

'TEXAS RULES OF CIVIL PROCEDURE

PART V - RULES OF PRACTICE IN JUSTICE COURTS

SECTION 1. GENERAL

RULE 523. DISTRICT COURT RULES GOVERN

All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules.

SECTION 2. INSTITUTION OF SUIT

RULE 524. DOCKET

Each justice shall keep a civil docket in which he shall enter:

- (a) The title of all suits commenced before him.
- (b) The time when the first process was issued against the defendant, when returnable, and the nature thereof.
- (c) The time when the parties, or either of them, appeared before him, either with or without a citation.
- (d) A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.
- (e) Every adjournment, stating at whose request and to what time.
- (f) The time when the trial was had, stating whether the same was by a jury or by the justice.
- (g) The verdict of the jury, if any.
- (h) The judgment signed by the justice and the time of signing same.
- (i) All applications for setting aside judgments or granting new trials and the order of the justice thereon, with the date thereof.
- (j) The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such

return on said docket, with the manner in which it was executed.

- (k) All stays and appeals that may be taken, and the time when taken, the amount of the bond and the names of the sureties.
- (l) He shall also keep such other dockets, books and records as may be required by law or these rules, and shall keep a fee book in which shall be taxed all costs accruing in every suit commenced before him.

RULE 525. ORAL PLEADINGS

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.

RULE 526. SWORN PLEADINGS

An answer or other pleading setting up any of the matters specified in Rule 93 shall be in writing and signed by the party or his attorney and verified by affidavit.

RULE 527. MOTION TO TRANSFER

A motion to transfer filed in the justice court shall contain the requisites prescribed in Rule 86; and in addition shall set forth the precinct to which transfer is sought.

RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

RULE 529. "NEAREST JUSTICE" DEFINED

By the term "nearest justice," as used in this section, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

RULE 530. BY CONSENT

The venue may also be changed to the court of any other justice of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

RULE 531. ORDER OF TRANSFER

The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court at its next ensuing term.

RULE 532. TRANSCRIPT

When such order of transfer is made, the justice who made the order shall immediately make out a true and correct transcript of all the entries made on his docket in the cause, certify thereto officially, and send it, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

RULE 533. REQUISITES OF PROCESS

Every writ or process from the justice courts shall be issued by the justice, shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, 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 some regular term of court, and have noted thereon the date of its issuance.

RULE 534. ISSUANCE AND FORM OF CITATION

- (a) **Issuance.** When a claim or demand is lodged with a justice for suit, the clerk when requested shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition if any is filed. Upon request, separate or additional citations shall be issued by the clerk.
- (b) **Form.** The citation shall (1) be styled "The State of Texas", (2) be signed by the clerk under seal of court or by the Justice of the Peace, (3) contain name and location of the court, (4) show date of filing of the petition if any is filed, (5) show date of issuance of citation, (6) show file number and names of parties, (7) state the nature of plaintiff's demand, (8) be directed to the defendant, (9) show name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules require defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, and

(12) shall notify defendant that in case of failure of defendant to file an answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct defendant to file a written answer to plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of ten days after the date of service thereof. The requirement of subsections 10 and 12 of this rule shall be in the form set forth in section c of this rule.

- (c) **Notice.** The citation shall include the following notice to defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of ten days after you were served this citation and petition, a default judgment may be taken against you."
- (d) **Copies.** The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies.

RULE 535. ANSWER FILED

Where citation has been personally served at least ten days before appearance day, exclusive of the day of service and of return, the answer of the defendant shall be filed at or before ten o'clock a.m. on such day. Where citation has been served by publication, and the first publication has been made at least twenty-eight days before appearance day, the answer of the defendant shall be filed at or before ten o'clock a.m. on the first day of the first term which shall convene after the expiration of forty-two days from the date of issuance of such citation.

RULE 536. WHO MAY SERVE AND METHOD OF SERVICE

- (a) Process - including citation and other notices, writs, orders, and other papers issued by the court - may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, 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. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.
- (b) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by this rule by:

- (1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or
 - (2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto if any is filed.
- (c) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service:
- (1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or
 - (2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

**RULE 536a. DUTY OF OFFICER OF PERSON RECEIVING
AND RETURN OF CITATION**

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall 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 he can ascertain.

Where citation is executed by an alternative method as authorized by Rule 536, proof of service shall be made in the manner ordered by the court.

No default judgment shall be granted in any cause until the citation with proof of service as provided by this rule, or as ordered by the court in the event citation is executed under Rule 536, shall have been on file with the clerk of the court three (3) days, exclusive of the day of filing and the day of judgment.

SECTION 3. APPEARANCE AND TRIAL

RULE 537. APPEARANCE DAY

If a defendant who has been duly cited is required by the citation to answer on a day which is in term time, such day is appearance day as to him. If he is so required to answer on a day in vacation, the first day of the next term is appearance day as to him. Where service of citation has been had by publication, the first day of the term of court which convenes after the expiration of 42 days from the date of issuance of the citation shall be appearance day.

RULE 538. IF DEFENDANT FAILS TO APPEAR

If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a.m. on appearance day, the justice shall proceed in the following manner:

- (a) If the plaintiff's claim to be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.
- (b) If the plaintiff's claim is not so liquidated, and the plaintiff appears in person or by attorney, the justice shall proceed to hear the testimony; and, if it appears therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant.

RULE 539. APPEARANCE NOTED

If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

RULE 540. IF NO DEMAND FOR JURY

If neither party shall demand and be entitled to a jury, the justice shall try the cause without a jury.

RULE 541. CONTINUANCE

The justice for good cause shown, supported by affidavit, may continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term.

RULE 542. CALL OF NON-JURY DOCKET

The docket of cases to be tried by the justice shall be called regularly, and the cases shall be tried when called unless continued or postponed.

RULE 543. DISMISSAL

If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice, on motion of the defendant, may dismiss the suit.

RULE 544. JURY TRIAL DEMANDED

Either party shall be entitled to a trial by jury. Except in forcible entry and detainer cases, the party desiring a jury shall before the case is called for trial not less than one day in advance of the date set for trial of the cause make a demand for a jury, and also deposit a jury fee of five dollars, which shall be noted on the docket; and the case shall be set down as a jury case.

RULE 545. JURY TRIAL DAY

The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

RULE 546. CALL OF JURY DOCKET

When the required number of jurors is present, the jury cases set for trial shall be called.

RULE 547. CHALLENGE TO THE ARRAY

When the parties to a jury case have announced themselves for trial, either party may challenge the array of jurors. The cause and the manner of making such challenge, the decision thereof and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

RULE 548. DRAWING JURY

If no challenge to the array is made, the justice shall write the names of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys.

RULE 549. CHALLENGE FOR CAUSE

If either party desires to challenge any juror for cause, such challenge shall now be made. The causes of such challenge, and the manner of making it and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

RULE 550. PEREMPTORY CHALLENGE

When a juror has been challenged for cause, and the challenge has been sustained, his name shall be erased from the slips furnished to the parties; and, if as many as twelve names remain on such slips, the parties may make their peremptory challenges governed by the rules prescribed for the district and county courts. Each party shall be entitled to three peremptory challenges.

RULE 551. THE JURY

When the peremptory challenges are made, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, and these shall be the jury to try the case.

RULE 552. IF JURY IS INCOMPLETE

If the jury by peremptory challenges is left incomplete, the justice shall direct the sheriff or constable to summon others to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance.

RULE 553. JURY SWORN

When the jury has been selected, such of them as have not been previously sworn for that trial of civil cases shall be sworn by the justice. The form of the oath shall be in substance as follows: "You and each of you do solemnly swear that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and the evidence. So help you God."

RULE 554. JUSTICE SHALL NOT CHARGE JURY

The justice of the peace shall not charge the jury in any cause tried in his court before a jury.

RULE 555. VERDICT

When the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof.

SECTION 4. JUDGMENT

RULE 556. JUDGMENT UPON VERDICT

Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

RULE 557. CASE TRIED BY JUSTICE

When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket and render judgment thereon.

RULE 558. JUDGMENT

The judgment shall be recorded at length in the justice's docket, and shall be signed by the justice. It shall clearly state the determination of the rights of the parties in the subject matter in controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

RULE 559. COSTS

The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.

RULE 560. JUDGMENT FOR SPECIFIC ARTICLES

Where the judgment is for the recovery of specific articles, their value shall be separately assessed, and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed with interest thereon at the rate of six per cent from the date of judgment.

RULE 561. TO ENFORCE JUDGMENT

The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff

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, fine and imprisonment.

RULE 562. NO JUDGMENT WITHOUT CITATION

No judgment, other than judgment by confession, shall be rendered by the justice of the peace against any party who has not entered an appearance or accepted service, unless such party has been duly cited.

RULE 563. CONFESSION OF JUDGMENT

Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice court; and such judgment shall be entered on the justice's docket as in other cases; but, in such cases, the plaintiff, his agent or attorney shall make and file an affidavit signed by him, to the justness of his claim.

RULE 564. WARRANT OF ATTORNEY

Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be in writing and filed with the justice and noted in the judgment.

RULE 565. RULES GOVERNING

The rules governing the district and county courts in relation to judgment and confession thereof, shall also apply to justice courts, insofar as they do not conflict with some provision of the rules applicable to justice courts.

SECTION 5. NEW TRIAL

RULE 566. JUDGMENTS BY DEFAULT

A justice may within ten days after a judgment by default or of dismissal is signed, set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof.

RULE 567. NEW TRIALS

The justice, within ten days after the rendition of a judgment in any suit tried before him, may grant a new trial therein on motion in writing showing that justice has not been done in the trial of the cause.

If the grounds of the motion be other than that the verdict or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit.

RULE 569. NOTICE

All motions to set aside a judgment or to grant a new trial, under the two preceding rules, shall be made within five days after the rendition of judgment and one day's notice thereof shall be given the opposite party or his attorney.

RULE 570. BUT ONE NEW TRIAL

But one new trial may be granted to either party.

SECTION 6. APPEAL

RULE 571. APPEAL BOND

The party appealing, his agent or attorney, shall within ten days from the date a judgment or order overruling motion for new trial is signed, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal; or if the appeal is by the plaintiff by reason of judgment denying in whole or in part his claim, he shall file with the justice a bond in the same ten-day period, payable to the appellee, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the costs incurred in the justice court and estimated costs in the county court, less such sums as may have been paid by the plaintiff on the costs, conditioned that he shall prosecute his appeal to effect and shall pay off and satisfy such costs if judgment or costs be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed. Within five days following the filing of such appeal bond, the party appealing shall give notice as provided in Rule 21a of the filing of such bond to all parties to the suit who have not filed such bond. No judgment shall be taken by default against any party in the court to which the cause has been appealed without first showing that this rule has been complied with. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same.

RULE 572. AFFIDAVIT OF INABILITY

Where appellant is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment or order overruling motion for new trial is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. If the justice of the peace denies the right of appeal, appellant may, within five days thereafter, bring the matter before the county judge of the county for final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents and papers pertaining thereto. The county judge shall set a day for hearing, not later than ten days, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules.

RULE 573. APPEAL PERFECTED

When the bond, or the affidavit in lieu thereof, provided for in the rules applicable to justice courts, has been filed and the previous requirements have been complied with, the appeal shall be held to be perfected.

RULE 574. TRANSCRIPT

Whenever an appeal has been perfected from the justice court, the justice who made the order, or his successor, shall immediately make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and immediately send it together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk of the county court of his county, or other court having jurisdiction.

RULE 574a. NEW MATTER MAY BE PLEADED

Either party may plead any new matter in the county or district court which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff, nor shall any set-off or counterclaim be set up by the defendant which was not pleaded in the court below. The pleading thereof shall be in writing and filed in the cause before the parties have announced ready for trial.

RULE 574b. TRIAL DE NOVO

The cause shall be tried de novo in the county or district court; and judgment shall be rendered.

SECTION 7. CERTIORARI

RULE 575. ORDER FOR WRIT

The writ of certiorari shall be issued by order of the county court or the judge thereof (or district court or judge thereof, if jurisdiction is transferred to the district court) as provided in these rules.

RULE 576. REQUISITES OF WRIT

The writ shall command the justice to immediately make and certify a copy of the entries in the cause on his docket, and immediately transmit the same, with the papers in his possession and a certified copy of the bill of costs to the proper court.

RULE 577. AFFIDAVIT OF SUFFICIENT CAUSE

The writ shall not be granted unless the applicant or some person for him having knowledge of the facts, shall make affidavit setting forth sufficient cause to entitle him thereto.

RULE 578. APPLICATION FOR CERTIORARI

To constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect.

RULE 579. WITHIN THAT TIME GRANTED

Such writ shall not be granted after ninety days from the time the final judgment is signed.

RULE 580. BOND WITH SURETIES REQUIRED

The writ shall not be issued unless the applicant shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him.

RULE 581. BOND, AFFIDAVIT AND ORDER

The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

RULE 582. WRIT TO ISSUE INSTANTER

As soon as such affidavit, order of the judge, and bond, shall have been filed, the clerk shall issue a writ of certiorari.

RULE 583. JUSTICE SHALL STAY PROCEEDINGS

Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ.

RULE 584. CITATION AS IN OTHER CASES

Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party adversely interested.

RULE 585. CAUSE DOCKETED

The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

RULE 586. MOTION TO DISMISS

Within thirty 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.

RULE 587. AMENDMENT OF BOND OR OATH

The affidavit or bond may be amended in the discretion of the court in which it is filed.

RULE 588. JUDGMENT OF DISMISSAL

If the certiorari be dismissed, the judgment shall direct the justice to proceed with the execution of

the judgment below.

RULE 589. PLEADING

After the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, have been filed in the county (or district) court, all pleadings in the cause which are not already written shall be reduced to writing.

RULE 590. NEW MATTER MAY BE PLEADED

Either party may plead any new matter in the county or district court which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff, nor shall any set-off or counterclaim be set up by the defendant which was not pleaded in the court below. The pleading thereof shall be in writing and filed in the cause before the parties have announced ready for trial.

RULE 591. TRIAL DE NOVO

The cause shall be tried de novo in the county or district court; and judgment shall be rendered as in cases appealed from justice courts.