

TMCEC CIVIL RULES WORKGROUP PROPOSAL

PART V-A - RULES OF PRACTICE IN MUNICIPAL COURTS

RULE 560. GENERAL RULES

RULE 560.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V-A of these Rules of Civil Procedure:

- (a) the past, present, and future tense each includes the other;
- (b) the term “it” includes a person of either gender or an entity; and
- (c) the singular and plural each includes the other.

RULE 560.2. DEFINITIONS

In Part V-A of these Rules of Civil Procedure:

- (a) “Answer” is the written response that a party who is sued must file with the court after being served with a citation.
- (b) “Citation” is the court-issued document required to be served upon a party to inform the party that it has been sued.
- (c) “Claim” is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.
- (d) “Clerk” is the municipal court clerk, deputy court clerk, court administrator, or deputy court administrator.
- (e) “County court” is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from municipal court.
- (f) “Default judgment” is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff’s claims in the lawsuit.
- (g) “Defendant” is a party who is sued, including a plaintiff against whom a counterclaim is filed.
- (h) “Defense” is an assertion by a defendant that the plaintiff is not entitled to relief from the court.
- (i) “Discovery” is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.
- (j) “Judge” is a municipal court judge.

- (k) “Judgment” is a final order by the court that states the relief, if any, a party is entitled to or must provide, and that disposes of all parties and all claims.
- (l) “Jurisdiction” is the authority of the court to hear and decide a case.
- (m) “Motion” is a request that the court make a specified ruling or order.
- (n) “Notice” is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.
- (o) “Officer” is anyone who is authorized to execute service of process.
- (p) “Party” is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.
- (q) “Petition” is a formal written application stating a party’s claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.
- (r) “Plaintiff” is a party who sues, including a defendant who files a counterclaim.
- (s) “Pleading” is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.
- (t) “Relief” is the remedy a party requests from the court, such as the repair or demolition of property.
- (u) “Side” means one or more litigants who have common interests on the matters with which the jury is concerned.
- (v) “Serve” and “service” are delivery of citation as required by Rule 561.2, or of a document as required by Rule 561.4.
- (w) “Sworn” means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

RULE 560.3. APPLICATION OF RULES IN MUNICIPAL COURT CASES

- (a) *Application of These Rules.* These rules apply to enforcement actions by municipalities commenced by petition in all civil cases over which the municipal court has jurisdiction. These rules do not apply to administrative procedures enacted by a municipality where the judge is serving as an administrative hearing officer. Where a municipality enacts local procedural rules published under Rule 3a of the Texas Rules of Civil Procedure, said local rules shall have full force and effect in that municipality.
- (b) *Application of Other Rules.* The other Texas Rules of Civil Procedure outside PART V-A do not apply except:

- (1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or
 - (2) when otherwise specifically provided by law or these rules;
 - (3) Rules 1, 5-6, and 8-13 of the Texas Rules of Civil Procedure apply.
- (c) *Examination of Rules.* The court must make these Rules, the Texas Rules of Civil Procedure and the Texas Rules of Evidence available for examination, both in paper form and electronically, during the court's business hours.

Comment to Proposed Rule 560.3:

Subsection (a) of the Rule states that these rules apply to enforcement actions by municipalities which are commenced by petition. These cases include civil actions filed by municipalities in municipal court regarding substandard buildings pursuant to section 214.001(p) of the Texas Local Government Code and to enforce ordinances (including those related to dangerously damaged or deteriorated structures) pursuant to section 54.012 *et seq.* of the Texas Local Government Code. The 75th Legislature gave municipal courts jurisdiction over the procedure described in Section 214.001 of the Texas Local Government Code relating to substandard buildings effective September 1, 1997. Section 30.00005(d)(2) of the Texas Government Code giving municipal courts jurisdiction of cases filed pursuant to Section 54.012 of the Texas Local Government Code if the municipality passes the appropriate ordinance was enacted by the 77th Legislature and took effect September 1, 2001.

Due in part to this piecemeal development of civil jurisdiction, some municipalities have developed administrative processes whereby a municipal judge acts as an administrative hearing officer. These rules do not apply in such instances and are applicable only in judicial proceedings.

Some cities have published ordinances which provide their municipal courts with jurisdiction to hear these cases and established long-standing procedures and deadlines which have been in effect for more than 20 years for these enforcement actions.

There are over 900 municipal courts in Texas. Unlike district, county, and justice courts which each have the same jurisdiction, municipal courts have different types of jurisdiction. Given the differences in jurisdiction, the sheer number of municipal courts, and the length of time some cities have employed these local procedures, preserving the continued validity of these local enactments is important, provided the ordinances meet certain requirements as stated in the Rule. Such ordinances will not conflict with the Rule if they meet the requirements for local rules. Ordinances meeting the Rule's requirements can be adopted as local rules under Rule 3a of the Texas Rules of Civil Procedure. Pursuant to Rule 3a(c) of the Texas Rules of Civil Procedure, local rules become effective when published on the Office of Court Administration's website.

RULE 560.4. REPRESENTATION IN MUNICIPAL COURT CASES

- (a) *Representation of an Individual.* An individual may:
- (1) represent himself or herself; or
 - (2) be represented by an attorney.

- (b) *Representation of a Corporation or Other Entity.* A corporation or other legal entity must be represented by an attorney.
- (c) *Representation of the Municipality.* A Municipality is represented by its City/Town Attorney or authorized legal counsel.

RULE 560.5. COMPUTATION OF TIME; TIMELY FILING

- (a) *Computation of Time.* Unless otherwise provided by statute or ordinance, to compute a time period in these rules:
 - (1) exclude the day of the event that triggers the period;
 - (2) count every day, including Saturdays, Sundays, and legal holidays; and
 - (3) include the last day of the period, but
 - (A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday; and
 - (B) if the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.
- (b) *Timely Filing by Mail.* Any document required to be filed by a given date is considered timely filed if deposited in the U.S. mail on or before that date and received within 10 days of the due date. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

RULE 560.6. EXCLUSION OF WITNESSES

The court must, on a party's request, or may, on its own initiative, order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

- (1) a party who is a natural person;
- (2) an officer or employee designated as a representative of a party who is not a natural person.

RULE 560.7. SUBPOENAS

- (a) *Use.* A subpoena may be used by a party, a clerk of the court, or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be

required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

- (b) *Who Can Issue.* A subpoena may be issued by the clerk of the municipal court or an attorney authorized to practice in the State of Texas, as an officer of the court.
- (c) *Form.* Every subpoena must be issued in the name of the “State of Texas” and must:
 - (1) state the style of the suit and its case number;
 - (2) state the court in which the suit is pending;
 - (3) state the date on which the subpoena is issued;
 - (4) identify the person to whom the subpoena is directed;
 - (5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;
 - (6) identify the party at whose instance the subpoena is issued, and the party’s attorney of record, if any;
 - (7) state that “Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both”; and
 - (8) be signed by the person issuing the subpoena.
- (d) *Service: Where, By Whom, How.* A subpoena may be served at any place within the State of Texas by any officer or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the party’s attorney of record. Proof of service must be made by filing either:
 - (1) the witness’s signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or
 - (2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.
- (e) *Compliance Required.* A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable

particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

- (f) *Objection.* A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.
- (g) *Enforcement.* Upon notice and opportunity to be heard to show cause, the failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the court from which the subpoena is issued or of a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof of service and proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

RULE 560.8. DISCOVERY

- (a) *Pretrial Discovery.* 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.
- (b) *Post-judgment Discovery.* Post-judgment discovery is not required to be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.

RULE 561. CITATION AND SERVICE

RULE 561.1. CITATION

- (a) *Issuance.* When a petition is filed with a municipal court to initiate a suit, the clerk must promptly issue a citation. The plaintiff is responsible for obtaining service on the defendant of the citation in accordance with applicable rules or statutes and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.
- (b) *Form.* The citation must:
- (1) be styled "The City of [where the action is pending], 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 cause number and names of the parties;
 - (7) be directed to the defendant;
 - (8) show the name and address of the attorney for the plaintiff, or if the plaintiff does not have an attorney, the address of the plaintiff; and
 - (9) notify the defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.
- (c) *Notice.* 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 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th 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-A of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."
- (d) *Copies.* The plaintiff must provide enough copies to be served on each defendant. If the plaintiff fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 561.2. SERVICE OF CITATION

- (a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, Other citations may be served by:
- (1) an officer;
 - (2) a process server certified under order of the Supreme Court;
 - (3) the clerk of the court, if the citation is served by registered or certified mail; or
 - (4) a person authorized by court order who is 18 years of age or older.
- (b) *Method of Service.* Citation must be served by:
- (1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or
 - (2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.
- (c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a sworn statement of inability to pay the fees with the court. If the plaintiff has filed a sworn statement of inability to pay, the plaintiff must arrange for the citation to be served by an officer or court clerk.
- (d) *Service on Sunday.* A citation cannot be served on a Sunday.
- (e) *Alternative Service of Citation.* If the methods under (b) are insufficient to serve the defendant, the plaintiff, an officer or process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize by written order the following types of alternative service:
- (1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age;
 - (2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit; or

(3) any other manner directed by the court in accordance with Rules 106, 109, 109a, 111, or 112 of the Texas Rules of Civil Procedure.

- (f) *Service by Publication.* In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 561.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION; RETURN OF SERVICE

- (a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:
- (1) endorse on the process the date and hour on which he or she received it;
 - (2) execute and return the same without delay; and
 - (3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.
- (b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:
- (1) the case number and case name;
 - (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted service;
 - (10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) *Citation by Mail.* When the citation is served by registered or certified mail as authorized by Rule 561.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

- (d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must 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 ascertainable.
- (e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a city marshal, sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:
- “My name is (First) (Middle) (Last) , my date of birth is (Month) (Day), (Year), and my address is (Street), (City), (State) (Zip Code), (Country) . I declare under penalty of perjury that the foregoing is true and correct.
- Executed in _____ County, State of _____, on the _____ day of (Month) , (Year).
- _____
- Declarant”
- (f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 561.2(e), proof of service must be made in the manner ordered by the court.
- (g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax if those methods of filing are available.
- (h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 561.2(e), has been on file with the clerk of the court 10 days, exclusive of the day of filing and the day of judgment.

RULE 561.4. SERVICE OF PAPERS OTHER THAN CITATION

- (a) *Method of Service.* Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways:
- (1) In person. A copy may be delivered to the party to be served, or the party’s duly authorized agent or attorney of record, in person or by agent.
- (2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party’s last known address. Service by certified or registered mail

is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

- (b) *Timing.* If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearing requested by a party must be served on all other parties not less than 10 days before the time specified for the hearing.
- (c) *Who May Serve.* Documents other than a citation may be served by a party to the suit, an attorney of record, an officer, or by any other person competent to testify.
- (d) *Certificate of Service.* The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is rebuttable proof of service.
- (e) *Failure to Serve.* A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 10 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

RULE 562. INSTITUTION OF SUIT

RULE 562.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

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, 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.

RULE 562.2. PETITION

Contents. To initiate a lawsuit, a petition must be filed with the court. A petition must contain:

- (1) the name of the plaintiff;
- (2) the name, address, telephone number, email address, and fax number, if any, of the plaintiff's attorney,
- (3) the name, address, email address, telephone number and fax number, if known, of the defendant;
- (4) the amount of civil penalties, if any, the plaintiff seeks;
- (5) a description of any other relief requested;
- (6) the basis for the plaintiff's claim against the defendant; and
- (7) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

RULE 562.3. VENUE — WHERE A LAWSUIT MAY BE BROUGHT

Venue is proper in the municipal court of the municipality where the property which is the subject of the lawsuit is located or the applicable extraterritorial jurisdiction. If the relevant property is located in multiple municipalities, the lawsuit may be filed in any municipal court of the municipality where the property is located.

RULE 562.4. ANSWER

- (a) *Requirements.* 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, email address, and fax number, if any, of the defendant's attorney, if applicable, or the address, telephone number, email address, 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.
- (b) *General Denial.* An answer that denies all of the plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance,

- (c) *Answer Docketed.* The defendant's appearance must be noted on the court's docket.
- (d) *Due Date.* Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but
 - (1) if the 14th 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 14th 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.
- (e) *Due Date When Defendant Served by Publication.* If a defendant is served by publication, the defendant's answer is due by the end of the 30th day after the day the citation was issued, but
 - (1) if the 30th 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 30th 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.

Comment to Proposed Rule 562.4:

Subsection (e) of the Rule states that the defendant's answer is due by the end of the 30th day after the day the citation issued if the defendant is served by publication. The deadline differs from the 42-day deadline stated in Rule 502.5(e) for justice courts. These Rules apply to cases including civil actions filed in municipal courts by municipalities regarding substandard buildings pursuant to Section 214.001 of the Texas Local Government Code and to enforce ordinances pursuant to Section 54.012 *et seq.* of the Texas Local Government Code. Justice courts do not have jurisdiction of cases filed under these provisions. Because Sections 54.014, 54.0155, and 214.001(s) evidence a legislative intent for an expedited process in cases involving dangerously damaged or deteriorated structures and the hazard to the public health, safety, and welfare such structures can present, the deadline has been shortened.

RULE 562.5. AMENDED, SUPPLEMENTAL, AND INSUFFICIENT PLEADINGS

- (a) *Amended or Supplemental Pleadings.* A party may withdraw something from or add something to a pleading, as long as the amended or supplemental pleading is filed and served as provided by Rule 561.4 not less than 7 days before trial. The court may allow a pleading to be amended or supplemented less than 7 days before trial if the amendment or supplement will not operate as a surprise to the opposing party.
- (b) *Insufficient Pleadings.* A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order

the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

RULE 563. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 563.1. IF DEFENDANT FAILS TO ANSWER

- (a) *Default Judgment.* If the defendant fails to file an answer by the date stated in Rule 562.4, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner: a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of the claims stated in the petition. If the plaintiff provides evidence of the claims stated in the petition, the judge may render judgment for the plaintiff and grant the relief sought. If the plaintiff is unable to provide evidence of the claims in the petition, the judge may render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.
- (b) *Appearance.* If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 563.3.
- (c) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and render judgment accordingly.
- (d) *Notice.* The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk or plaintiff under the court's direction must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

RULE 563.2. SUMMARY DISPOSITION

- (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, identifying all agreed upon or disputed facts, including supporting evidence, not later than 7 days before the hearing. A party may file a reply not later than 3 days before the hearing, limited to facts and issues raised in the response.
 - (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 not consider evidence offered by the parties other than is submitted through motion, response, and reply. By agreement of the parties, the judge may decide the matter on the briefs (motion, response, reply) 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.

RULE 563.3. SETTINGS AND NOTICE; POSTPONING TRIAL; REQUESTING A JURY TRIAL

- (a) *Settings and Notice.* After the defendant answers, the case will be set on a trial docket at the discretion of the judge. The court must, or, under its direction cause the plaintiff to send a notice of the date, time, and place of this setting to all parties at their addresses of record no less than 30 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Said notice reflecting service shall be filed among the papers of the court. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.
- (b) *Postponing Trial.* A party may file a motion requesting that the trial be postponed. The motion must state why a postponement is necessary. The judge, for good cause, may postpone any trial for a reasonable time.
- (c) *Requesting a Jury Trial.* Any party requesting a jury trial must demonstrate by written submission the specific factual questions to be decided by a jury and make a written request for a jury no later than 30 days before a trial is first scheduled to begin. Jury trials are permitted when required by law. Absent a proper and timely request, trial may be had before the judge. When a trial has concluded, the judge must announce the decision in open court and render judgment accordingly.

RULE 563.4. PRETRIAL CONFERENCE

Conference Set; Issues. If all parties have appeared in a lawsuit, the court, at any party's request or on its own, may set a case for a pretrial conference. Reasonable notice must be sent to all parties at their addresses of record. Appropriate issues for the pretrial conference include:

- (1) discovery disputes, exchange of trial exhibits, identification of documents intended to be used at trial and objections thereto;
- (2) the amendment or clarification of pleadings;
- (3) the admission of facts and documents to streamline the trial process;
- (4) a limitation on the number of witnesses at trial;
- (5) the identification of facts, if any, which are not in dispute between the parties;
- (6) the possibility of settlement;
- (7) trial setting dates that are amenable to the court and all parties;
- (8) the appointment of interpreters, if needed;
- (9) the application of a Rule of Civil Procedure not in Part V-A or a Rule of Evidence; and
- (10) any other issue that the court deems appropriate.

RULE 563.5. EXPEDITED ACTIONS IN MUNICIPAL COURT

- (a) *Docket Control.* The judge, in the interest of efficiency, may set appropriate parameters for the conduct of trial.
- (b) *Application.* Subject to Rule 560.3, the court on its own, or upon a party's motion, may designate or de-designate a cause as an expedited action.
- (c) *Expedited Actions Process.*
 - (1) Discovery. Discovery is governed by Rule 560.8.
 - (2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date after the discovery period ends. The court may continue the case twice.
 - (3) Time Limits for Trial. Each side is allowed no more than 3 hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than 6 hours per side. Time spent on objections, bench conferences, and offers of proof are not included in the time limit.

(4) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary disposition evidence under Rule 563.2 or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comment to Proposed Rule 563.5:

Rule 563.5 is based on Rule 169 (Expedited Actions). The language in Rule 563.5 that differs from Rule 169 (for example, language in Subsection 563.5(c)(2) relating to timelines) provides more flexibility for municipal judges. Municipal courts, based on varying case volume and complexity, move at different speeds. Not all courts are equipped to resolve a case in 60 days. Conversely, a civil suit involving a dangerously damaged or deteriorated structure may need to move quickly because of the danger presented to the public. Section 54.0155 of the Local Government Code requires municipal courts to expedite those cases. Other types of civil cases such as those involving dangerous dogs or junked vehicles have varying timelines. Rule 563.5 provides the necessary flexibility for municipal courts.

RULE 563.6. TRIAL

- (a) *Docket Called.* On the day of the trial setting, the judge must call all of the cases set for trial that day.
- (b) *If Plaintiff Fails to Appear.* If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.
- (c) *If Defendant Fails to Appear.* If the defendant fails to appear when the case is called for trial, the judge may postpone the case or may proceed to take evidence. If the plaintiff proves its case, judgment may be awarded for the relief proven. If the plaintiff fails to prove its case, judgment may be rendered against the plaintiff.

RULE 564. JUDGMENT; NEW TRIAL

RULE 564.1. JUDGMENT

A judgment must:

- (1) clearly state the determination of the rights of the parties and their relief in the case;
- (2) state who must pay any civil penalties, if applicable;
- (3) be signed by the judge; and
- (4) be dated the date of the judge's signature.

RULE 564.2. ENFORCEMENT OF JUDGMENT

Municipal court judgments are enforceable in the same method as in county and district court, except as provided by law.

RULE 564.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL

- (a) *Motion to Reinstate after Dismissal.* A plaintiff whose case is dismissed may file a verified motion to reinstate the case no later than 10 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 561.4. The court may reinstate the case for good cause shown.
- (b) *Motion to Set Aside Default.* A defendant against whom a default judgment is granted may file a verified motion to set aside the judgment no later than 10 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 561.4. The court may set aside the judgment and set the case for trial for good cause shown.
- (c) *Motion for New Trial.* A party may file a motion for a new trial no later than 10 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 561.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party. If the municipal court is a court of record, a motion for new trial alleging points of error must be filed to perfect appeal.
- (d) *Motion Denied as a Matter of Law.* If the judge has not ruled on a motion to set aside, motion to reinstate, or motion for new trial, the motion is automatically denied at 5:00 p.m. on the 30th day after the day the judgment was signed.