



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER CO#124891

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DATE: 04/04/2017

SUBJECT: **RECEIVE AND FILE THE AUDITOR'S REPORT OF THE JUSTICE OF THE PEACE, PRECINCT 3, APPEALED EVICTION CASES**

COMMISSIONERS COURT ACTION REQUESTED:

It is requested that the Commissioners Court receive and file the Auditor's Report of the Justice of the Peace, Precinct 3, Appealed Eviction Cases.

BACKGROUND:

In accordance with Local Government Code, the Auditor's Office performed a limited review of financial controls established by the Justice of the Peace, Precinct 3, for eviction cases appealed to the County Courts and whether processes complied with relevant statutes.

FISCAL IMPACT:

There is no direct fiscal impact associated with this item.

SUBMITTED BY: Auditor's Office

PREPARED BY: S. Renee Tidwell
APPROVED BY:



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March 6, 2017

The Honorable Russell Casey, Justice of the Peace, Precinct 3
The Honorable District Judges
The Honorable Commissioners Court
Tarrant County, Texas

RE: Auditor's Report – Justice of the Peace, Precinct 3, Appealed Eviction Cases

SUMMARY

In accordance with Local Government Code, the Auditor's Office performed a limited review of financial controls established by the Justice of the Peace, Precinct 3 (JP3), for eviction cases appealed to the County Courts and whether processes complied with relevant statutes. As a result of our review, we found that payments collected for appealed eviction cases did not comply with the Texas Property Code and the Texas Rules of Civil Procedure. According to JP3, current procedures have been in place since the prior administration and other Tarrant County JP offices follow the same procedures. However, the Auditor's Office obtained an opinion from the Criminal District Attorney's Office, and they agree with the observation as stated in this report.

OBSERVATION AND RECOMMENDATION

Background

Texas Property Code Sec. 24.0053 defines procedures for a justice court related to the payment of rent during the appeal of an eviction. Sec. 24.0053 (a-1) specifically states that the initial deposit stated in the judgement must be paid into the justice court registry. The code states that payment may be made by cash, cashier's check, or money order.

The Property Code also makes reference to the Texas Rules of Civil Procedure. Rule 510.9 also defines procedures if a defendant appeals an eviction for nonpayment of rent. The rule specifically states that the defendant must pay a deposit of rent into the justice court registry.

The Tarrant County Justice of the Peace offices record case activity and financial transactions into Odyssey Case Manager.

Observation

During our review of eviction cases appealed to the County Courts, we observed that payments collected by JP3 did not comply with the Texas Property Code and the Texas Rules of Civil Procedure. Although we observed notes within the Case Summary of Odyssey that reference rent deposits paid by defendants, the payments were not recorded and deposited into the JP's court registry. No "financial transactions" were recorded in Odyssey. Instead, the JP's order stated that the defendant must make payment either by cash or by a cashier's check made payable to the County Clerk. Then the JP staff forwarded the payment, either the cash or cashier's check, to the County Clerk with the case file documents.

A loss of \$4,250 was discovered in November 2016 when the plaintiff's attorney contacted the County Clerk's Office requesting the funds since judgment was rendered by the county court. Neither JP3 nor the County Clerk's Office could locate the funds. The Commissioners Court approved payment for this loss from the County Clerk's Professional Liability Fund on December 13, 2016.

Recommendation


As required by the Texas Property Code and the Texas Rules of Civil Procedure, the JP should ensure that rent collected on appealed eviction cases is deposited into the registry of the court. Therefore, cashier's checks and money orders must be made payable to the "Justice of the Peace, Precinct 3." Then, the JP should prepare a check made payable to the "County Clerk" and remit the check, along with the case file documents, to the County Clerk's Office.

Unless statutes specify otherwise, the JP should record *all* monies collected into Odyssey, including monies owed to other county offices or agencies. This includes monies collected for cases to be transferred to other courts.

CLOSING REMARKS

We appreciate the cooperation of the JP staff and the Criminal District Attorney's Office during our review. Please call me if you have any questions regarding the contents of this report.

Sincerely,



S. Renee Tidwell, CPA
County Auditor

Attachment: Management response

Distribution: Vince Cruz, Chief-Civil Division, Criminal District Attorney's Office
Belinda McLeod, Court Manager, Justice of the Peace, Precinct 3

Audit Team: Kim Trussell, Audit Manager
Maki Ogata, Senior Internal Auditor

March 28, 2017

The Honorable Commissioners Court

S. Renee Tidwell

Tarrant County, Texas

RE: Auditor's Report –Justice of the Peace, Precinct 3, Cases Appealed to the County Courts

BACKGROUND

On August 17th, 2016 Case No. JP03-16-E00054891 was appealed from Justice Court Pct. 3 to the County Court at Law by the defendant filing a statement of inability to pay in lieu of bond and court cost. On August 22nd the defendant deposited with the court registry a cashier's check made payable to Tarrant County Clerk in the amount of \$4250. On August 25th after the Statement of Inability to pay had not been contested, the appeal packet was prepared and forwarded to the county clerk.

RESPONSE

In the audit's observation that the Justice Court did not comply with the law, the audit references the Texas Rules of Civil Procedure and the Texas Property Code that states that the initial deposit for rent must be paid into the Justice Court Registry. The auditor has interpreted this to mean that the check must be made payable to the Justice Court and made a determination that Justice Court, Precinct #3 is not in compliance with the law by not depositing this check into the Justice Court bank account.

Black's Law Dictionary defines "registry" as the act of recording or writing in the register or depositing in the place of public records. A court registry may contain any tangible items such as documents, or other property. For example Texas Civil Practices and Remedies Code Section 7.002 provides that an officer who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action, shall:

- Seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court,
- Hold these items for safekeeping until further order,
- Keep an itemized inventory of the property deposited and its disposition and
- Transfer all property and the inventory list to the officer's successor in office. (The successor shall give a receipt to the outgoing officer),

Justice Court Pct. 3 has for the duration of our records accepted cashier's checks or money orders in regards to rent being paid into the court. In accordance with Texas Rules of Civil Procedure 510.9c5A(ii), when the defendant has filed the bond for appeal with a statement of inability to pay, we have requested that these be made payable to the County Clerk. This has been the practice since before I took office, and has been deemed acceptable in all the previous audits up to this one. Upon receipt of these items they are documented into the Odessey system, and the check is placed into our vault. In this particular instance, as is our custom, the docket entry on 8/22/16 is "Defn Paid Rent into Court Registry on Appeal" with notes as regards to the

type of check, the check number, amount of the check, and to whom the check was made payable to. Since the check is made payable to the County Clerk, we sent it forward to the County Clerk. The cashier's check is by definition an instrument. As such we look to the Civil Practices and Remedies Code for guidance and find CPRC 7.002, as is quoted above, as the guiding law as to how handle instruments deposited into the court registry. We felt that this satisfied the requirements of the Texas Property Code and the Texas Rules of Civil Procedure.

There are reasons why we have done it this way for so long. The perfection of an appeal is not dependent upon the payment of rent during the appeal process. Texas Rules of Civil Procedure 510.9(f) states that an appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed. We have always felt that when an appeal is perfected we lose jurisdiction. Once we lose jurisdiction our ability to act is limited. In many situations the payment of rent comes after the appeal is perfected. We have allowed cashier's checks because it is often times more convenient for the tenant. Appeals can be made by mail. At times, especially in regards to commercial evictions, the home office is not even located in Texas. If the check was made payable to the Justice Court then this would cause a conflict with court following auditor recommended procedures and obeying the Rules of Civil Procedure.

When we deposit a check or money order, the auditor recommends that before we can disperse those funds, we must first wait a certain number of days to make sure that everything has cleared. It has happened in the past that money orders were not honored. However, Texas Rules of Civil Procedure rule 510.10(a) states "Unless otherwise provided by law or in these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgement and must immediately send to the clerk of the county court 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)." I feel that the auditor's recommendation would place Justice Court Pct. 3 in a position where we could not be in compliance with both their recommendations and the Texas Rules of Civil Procedure. If we held the case for the recommended number of days to make sure the checks cleared, then we would be violation of the Texas Rules of Civil Procedure. But immediate release of the funds would put us in violation of auditor's recommendations, as well as subject the justice court to new liabilities if we had a check written to us is not honored. This can further create new problems for the County Court.

Imagine if you will a scenario where the check used to pay rent was not honored and the Justice Court had already dispersed those funds to the County Clerk. There are of course rules concerning what to do if the rent check is bad. If the tenant fails to pay rent, the landlord can immediately receive a default judgement reducing the landlord's expense of trial on the county level. However, if the check the Justice Court received is not honored, then this creates a legal quandary where none would have existed by having the check made payable to the County Clerk. Once the case is appealed the Justice Court has lost jurisdiction to enforce these rules. Although the County Court would now have jurisdiction, its ability to act would be limited because the funds in its registry would be good because they came from the Justice Court.

Over the years the Justice Court and the County Clerk have developed a system for the transfer of cases from justice court to county court. When an appeal has been perfected we prepare a packet, and everything in the packet is placed in a specific order to allow ease of verifying everything that is supposed to be in it, is in fact there. The first item in the packet, placed on top, are two cover sheets. One cover sheet acts as our receipt and it is returned to us from county

clerk. Any discrepancies are to be noted on the returned cover sheet. We staple any checks to the top of the cover sheet. There is not anything else that is stapled to the cover sheet. After the cover sheet is transcript, judgment, summary page, appeal w/sureties or statement of inability to pay, a copy of the letter to the parties /notice of transfer, and then anything else. In the referenced instance, the packet went out on August 25th. On September 9th we received the filed stamped cover sheet from the county clerk indicating everything was received and no discrepancies were noted. The staple holes from where the check was attached are clearly visible. Justice Court Pct#3 feels that given the procedures that were in place at the time, every indicator reflects that the check was delivered from our office to the county clerk.

SUMMARY

We appreciate the auditor's effort to improve the way money is handled. It seems that the overall end goal here is improve the way things are transferred from one court to another during the appeal process. Although the auditors address the rent deposit, they do not address the other cashier's checks we receive that are made out to the County Clerk, such as appeal bonds and filing fees for the County Court. Although we feel that we were in compliance with the law, we will defer to the auditor's findings, and comply with the audits suggestions to the best of our ability. Additionally we will attempt to update our paperwork in order to facilitate better case transitioning between the Justice Court and the County Court.

Sincerely,

Russell Casey

Justice of the Peace

Tarrant County Pct. 3