allows for non-attorney assisted representation.<sup>23</sup> The rule states, "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."<sup>24</sup> Be it a family member, neighbor, friend, associate, or casual acquaintance, the new rules allow a layperson to use non-lawyer representation, provided the judge approves and that person is not compensated. Ultimately, this could be a great benefit for persons who may otherwise struggle with communication. However, the rule is not without its problems.

The new rule does not define "good cause" or "compensated." Because "good cause" is not clearly defined, approval of non-lawyer representation is left to the discretion of the court. With no case law on the issue, it is impossible to predict what courts might consider. Likely functioning on a case-by-case basis, with no specific legal standard for determining "good cause," application of the law is likely to be inconsistent across courts, and even throughout cases in a single court. Rationalizing arguments about what is "just" and "reasonable" is subjective by nature, and leaves the door open for very broad interpretation. As a result, what may satisfy "good cause" in one court, or even one case, may not in another.

The new rule may also discourage individuals from seeking out an attorney, when one could be very helpful. This is especially troubling in fee-shifting cases that allow attorney's fees to be awarded against the defendant. Additionally, while attorneys are held to a standard of care and answer to the state bar, non-lawyers representing in justice court have no governing body or standard of care. To expect a non-lawyer to represent with the same effectiveness is to set extraordinarily high expectations. Ideally, this rule will be used to simply provide assistance with communication and presentation, and not as a substitute for legal representation.<sup>25</sup>

### B. Venue

According to Texas Rules of Civil Procedure 502.4(a), venue is defined pursuant to Texas Civil Practice and Remedies Code Rule 15.082. According to the rule, "a suit in justice court shall



be brought in the county and precinct in which one or more defendants reside.”<sup>26</sup> The apparently mandatory language of this rule, however, is modified by more specific language of the next section, which provides for four possible venues.<sup>27</sup> The rule states:

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.

Thus, it appears that small claims and debt cases may be brought in a number of venues, while eviction and repair cases must be brought where the defendant resides.<sup>28</sup>

### C. Motion to Transfer Venue

Contrary to the general due order of pleadings rule, a defendant may challenge venue up to 21 days after the answer is filed, if the plaintiff files a case in an improper venue.<sup>29</sup> This provision is an exception to the general rule, only available if a plaintiff files in an improper venue. The rule states:

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 the 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.<sup>30</sup>

While the rule is unique, it is limited to instances where a plaintiff has filed in an improper venue. Further, should more than 21 days pass after the answer is filed, the due order of pleadings remain, and the case will continue without regard for proper venue.

### D. Pleadings

Of the changes to justice court, the requirement for pleadings illustrates the more formalized nature of new rules. Pursuant to former Rule 525 of the Texas Rules of Civil Procedure, all pleadings, with certain exceptions, were required to be oral.<sup>31</sup> The old Texas Government Code rules governing small claims court were largely silent on pleadings.<sup>32</sup> This rule has been changed to require written, signed, and filed documents for pleadings and motions.<sup>33</sup>

Rule 525 stated, “The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket; provided that after a case has been appealed and is docketed in the county (or district) court all pleadings shall be reduced to writing.”<sup>34</sup> New Rule 502.1 of the Texas Rules of Civil Procedure replaces Rule 525 and dramatically alters the requirements for pleadings, calling for all pleadings, with certain exceptions, to be written. The new rule states:

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.<sup>35</sup>

Ultimately, the written pleading requirement may be another change to the rules that could impact the accessibility of justice court for the layperson because it creates an additional hurdle that a layperson may be unable to overcome. However, although statistics aren’t available, Rule 525 was a rule rarely used in practice. For practical purposes, this rule change may have very limited impact.

### E. Citation

Unlike the changes noted above, the changes to the rules governing citation are dramatic, noteworthy, and particularly important for practicing attorneys. From changes to the format of citation to a new answer due date, the additions and alterations within this section are considerable. Attorneys practicing in justice court should make a diligent effort to understand and adjust their practice accordingly.<sup>36</sup>

Under the new rule:

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.<sup>37</sup>

Unlike in Texas Rules of Civil Procedure 534(b)(11), new Texas Rules of Civil Procedure 501.1(b)(8) calls for the inclusion of the “name and address of an attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff.” This replaces the Texas Rules of Civil Procedure 534(b)(11) requirement that the citation “contain the address of the clerk.”

Other parts of Texas Rules of Civil Procedure 534(b) have been moved to the notice text requirement to create a more robust notice to the defendant. Furthermore, the new notice requirement includes the addition of the new answer due date. 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 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14<sup>th</sup> 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.<sup>38</sup>

Critical components of the new citation rules include the new answer due date, listing the attorney’s address instead of the clerk’s address, and the new notice text. With both subtle and significant changes to the rules governing citation, attorneys should take special care when filing suit to include the modified text, new format, and amended dates.

### F. Answer

As briefly discussed above, there are some significant changes to the rules governing the defendant’s answer. Attorneys should

take particular note of the new answer due date. While the old rule calculated the answer due date as the Monday next following 10 days, the new rule calls for the defendant to file an answer by the end of the 14<sup>th</sup> day after the defendant was served. As a result, half of the time the answer will be due sooner than under the previous rules, creating a situation in which a defendant could face default judgment. According to the new rule:



## **Instead of defined parameters, the judge will make the ultimate decision on whether to allow discovery.**

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.<sup>39</sup>

The rule makes it clear the defendant may file a general denial.

It states, "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."<sup>40</sup>

As noted above, unlike the old rules, the answer is due by the end of the 14<sup>th</sup> day after the defendant was served.<sup>41</sup> The rule states:

Unless the defendant is served by publication, the defendant's answer is due by the end of the 14<sup>th</sup> day after the day the defendant was served with the citation and petition, but

- (1) if the 14<sup>th</sup> 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 14<sup>th</sup> day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court's next business day.<sup>42</sup>

If an attorney remembers only one change to the Texas Rules of Civil Procedure for justice court, it should be the rules governing the defendant's answer. This change alone could leave an attorney facing default judgment for a procedural mistake. This change could open the door for more *de novo* appeals to county court, a result counterproductive to the intent of the law, and further burdening an already overworked court docket. Regardless, it is among the most important new rules.

### **G. Discovery**

The new rules incorporate many of the discovery practices long used in district and county court, but with some significant differences specifically geared to justice court.<sup>43</sup> Although small claims court allowed for "reasonable discovery" as permitted by a judge, justice court cases fell under a level 1 discovery control plan.<sup>44</sup> Now, instead of defined parameters, the judge will make the ultimate decision on whether to allow discovery, and the extent to which it is reasonable. For pre-trial discovery, the new justice court rules state:

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 discovery 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.<sup>45</sup>

Although justice court does not have specific

guidelines for the amount of discovery that can be taken in a given case, the judge now has great leeway to allow discovery deemed "reasonable and necessary."<sup>46</sup> This should allow the judge the ability to move a case forward, especially when only one side has an attorney.

### **H. Summary Disposition**

The summary disposition rule for justice court operates as a hybrid summary judgment, combining both fact and no evidence summary judgment.<sup>47</sup> Under the new rules, the time frame for a court's consideration of summary disposition has been shortened from at least 21 days to 14 days.<sup>48</sup> The new rule on summary disposition states:

(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. The judge may consider evidence offered by the parties at the hearing. By agreement of the parties, the judge may decide the motion and response without a hearing.

(d) Order. The judge 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.<sup>49</sup>

The affect of the new rules for summary disposition should be the same as under the old rules, except that the name has changed and that the motion for summary disposition may be considered after only 14 days, rather than 21.

### **IV. Trial & Post-Trial**

Following the changes to the Texas Rules of Civil Procedure and the implementation of the Rules of Evidence, plaintiffs and defendants face a much more formalized trial process. However, since the judge has the ability to develop a case, plaintiffs and

defendants conceivably have some guidance in presenting their cases without trampling the rules. Furthermore, the new rules call for a more practical approach to redress, allowing plaintiffs to not only recover monetary damages, but also retrieve personal property. Although plaintiffs and defendants face a more structured system when pursuing small claims cases at trial, they benefit from many pragmatic changes that give the court authority to more appropriately resolve disputes.

### A. Judge to Develop Case

Under the new rules, “[i]n 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.”<sup>50</sup> While this was already the case for small claims court, it is entirely new for the other types of cases.<sup>51</sup> While this can be helpful for pro se plaintiffs and defendants, it is also foreseeable that such activity may influence juries. For example, if a judge is asking a party questions in order to develop a case, it could be construed as the judge siding with, or disagreeing with the party. However, charging the judge with developing the case can speed up the process and allow for more effective docket management.

### B. Judgment

Throughout its history, small claims court has traditionally been a court where litigants could only recover monetary damages.<sup>52</sup> That is, if a plaintiff wanted a judgment for specific property, the plaintiff would have to file in another court.<sup>53</sup>

One of the major changes in the new justice court rules governing small claims cases is the ability to recover a specific article.<sup>54</sup> For example, if a defendant has possession of the plaintiff’s \$5,000 piano, the plaintiff may now bring a small claims case against the defendant to recover the piano. Under Texas Rules of Civil Procedure 505.1(e), the plaintiff can obtain a judgment for the return of the piano.<sup>55</sup> However, if the piano can’t be found, the plaintiff can recover the value as assessed by a judge or jury. Plaintiffs seeking the return of property, therefore, should also be prepared to prove the value of the property as part of their case.<sup>56</sup>

### C. Motion to Set Aside / Motion for New Trial / Appeal

Following trial, a party may want to file a motion to set aside, a motion for new trial, or an appeal.<sup>57</sup> Under the old rules, a party to a lawsuit had to act quickly to receive a new trial or request an appeal. Compared to the rules previously governing cases before the justices of the peace, a party to a lawsuit now has more time to request a new trial or file an appeal.

Under the old rule, a party had five days after rendition of judgment to file a motion to set aside a default judgment or a motion for new trial.<sup>58</sup> Pursuant to new Texas Rules of Civil Procedure 505.3, motions must now be filed within fourteen days of judgment.<sup>59</sup> If the judge doesn’t rule on the motion, it is automatically denied at 5:00 p.m. on the 21<sup>st</sup> day after judgment.<sup>60</sup>

Similarly, the rules governing appeal have also been extended. The former rules called for appeals to be filed within 10 days of judgment or order over-ruling a motion for new trial.<sup>61</sup> Now, a party may appeal by filing a bond, deposit, or statement of inability to pay within 21 days of judgment or denial of a motion to reinstate, motion to set aside, or motion for new trial.<sup>62</sup> As with the old rule, the case must be tried de novo in county court.<sup>63</sup>

### V. Conclusion

From non-lawyer representation to dramatically different dates and deadlines, Texas Rules of Civil Procedure 500 to 510 mark a significant departure from the previous rules governing

justice and small claims court. While justice court maintains jurisdiction over claims of \$10,000 or less, small claims cases in justice court are now much more formal. The days of an informal small claims court are gone, replaced by a system that much more closely resembles county or district court, but with an entirely new set of deadlines and procedures.

A comparison reading of the rules governing small claims cases paints the picture of a more complex system. While a reader could examine the former rules governing small claims court in a matter of minutes, the new rules are quite expansive and require much more time to read and understand. It will take time for litigants to learn the new rules and judges to determine how to exercise the broad discretion provided by the new rules.

The true ramifications of the new rules governing justice court may not be known for quite some time. That is, the justice court system may achieve long-term efficiencies under the new rules, but still deal with significant short-term inefficiencies to reach that goal. It will take time for litigants to learn the new rules, courts will need to restructure an entire operation, attorneys may lose business to non-lawyer alternatives, and county courts will bear the burden of a swollen docket from de novo appeals. However, the hope is that by sacrificing some short-term inefficiency, the justice court system will ultimately provide the public with a better outlet to appropriately resolve disputes.

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<sup>1</sup> Tex. H.B. 79, 82<sup>nd</sup> Leg., 1<sup>st</sup> C.S. (2011).

<sup>2</sup> Tex. H.B. 1263, 83<sup>rd</sup> Leg., R.S. (2013).

<sup>3</sup> Previously, justice courts operated under a combination of rules, some of which were specific to justice court and others taken from county and district court. *See* Tex. R. Civ. P. 523 (West 1985, repealed 2013); *see generally* Tex. R. Civ. P. 523-91 (West 1985, repealed 2013).

<sup>4</sup> *See* Tex. Sup. Ct. Misc. Docket No. 13-9049, 76 Tex. B.J. 440, available at [http://www.texasbar.com/AM/Template.cfm?Section=Texas\\_Bar\\_Journal&Template=/CM/ContentDisplay.cfm&ContentID=22244](http://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=22244) (*repealing* Texas Rules of Civil Procedure 523-91).

<sup>5</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1815 [hereinafter “former Section 28.002”], *repealed by* Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225. Under former section 28.002 (repealed 2013), each justice of the peace also served as the judge of the small claims court of the same precinct and place.

<sup>6</sup> All cases are governed by Texas Rules of Civil Procedure 500 to 507. *See* Tex. R. Civ. P. 500-07. Additional rules for debt claim cases, repair and remedy cases, and eviction cases are available in Texas Rules of Civil Procedure 508, 509, and 510, respectively. *See* Tex. R. Civ. P. 508-10.

<sup>7</sup> *See* Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1815, repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225, *et seq.*

<sup>8</sup> *See* Tex. R. Civ. P. 523-91 (West 1985, repealed 2013); Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1815, *repealed by* Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225, *et seq.*

<sup>9</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1816, *amended by* Act of May 15, 1989, 71st Leg., R.S., Ch. 802, § 10, 1989 Tex. Gen. Laws 3664, 3666 [hereinafter “former Section 28.033”], *repealed by* Act of June 29, 2011, R.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225.

<sup>10</sup> *Id.*



<sup>11</sup> See generally Tex. R. Civ. P. 500-10.

<sup>12</sup> Tex. R. Civ. P. 500.3(a).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The discussion of small claims cases is the primary focus of this article. As such, discussion of debt cases, repair and remedy cases, and eviction cases will be limited throughout this article. However, they are mentioned to provide context.

<sup>16</sup> Tex. R. Civ. P. 500.3(b).

<sup>17</sup> See generally Tex. R. Civ. P. 508.

<sup>18</sup> Tex. Prop. Code Ann. § 92.056 (Vernon 2008).

<sup>19</sup> Tex. R. Civ. P. 500.3(c).

<sup>20</sup> Compare Tex. R. Civ. P. 737.5 (West 1985, repealed 2013) with Tex. R. Civ. P. 500.4(c) (regarding representation); Compare Tex. R. Civ. P. 737.7 (West 1985, repealed 2013) with Tex. R. Civ. P. 500.9 (regarding discovery); See Tex. R. Civ. P. 509.4 (regarding citation); Tex. R. Civ. P. 509.8 (regarding appeal).

<sup>21</sup> Tex. R. Civ. P. 510.3(a); Tex. R. Civ. P. 510.4(a); Tex. R. Civ. P. 510.6(c).

<sup>22</sup> Conrad Teitell, *Fearless Public Speaking*, 74 A.B.A.J. 94 (1988).

<sup>23</sup> Tex. R. Civ. P. 500.4(c).

<sup>24</sup> *Id.* Note that prior to the new rules, non-lawyers could represent defendants in eviction cases under Texas Rules of Civil Procedure 747a. See Tex. R. Civ. P. 747a.

<sup>25</sup> There may even be an opportunity for an industry to arise that sells “non-attorney representation” without encroaching on the rule prohibiting compensation. For example, a business could hypothetically sell other goods or services, and offer “representation” for free. However, the compensation rule is undefined and inherently very broad. As such, judges’ discretion and local rules may prevent such activities from occurring. Compare Ronald J. Mann & Jim Hawkins, *Just Until Payday*, 54 UCLA L. REV. 855 (2007) (“For example, payday lenders in some cases have avoided fee ceilings by selling insurance with the credit product, enabling the lenders to comply with rate ceilings while generating revenue through products that most consumers probably do not want. Another similar practice is to force consumers to purchase advertising space (for sayings such as “Go Cowboys!”) in the lender’s newsletter or to purchase gift certificates for worthless products in catalogs.”)

<sup>26</sup> Tex. Civ. Prac. & Rem. Code Ann. § 15.082 (West 1985). Note that this rule is substantially the same as the old venue rule for small claims court found in former rule 28.011 (repealed 2013). See Act of Apr. 30, 1987, 70th Leg., R.S., Ch. 148, § 2.31, 1987 Tex. Gen. Laws 534, 552 [hereinafter “former Section 28.011”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225.

<sup>27</sup> Compare Tex. Civ. Prac. & Rem. Code Ann. § 15.082 (West 1985) with Tex. R. Civ. P. 502.4(b).

<sup>28</sup> With no similar contradiction for eviction and repair and deduct cases, appropriate venue is only where the defendant resides. Note the potential problems that may arise if a defendant doesn’t live in the same area as a rental property under a repair case.

<sup>29</sup> Compare Tex. R. Civ. P. 86(1) and Tex. R. Civ. P. 120a with Tex. R. Civ. P. 502.4(d).

<sup>30</sup> Tex. R. Civ. P. 502.4(d).

<sup>31</sup> Tex. R. Civ. P. 525 (West 1985, repealed 2013).

<sup>32</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1816, amended by Act of May 15, 1989 71st Leg., R.S., Ch. 802, §5, 1989 Tex. Gen. Laws 3664, 3665 [hereinafter “former Section 28.012”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225 (By providing the sworn statement, this arguably constitutes the only provision of former Section 28 that concerned pleadings).

<sup>33</sup> Compare Tex. R. Civ. P. 525 (West 1985, repealed 2013) with Tex. R. Civ. P. 502.1.

<sup>34</sup> Tex. R. Civ. P. 525 (West 1985, repealed 2013).

<sup>35</sup> Tex. R. Civ. P. 502.1.

<sup>36</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1816, amended by Act of May 15, 1989 71st Leg., R.S., Ch. 802, §7, 1989 Tex. Gen. Laws 3664, 3665, [hereinafter “former Section 28.013”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225 (According to Section 28.013(a), citation rules for small claims court were governed by the guidelines set forth in Texas Rules of Civil Procedure 534. See Tex. R. Civ. P. 534 (West 1985, repealed 2013).

<sup>37</sup> Tex. R. Civ. P. 501.1(b).

<sup>38</sup> Tex. R. Civ. P. 501.1(c).

<sup>39</sup> Tex. R. Civ. P. 502.5(a).

<sup>40</sup> Tex. R. Civ. P. 502.5(b).

<sup>41</sup> Tex. R. Civ. P. 502.5(d).

<sup>42</sup> *Id.*

<sup>43</sup> Tex. R. Civ. P. 500.9. In county and district court, discovery limitations are defined by the discovery level, which give specific guidance on the amount of discovery that can be taken. See Tex. R. Civ. P. 190.

<sup>44</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1816, amended by Act of May 15, 1989, 71st Leg., R.S., Ch. 802, § 10, 1989 Tex. Gen. Laws 3664, 3666 [hereinafter “former Section 28.033”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225. Note that the old justice court rules were silent as to discovery. As such, Texas Rules of Civil Procedure 523 referred to the rules governing county and district court. Since all cases in justice court fell under the required \$50,000 threshold, discovery control plan 1 applied. See Tex. R. Civ. P. 523 (West 1985, repealed 2013); Tex. R. Civ. P. 190.

<sup>45</sup> Tex. R. Civ. P. 500.9(a).

<sup>46</sup> *Id.* Note that an attorney who serves discovery under the old rules could be subject to sanctions or other discipline.

<sup>47</sup> Compare Tex. R. Civ. P. 166a with Tex. R. Civ. P. 503.2.

<sup>48</sup> Tex. R. Civ. P. 503.2(c). Under Texas Rules of Civil Procedure 166a(c), “the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing.” See Tex. R. Civ. P. 166a(c).

<sup>49</sup> Tex. R. Civ. P. 503.2(a)-(d).

<sup>50</sup> Tex. R. Civ. P. 500.6.

<sup>51</sup> Act of May 17, 1985, 69th Leg., R.S., Ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1816 [hereinafter “former Section 28.034”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225.

<sup>52</sup> Act of May 22, 1991, 72nd Leg., R.S., Ch. 776, § 4, 1991 Tex. Gen. Laws 2767, 2768, amended by Act of May 16, 2007, 80th Leg., R.S., Ch. 383, § 3, 2007 Tex. Gen. Laws 685, 686, [hereinafter “former Section 28.003”], repealed by Act of June 29, 2011, 1st C.S., Ch. 3, § 5.06, 2011 Tex. Gen. Laws 5206, 5225.

<sup>53</sup> Old justice court rules allowed for the recovery of specific property, but small claims court rules did not. See Tex. R. Civ. P. 560 (West 1985, repealed 2013).

<sup>54</sup> Tex. R. Civ. P. 505.1(e).

<sup>55</sup> Tex. R. Civ. P. 505.1(e).

<sup>56</sup> Without evidence proving up the value of the article, a judge or jury could have difficulty assigning appropriate damages. As such, the plaintiff should go to court prepared to prove up the value of the specific article using receipts, a survey or market prices for the same, or similar article, or an affidavit from an expert.

<sup>57</sup> Tex. R. Civ. P. 505.3; Tex. R. Civ. P. 506.1.

<sup>58</sup> Tex. R. Civ. P. 569 (West 1985, repealed 2013).

<sup>59</sup> Tex. R. Civ. P. 505.3.

<sup>60</sup> Tex. R. Civ. P. 505.3(e).

<sup>61</sup> Tex. R. Civ. P. 571 (West 1985, repealed 2013).

<sup>62</sup> Tex. R. Civ. P. 506.1.

<sup>63</sup> Compare Tex. R. Civ. P. 574b (West 1985, repealed 2013) with Tex. R. Civ. P. 506.3.