



**DALLAS COUNTY
COUNTY AUDITOR**

Memorandum

To: Honorable Judge Al Cercone
Justice of Peace, Precinct 3, Place 1

From: Darryl D. Thomas 
County Auditor

Subject: Special Review Performed on Appeals

Date: Issued: September 8, 2016
Released: September 22, 2016

Scope

A limited review was performed in accordance with statutory guidelines and Rules of Civil Procedure on the disposition of appeal bonds and special fund reports of Justice of the Peace, Precinct 3, Place 1.

Review Procedures

A partial list of the limited review tests included:

- Reviewed special fund reports for cases with appeal bonds not disbursed
- Examined special fund disbursements to determine if sufficient funds were collected, proper payees paid, and if posting to the JPAS had occurred
- Reviewed disposition of appeal bonds

FINDINGS

Appeals – A sample review of civil/small claims/eviction/debt claim cases appealed to the County Courts at Law revealed: two appeal bonds totaling \$1,675.20 not transferred to the clerk of the County Courts at Law as required by Rules of Civil Procedure and Government Code Section 27.001(2). **Status:** *Subsequently disbursed to the plaintiffs by the justice court after entry of judgment by a County Court at Law.*

RECOMMENDATIONS

Appeals – The justice court must immediately send (upon perfection of the appeal) to the clerk (County Clerk) of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry in accordance with the Rules of Civil Procedure.

CURRENT FINDINGS/OBSERVATION AND RECOMMENDATIONS

Finding template numbered 16-JP3.1-01-01 is attached with management's responses incorporated.

Summary

The report is intended for the information and use of the department. The limited scope of this review will not necessarily disclose all matters of a material weakness. It is the responsibility of the department to establish and maintain effective internal control over compliance with the requirements of laws, regulations, and contracts applicable to the department.

Highest areas of risk which needs to be addressed include: remitting appeal bonds to the clerk of the County Courts at Law.

Consideration of all issues and weaknesses should be incorporated by the court as a self-assessment tool in testing processing functionality of a new justice court system. Adherence to and follow-through with the recommendations should strengthen internal control and compliance with Dallas County policies and procedures.

Cc: Darryl Martin, Commissioners Court Administrator
Honorable Judge D'Metria Benson



Finding Number: 16-JP3.1-01-01 – Appeals
Date: June 1, 2016
Audit: Justice of the Peace 3-1 Special Review
Auditor(s) Assigned: MM/TM

<p>Finding:</p>	<p>A sample review of civil/small claims/debt claims/eviction cases appealed to the County Courts at Law for appeal bonds not transferred to the County Courts at Law as required by Rules of Civil Procedure revealed:</p> <ul style="list-style-type: none"> • 20 cases with appeal bonds timely remitted to the County Clerk. • Two cases with appeal bonds timely remitted to the County Clerk though not receipted by the County Clerk since filing fees were not paid. <i>Status: Checks were returned to the justice court, properly voided/cancelled, and reissued as appropriate.</i> • One case (JE1600459A) with an \$800 appeal bond timely remitted to the County Clerk. Check was never receipted though appeal was perfected. Stop payment was placed on the check. Agreed Order of Dismissal was issued by the County Court at Law ordering that the appeal bond be returned to the defendant. <i>Status: Justice court issued replacement check to the defendant rather than remitting to the County Clerk for disbursing.</i> • Two cases (JE-1350206A and JE1450073A) with appeal bonds totaling \$1,675.20 not transferred. <i>Status: Funds were disbursed to plaintiffs by the JP court after entry of judgment by a County Court at Law.</i>
<p>Workpaper Reference: (or other method by which finding was identified)</p>	<p>Appeals to County Courts at Law Odyssey courts system JPAS Special Fund Report Oracle Accounts Payable Special Fund Reports</p>
<p>Condition: (Describe the current condition)</p>	<p>The plaintiff or defendant may appeal the justice court’s decision after a judgment has been rendered. Once the appeal has been perfected, the justice court sends to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case. The justice court failed to send money upon appeal perfection in the justice court’s registry to the clerk of the county court.</p>
<p>Criteria: (Describe the optimal condition)</p>	<p>RULE 506. APPEAL, RULE 506.1. APPEAL</p> <p>(a) How Taken; Time. A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.</p> <p>(b) Amount of Bond; Sureties; Terms. A plaintiff must file a \$500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant’s prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.</p> <p>(c) Cash Deposit in Lieu of Bond. In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant’s prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.</p> <p>(d) Sworn Statement of Inability to Pay.</p> <p>(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the</p>



requirements of Rule 502.3(b) and may be the same one that was filed with the petition.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 14 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) Notice to Other Parties Required. If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) No Default on Appeal Without Compliance With Rule. The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) No Dismissal of Appeal Without Opportunity for Correction. An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) Appeal Perfected. An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

(i) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

RULE 506.2. RECORD ON APPEAL

When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case.

RULE 506.3. TRIAL DE NOVO

The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 506.4. WRIT OF CERTIORARI

(a) Application. Except in eviction cases, after final judgment in a case tried in justice court, a party may apply to the county court for a writ of certiorari.

(b) Grounds. An application must be granted only if it contains a sworn statement setting forth facts showing that either:

- (1) the justice court did not have jurisdiction; or
- (2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) Bond, Cash Deposit, or Sworn Statement of Indigency to Pay Required. If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a sworn statement of indigency that complies with Rule 145.

(d) Time for Filing. An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.

(e) Contents of Writ. The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the



transcript of the proceedings in the justice court, together with the original papers and a bill of costs, to the proper court.

(f) Clerk to Issue Writ and Citation. When the application is granted and the bond, cash deposit, or sworn statement of indigency have been filed, the clerk must issue a writ of certiorari to the justice court and citation to the adverse party.

(g) Stay of Proceedings. When the writ of certiorari is served on the justice court, the court must stay further proceedings on the judgment and comply with the writ.

(h) Cause Docketed. The action must be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

(i) Motion to Dismiss. Within 30 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. If the certiorari is dismissed, the judgment must direct the justice court to proceed with the execution of the judgment below.

(j) Amendment of Bond or Oath. The affidavit or bond may be amended at the discretion of the court in which it is filed.

(k) Trial De Novo. The case must be tried de novo in the county court and judgment must be rendered as in cases appealed from justice courts. A trial de novo

RULE 507. ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL, RULE 507.1. PLENARY POWER

A justice court loses plenary power over a case when an appeal is perfected or if no appeal is perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied.

RULE 507.3. DOCKET AND OTHER RECORDS

(a) Docket. Each judge must keep a civil docket in a permanent record containing the following information:

(11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

RULE 509. REPAIR AND REMEDY CASES, RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL

(a) Time and Manner. Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within 21 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) Perfection. The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) Effect. The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) Trial on Appeal. On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.



	<p>RULE 510. EVICTION CASES, RULE 510.9. APPEAL</p> <p>(a) How Taken; Time. A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 5 days after the judgment is signed.</p> <p>(b) Amount of Security; Terms. The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.</p> <p>(c) Sworn Statement of Inability to Pay.</p> <p>(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3(b).</p> <p>(5) Payment of Rent in Nonpayment of Rent Appeals.</p> <p>(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay, the justice court must provide to the defendant a written notice at the time the statement is filed that contains the following information in bold or conspicuous type:</p> <p>(i) the amount of the initial deposit of rent, equal to one rental period's rent under the terms of the rental agreement, that the defendant must pay into the justice court registry;</p> <p>(ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;</p> <p>(iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the sworn statement of inability to pay is filed; and</p> <p>(iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.</p> <p>(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:</p> <p>(i) Within 5 days of the date that the defendant files a sworn statement of inability to pay, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the statement. If the defendant was provided with notice and fails to pay the designated amount into the justice court registry within 5 days, and the transcript has not been transmitted to the county clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.</p> <p>(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the county court registry within 5 days of the rental due date under the terms of the rental agreement.</p> <p>(iii) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.</p> <p>(iv) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a sworn motion that the defendant is in default in county court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue a writ of possession.</p>
--	--



	<p>(v) The plaintiff may withdraw any or all rent in the county court registry upon 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. (vi) All hearings and motions under this subparagraph are entitled to precedence in the county court.</p> <p>RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO</p> <p>(a) Preparation and Transmission of Record. <u>Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(c)(5)(B).</u></p> <p>(b) Docketing; Notice. 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.</p> <p>(c) Trial De Novo. The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.</p> <p>Government Code, Sec. 27.001. BOND. Each justice of the peace must give a bond payable to the county judge, in an amount of not more than \$5,000, and conditioned that the justice will:</p> <p>(1) faithfully and impartially discharge the duties required by law; and</p> <p>(2) promptly pay to the entitled party all money that comes into the justice 's hands during the term of office.</p>				
<p>Cause: (Describe the cause of the condition if possible)</p>	<p>Non-compliance with Rules of Civil Procedure and Government Code, Sec 27.001(2)</p>				
<p>Effect: (Describe or quantify any adverse effects)</p>	<p>Potential liability to the County for withholding bond money/registry funds and failure to properly and timely disburse appeal bonds in the justice court's registry to the clerk of the county courts.</p> <p>Additional actions required of the prevailing party in the appeal to receive funds entitled to after judgment or dismissal by the county courts at law.</p>				
<p>Recommendation: (Describe corrective action)</p>	<p>The judge should stay all further proceedings on the judgment when an appeal has been perfected. The justice court must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry in accordance with the Rules of Civil Procedure.</p>				
<p>Responsible Department or Organization:</p>	<p>Justice of the Peace 3, Place 1</p>				
<p>Management's Response:</p>	<input type="checkbox"/> Agree	<input checked="" type="checkbox"/> Disagree	<p>Respondent:</p>	<p>Honorable Judge Al Cercone and Zoe Harlan, Chief Clerk</p>	<p>Date: 9-19-16</p>
<p>Comments:</p>	<p>See attached response</p>				
<p>Disposition:</p>	<input checked="" type="checkbox"/> Audit Report	<input type="checkbox"/> Oral Comment	<input type="checkbox"/> Deleted From Consideration		



JUDGE AL CERONE

Justice of the Peace
Precinct 3, Place 1
Dallas County

16-JP3.1-01-01 – Appeals

DEPARTMENT RESPONSE: Agree Disagree

RESPONDENT: Zoe Harlan, Al Cerone DATE: 09-19-2016

COMMENTS:

JE13-50206A Montecito Palms v. Michael Curley & all occupants

- 10-21-2013 Rent tendered into registry of JP-31 Court, \$675 **Receipt #60408**
- 10-24-2013 Bond approved, Transcript with all papers forwarded to County Clerk
- 11-25-2013 Received copy of Order from County Court Law No. 3, dated November 21, 2013, for County Clerk to disburse funds of \$675 to Montecito Palms c/o Counsel, Jennifer L Owen. Plaintiff's Attorney informed the court (JP31) that the County Clerk instructed them to file a copy of the Order to Disburse with the JP Court for us to release the funds to the Plaintiff as ordered. **Check # 00984, \$675**

JE14-500736A Lakeview at Parkside v. Monica Montiel & all occupants

- 01-31-2014 Rent tendered into registry of JP-31 Court, \$1,000.20 **Receipts #65048,49,50**
- 02-05-2014 Bond Approved, Transcript with all papers forwarded to County Clerk
- 03-11-2014 Received copy of Judgment from County Court Law No. 5, dated February 27, 2014, that tendered money will act as a credit on the amount stated in the judgment and funds released to Plaintiff. Disbursed funds to Plaintiff's Attorney, \$1,000.20 **Check #01013, \$1,000.20**

JE16-00459A Mary Ellen Sargent v. Deborah W. Cooper

- 03-17-2016 Rent tendered into registry of JP-31 Court, \$800.00 **Receipt #04249**
- 03-22-2016 JP-31 Court disbursed rent tendered \$800 to County Clerk **Check #01386, \$800**
- 03-22-2016 Bond Approved, Transcript with all papers forwarded to County Clerk
- 05-10-2016 Plaintiff filed Release & Satisfaction of Judgment
- 05-16-2016 County Clerk informed JP-31 Court that check #01386 lost and requests that JP-31 issue a stop payment to the County Treasurer's office, and re-issue check to Defendant per Agreed Order signed by County Court at Law No. 1.
- 05-17-2016 JP-31 Court issued a Stop Payment Request form to County Treasurer
- 05-18-2016 Confirmation of Stop Payment received from County Treasurer
- 05-20-2016 Check issued to Defendant, Deborah W Cooper **Check #01413, \$800**