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**KEITH BAKER**  
JUSTICE OF THE PEACE

June 28, 2001

**Logger'**

The Honorable Nathan Hecht  
Supreme Court Justice  
291 W. 14<sup>th</sup> Street, Room 310  
P.O. Box 12248  
Austin, Texas 78711

RE: SCAC Subcommittee's Proposed Rules 735-822

Dear Justice Hecht,

The Honorable David Peeples gave me a copy of the SCAC Subcommittee's proposed changes to the FE&D (eviction) Rules 735-822. I have ample experience in administering these rules since I hear 2,000 FE&D's a year, and I have been a JP for 18 years. Generally, I agree with the proposed changes, but a few of the modifications will cause real problems for Texas JP Courts. Therefore, I hope the Supreme court will consider my concerns, which are as follows:

RULE 742: Currently, only a sheriff or constable can serve an FE&D citation. The proposed modifications to Rule 742, will permit other persons allowed by law to serve FE&D citations. This one modification will have a very severe, adverse impact on county government. Such a modification will dramatically reduce county revenue received from JP courts because we will lose much of the money we collect in citation service fees (which is set by each county). Furthermore, my court personnel have found that the majority of private process servers are very unreliable. They frequently misplace citations. Their citations often expire prior to service. The court has to constantly reissue citations to process servers, which causes delayed trials. The returns on the citations are often incomplete or inaccurate. Process servers routinely fail to timely file the returns on citations with the court after service or don't return them at all. They cannot be found or fail to appear when summoned to testify at trial concerning service of a citation. There is also a great turnover in private process servers. When one quits, the law firm that employed him frequently requests the court to provide documentation of all citations that were assigned to that private process server, and the court has to reissue all citations that the process server did not return to the court. My clerks and I have extensive experience with private process servers because every year we docket approximately 1,000 small claims cases and 1,000 civil suits (which are mostly collection suits filed by attorneys). Because FE&D citations must be served no more than 10 and no less than 6 days prior to the set trial date, proof of timely and accurate service of citation are very important issues in an eviction case. I foresee a substantial loss of revenue for county governments, a multitude of documentation and citation problems for the JP courts, and an outcry from angry landlords, tenants and attorneys, if this proposed modification is implemented.

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RULE 748: The Subcommittee proposes to modify Rule 748, by requiring JP's to include findings of fact in their judgments. This requirement alone would place a very heavy and unwarranted burden on metropolitan JP's. As I pointed out above, I hear 2,000 FE&D cases every year. Very few FE&D plaintiffs are represented by attorneys, and every year I would have to prepare approximately 1,600 specially tailored judgments to comply with this modification. At the present time, my court can only keep current in it's paperwork by issuing standardized fill-in-the-blank judgments, with very few variables, in cases where plaintiffs are not represented by attorneys. Furthermore, I believe lay JP's will have a difficult time following this proposed revised rule. Over the years, I have attended many JP training seminars, and talked to many lay JP's. They have a very limited grasp on their duties even though most are conscientious and hardworking. Their formal education is often very limited. The Subcommittee's proposal simply asks too much from an almost entirely lay judiciary. Only a handful of the approximately 900 Texas JP's are attorneys. In Bexar County, an urban county of one million in population, there are two lay JP's. I know that the Advisory Committee will find this observation difficult to accept, but please believe me that the ordinary lay JP will struggle, often unsuccessfully, in determining the "rent paying period", because the phrase will have little meaning to him. To an attorney, a determination of "the day rent is due" is straight-forward, but lay JP's are often very uncertain when it comes to making a fact finding that includes a legal determination as well. I could expand on these observations at much greater length, but I hope the above illustrations are sufficient. If the Subcommittee's proposal on findings of fact are adopted, I know the lay judiciary will heroically struggle to make the findings, but inevitably our county courts will be saddled with some very imperfect results.

RULE 749: At present, Rule 749, does not provide for a motion for new trial. The proposed modification to Rule 749, provides for a motion for new trial. This proposed modification will also impose a substantial administrative burden on JP courts. Based on my experience on hearing more and more cases with extremely angry tenants, JP courts will get a large influx of motions for new trials. Very few of them will have any merit. Most counties have very tight budgets and Justice Courts are often very underfunded. JP courts rarely have all the staff, equipment, office and storage space needed to maintain an adequate operation. This proposed modification will make it even more difficult for JP staffs to keep current on FE&D paperwork and processing requirements. I suggest that, at a very minimum, any revised rule provide that a motion for new trial will be sufficient only if the tenant specifically recites facts that refute the landlord's allegations as to the defaults in the lease.

RULE 749(a): I agree with the substance of proposed Rule 749(a), but I believe the Supreme Court should instead repeal existing Rule 145, and replace it with the substance contained in proposed Rule 749(a), as to the contents of the affidavit. A revised Rule 145, should be applicable to any situation under the Rules of Civil Procedure, where an indigent is not able to pay court costs or post any type of bond, including an appeal bond or supersedeas bond. Proposed Rule 749(a), should simply require an indigent to file an affidavit that complies with revised Rule 145.

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RULE 749(c) & RULE 751: Proposed Rule 749(c) concerns the form of the appeal bond, and proposed Rule 751 concerns the form of the supersedeas bond. This court has found that a large number of appeal bonds have unreadable scrawls on the spaces provided for sureties signatures. There is often no way to determine the name or address of these individuals. I suggest that the proposed forms be modified to include a space for the printed or typewritten name of the principal and each surety, and a space for the printed or typewritten address of the principal and each surety. If these changes are not included in the proposed forms, the bonds will, in many cases, be a waste of time and paper. I also suggest that spaces be included for a printed or typewritten date of birth and Texas drivers license number for the principal and the sureties, because personal identifiers are necessary in bond forfeiture situations, and because, from time to time, we get fictitious names.

Thank you for your consideration of the above observations on the SCAC Subcommittee's proposed changes to the FE&D rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Baker". The signature is written in a cursive, somewhat stylized font.

Keith Baker  
Justice of the Peace  
Pct. 3, Bexar County

KB/jm

cc: The Honorable Tom Phillips  
The Honorable David Peeples  
Mr. Charles Babcock