



Trial De Novo: The Justice Court Appeal

Thea D. Whalen

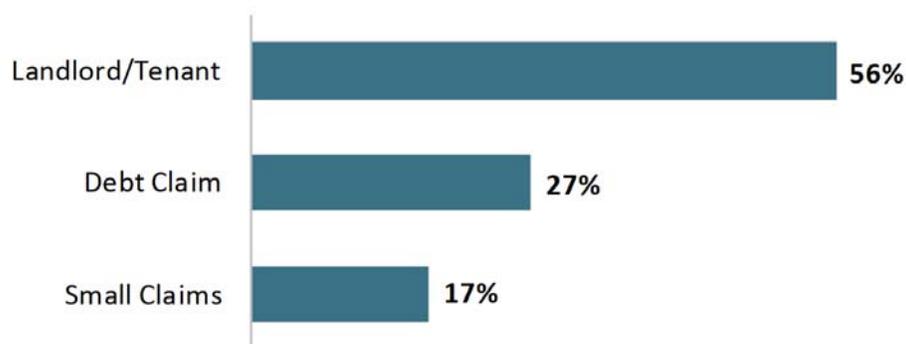
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Focus on Evictions

Government Code Sec. 27.031. JURISDICTION. (a) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of:

(2) cases of forcible entry and detainer;

Civil Cases



TEXAS JUDICIARY • FY 2016 ANNUAL STATISTICAL REPORT

Why Appeal the Case?

- Dismissed for lack of jurisdiction
 - Must be in the precinct and county in which property is located
- Default judgment
 - Service is different from a typical civil suit
- Attempting to stay in the home longer
 - Rules to address that issue

Perfected?

- Within 5 days of the signed judgment, must post:
 - Surety Bond
 - Cash Deposit
 - Statement of Inability to Afford Payment of Court Costs

○ TRCP 510.9(a) & (f)

Notice of Appeal

- Statement of Inability to Afford Payment of Court Costs (SIAPCC)
 - Court must provide notice to all other parties by the next business day
- Bond or Cash
 - Appellant must serve written notice of the appeal on all other parties within 5 days
 - via Rule 501.4 (informal service)

○ TRCP 510.9 (d)

Methods to appeal & contests in County Court

SIAPCC & surety bond posting

Stamt. of Inability to Afford Court Costs

- Why do we have it?
 - Sitting out appeal rent free

Stamt. of Inability to Afford Court Costs

- Must be sworn to before a notary or made under penalty of perjury
- Must use the Supreme Court form
- TRCP 510.9 (c) & 502.3 (a)&(b)

Plaintiff: _____ In the (check one):
(Print first and last name of the person filing the lawsuit)

_____ (Court Number)

And

Defendant: _____
(Print first and last name of the person being sued) (County)

District Court
 County Court at Law
 County Court
 Justice Court

Statement of Inability to Afford Payment of Court Costs

WARNING: Read Texas Rules of Civil Procedure 145 and 502.3 before filling out this form.

Part 1: Your Information

Your full name: _____

Your date of birth: _____

Your address (if the place you receive mail is different from the place you actually live, list both addresses):

Your telephone number: _____

Part 2: Representation By Legal-Aid Attorney

Only fill out this section if (a) you are being represented in this case by an attorney who works for a legal-aid provider or who received your case through a legal-aid provider, or (b) you applied for representation through a legal-aid provider and were determined to be financially eligible, but the legal-aid provider was unable to take your case. If you are not being represented in this case by a legal-aid attorney or have not sought representation through a legal-aid provider, skip to Part 3.

Check the box that applies. Attach the certificate that the legal-aid provider gave you and label it "Exhibit: Legal Aid Certificate."

Contest: w/in 5 days of notice

- Cannot contest if have legal aid
- Party or the Court may contest
- If claiming government assistance, can only contest truthfulness of that assistance

○ TRCP 510.9 (c)(1)&(2) & 502.3 (a)&(b)

Contest: Hearing

- Judge must hold a hearing if contested
- Burden on party who filed statement to prove inability to afford costs
- If judge finds party can afford costs, must make written order of findings
- Party must then post bond within 1 day or appeal

○ TRCP 502.3 (d)

Contest: Appeal

- Filed within 5 days of order
- Forward all relevant documents to County Court
- County court must hear within 5 days
- De novo
- TRCP 510.9 (c)(3)

Contest: Appeal

County court must hear
within 5 days

- TRCP 510.9 (c)(3)

Contest: Outcome

- County court agrees with inability – direct justice court to forward remainder of case and case is appealed
- If County court disagrees with inability – appellant must post bond or cash within 1 business day

○ TRCP 510.9 (c)(3)&(4)

Non-Payment of Rent Appeal: Surety

- Why do we have this?
 - Tenants evading statement of inability to afford payment of court costs
- Does not apply to corporate surety

Sec. 24.00511 & 24.00512(a) Property Code

Non-Payment of Rent Appeal: Surety - Judgment

- In an eviction suit for non-payment of rent, the amount of the appeal bond must be stated in the court's judgment.
- Appeal bonds in eviction suits for nonpayment of rent must include the surety's contact information, including:
 - Address
 - Phone number
 - Email address (if any)

Sec. 24.00511, Property Code

Non-Payment of Rent Appeals: Surety - Contest

- When a judgment in an eviction suit for nonpayment of rent is appealed, the appellee may contest:
 - 1) the appeal bond amount;
 - 2) the form of the appeal bond; or
 - 3) the financial ability of a surety to pay the appeal bond.
- Within 5 days of bond filed
- The justice court shall notify the other party and the surety of the contest.

Sec. 24.00512 (b), Property Code

Non-Payment of Rent Appeals: Surety - Hearing

- A hearing shall be held "not later than the fifth day after the date the contest is filed."
- Amount of the bond or form of the bond:
 - appellee has the burden of proof
- Financial ability of the surety to pay the bond:
 - appellant has the burden of proof
- **Surety must appear at hearing; failure to appear constitutes "prima facie evidence that the bond should be disapproved."**

Sec. 24.00512 (c)&(d), Property Code

Non-Payment of Rent Appeals: Surety - Outcome

- If the appeal bond is approved by the justice court:
 - The appeal in the county court goes forward.
- If the appeal bond is disapproved, must within 5 days:
 - Make a cash deposit
 - File a SIAPCC, or
 - Appeal to county court
- If not, judgment is final. Writ of possession may issue.

Sec. 24.00512(d)&(e) Property Code

Non-Payment of Rent Appeals: Surety - Appeal

- If appealed to county court:
 - All relevant documents go to county court;
 - County court notifies the parties and the surety of the hearing time and date
 - County court shall hold a hearing within 5 days;
 - The contest shall be de novo.

Sec. 24.00512 (f), Property Code

Non-Payment of Rent Appeals: Surety - Appeal

- Failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal.
- A writ of possession may not be issued before the county court issues a final decision on the appeal bond.

Sec. 24.00512 (f), Property Code

Non-Payment of Rent Appeals: Surety – Appeal Outcome

- After the contest is heard in county court, the county clerk shall transmit the transcript and records of the case back to the justice court.

Sec. 24.00512 (g), Property Code

Non-Payment of Rent Appeals: Surety – Appeal Outcome

- County court disapproves the appeal bond, the party has 5 days to :
 - Cash deposit or file a SIAPCC
- If not timely made or filed, the judgment of the justice court becomes final and a writ of possession and may issue
- County court approves the appeal bond, shall transmit the transcript and other records of the case to the justice court, and the justice court shall proceed as if the appeal bond was originally approved.

Sec. 24.00512 (g), Property Code

Payment of Rent During Appeal

Generally

- If an appeal is based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment.
- This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.
- Sec. 24.0053, Property Code

How Appeal Made: Authority

- Non-payment of rent via SIAC:
 - TRCP 510.9 (5)(A) & Sec. 24.0053, Property Code
- Non-payment of rent via surety bond:
 - Sec. 24.0053, Property Code

Non-Payment of Rent Appeals: Notice

- The justice court must provide to the defendant a written notice telling them to pay a deposit of rent into the court's registry
- Must be paid within 5 days
- TRCP 510.9 (5)(A) & Sec. 0053 (a-1) & (a-2), Property Code

Non-Payment of Rent Appeals: Timely Pays

- If the defendant timely pays, they get to remain in the premises
- Any subsequent rent due on appeal is paid to the county court registry
- TRCP 510.9 (5)(B)(i)&(ii) & Sec. 24.0053

Non-Payment of Rent Appeals: Fails to pay

- Failure to pay can result in a writ of possession
- If the transcript has not been transmitted to the county clerk, justice court must issue a writ of possession without hearing, if requested
- TRCP 510.9 (5)(B)(i)

Non-Payment of Rent Appeals: Fails to pay

- The court "may not forward the transcript and original papers before the sixth day after the date the tenant files a [SIACC], except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry ..."

○ Property Code § 24.0054(a-2)

If the transcript has been transmitted to the county clerk ...

Non-Payment of Rent Appeals: County Court

- If the defendant fails to pay rent, the plaintiff may file a sworn motion that the defendant is in default
- The plaintiff must notify the defendant of the motion and the hearing date
- If the defendant is in default, the court must issue a writ of possession

TRCP 510.9(c)(5)(B)(iv)&(v) & Sec. 24.0053(a-4), Property Code

Non-Payment of Rent Appeals: County Court

- The plaintiff may withdraw any or all rent in the county court registry with a sworn motion and hearing, prior to final determination of the case:
 - showing just cause;
 - dismissal of the appeal; or
 - order of the court after final hearing.

TRCP 510.9(c)(5)(B)(iv)&(v) & Sec. 24.0053(a-4), Property Code

The appeal is sent up
after 5 days regardless of
rent payment

The failure of the tenant to pay rent
into the registry of the justice court
does not affect the perfection of the
appeal – only the right of the tenant to
remain in possession pending the
appeal.

Non-Eviction Suit

Small Claims & Debt Claim

Perfecting: Non-Eviction

- An appeal is perfected when a bond, cash deposit, or SIAPCC is filed in accordance with this rule.
- The appellant must pay the costs on appeal to a county court in via Rule 143a.

○ TRCP 506.1 (h)&(i)

Perfected: Non-Eviction

If the appellant fails to pay the costs on appeal from a judgment of a justice of the peace within (20) days after being notified to do so by the county clerk, the appeal shall be deemed not perfected and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted.

○ TRCP 143a

Writ of Procedendo

The problem with a county court issuing a writ of procedendo to a justice court is that if an appeal was properly perfected from the justice court to the county court, then there is no longer any judgment that may be executed or enforced.

“Perfection of an appeal from a justice court for trial de novo vacates and annuls the judgment of the justice court.”

Mullins v. Coussons, 745 S.W.2d 50 (Tex. App.—Houston [14th Dist.] 1987, no writ); *Poole v. Goode*, 442 S.W.2d 810, 812 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref’d n.r.e.).

Writ of Procedendo

By contrast, if an appeal is not properly perfected but is sent to county court, the proper procedure for the county court is to dismiss the appeal.

“A county court of law does not have jurisdiction over an appeal for which a timely appeal from a justice court’s judgment was not perfected.”

“If the appeal bond is not timely filed, the county court is without jurisdiction to hear the appeal, and the appeal must be dismissed for lack of jurisdiction.”

Cavazos v. Hancock, 686 S.W.2d 284, 287 (Tex. App.—Amarillo 1985, no writ). See also Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc., 780 S.W.2d 952, 954 (Tex. App.—Fort Worth 1989, no writ); In re A.J.’s Wrecker Service of Dallas, 2002 WL 497021 at *1 (Tex. App.—Dallas Apr. 3, 2002, no writ)

Writ of Procedendo

Why do we care?
Liability

What to Look for

Once it is a Trial De Novo

What your court Receives

When an appeal has been perfected, the (justice court) must stay all further proceedings on the judgment and must immediately send to the clerk of the county court:

1. a certified copy of all docket entries
2. a certified copy of the bill of costs
3. the original papers in the case with any money in the court registry, including rent paid into the registry

TRCP 510.10(a)

Docketing the case

The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case.

The notice must advise the defendant that it must **file a written answer in the county court within 8 days** if one was not filed in the justice court.

Trial can be held anytime after 8 days from receiving the transcript

TRCP 510.10(b) & 510.12

Damages on Appeal

- Parties will be permitted to plead, prove and recover damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal.
- Damages may include :
 - loss of rentals during the appeal
 - attorney fees in the justice and county courts

TRCP 510.11

Damages on Appeal

Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

TRCP 511

Default on Appeal

An answer filed by the defendant must be taken as an appearance

If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, default judgment may be entered

TRCP 512

Does the SIAPCC transfer?

- Discretion
- No requirement that it does

Written Notice to Vacate: Element

- Written or oral agreement (lease) holdover – min. 3 days unless parties agreed to shorter or longer
- Tenant “at will” or “at sufferance” – min. 3 days unless parties agreed to shorter or longer
- Forcible entry tenant – immediate notice and may be oral
- Tax or trustee’s foreclosure; tenant timely pays rent and not otherwise in default – 30 days
- Property Code § 24.005

Tenant vs Occupant

- Tenant has due process rights
- Occupant does not

What is a Landlord/Tenant Relationship?

- A boyfriend/girlfriend or adult child living with parents?
- Likely be considered either a tenant at will or a tenant at sufferance who entered the premises by agreement and is subject to a forcible detainer action under Property Code § 24.002.

TEXAS JUSTICE COURT

★

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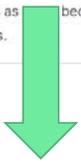
Meet the TJCTC Legal Department

Our legal department is made up of three attorneys who are passionate about justice courts. Randy, Bronson, and Rebecca teach at the seminars across the state, develop the

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The TJCTC legal department has created 109 new criminal and civil forms for judges', court personnel, constables' and deputy constables' use. We hope you will find these forms helpful in your practice. Please note the following:

- These forms are compatible with Word 2013. If you have an earlier version of Word, you may need to adjust the formatting after you save the form.
- We will continue updating the forms as [new forms](#) become available. Many new forms will be made available later this year in conjunction with our new deskbooks.



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EVICCTIONS AND LANDLORD-TENANT		
RETURN TO INDEX		
Document	Description	Revised
Abstract of Judgment		3/10/2016
Alternative Service – Eviction – Order Granting		3/17/2016
Alternative Service – Eviction – Request		3/17/2016
Answer Form		3/10/2016
Appeal – Notice of Filing of Statement of Inability to Pay Costs		3/17/2016
Appeal – Notice of Hearing on Contested Statement of Inability to Pay Costs		3/17/2016
Appeal – Order to Pay Rent Into the Justice Court Registry		3/17/2016

TOP

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CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. _____
§
§
§ _____ COUNTY, TEXAS

NOTICE OF HEARING ON CONTESTED STATEMENT OF INABILITY TO PAY (APPEAL)

The above styled-cause was appealed by filing a statement of inability to pay. The statement was challenged within seven days of notice by this court to the opposing party. Notice is hereby given that the above referenced Contest on Statement of Inability to Pay is set for a hearing on the ____ day of _____, 20__, at: _____.

ISSUED AND SIGNED this the ____ day of _____, 20__.

JUSTICE OF THE PEACE, PRECINCT ____

COUNTY, TEXAS

Thank you!