



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

June 16, 1952

Hon. R. Y. Lindsey, Jr.      Opinion No. V-1461  
County Attorney  
Dawson County  
Lamesa, Texas

Re: Necessity for the answer  
to plaintiff's petition  
in civil suits in jus-  
tice courts to be in  
writing.

Dear Sir:

We refer to your request for an opinion of this office concerning the necessity for a written answer to plaintiff's petition in civil suits in justice courts, in the light of the amendment of Rule 101 of the Texas Rules of Civil Procedure.

Rule 101, supra, as amended by the Supreme Court on October 10, 1951, became effective March 1, 1952. See 14 Texas Bar Journal 633. As amended, that rule now reads in part as follows:

"The citation shall be styled 'The State of Texas' and shall be directed to the defendant and shall command him to appear by filing a written answer to the plaintiff's petition at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days after the date of service thereof, stating the place of holding the court. . . ."

Rule 101 is a part of those rules which govern civil procedure in the district and county courts. Prior to its amendment, the rule required that the citations command the defendant "to appear and answer." Now it commands defendant "to appear by filing a written answer."

Rules 523, 525, 526, 534, and 535 are a part of the rules specifically controlling civil practice in the justice courts. These rules of procedure read in part as follows:

"Rule 523. District Court Rules Govern.--  
All rules governing the district and county courts shall also govern the justice courts,

insofar as they can be applied, except where otherwise specially provided by law or these rules." (Emphasis added.)

"Rule 525. Oral Pleadings.--The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket; provided that after a case has been appealed and is docketed in the county (or district) court all pleadings shall be reduced to writing."

"Rule 526. Sworn Pleadings.--An answer or other pleading setting up any of the matters specified in Rule 93 shall be in writing and signed by the party or his attorney and verified by affidavit." (Rule 527 contains further provisions with respect to a plea of privilege.)

"Rule 534. Citation. When a claim or demand is lodged with a justice for suit, he shall issue forthwith citations for the defendant or defendants. The citation shall require the defendant to appear and answer plaintiff's suit at or before 10:00 o'clock a.m. on the Monday next after the expiration of ten days from the date of service thereof, and shall state the place of holding the court. . . ."

"Rule 535. Answer Filed.--Where citation has been personally served at least ten days before appearance day, exclusive of the day of service and of return, the answer of the defendant shall be filed at or before ten o'clock a.m. on such day. . . ."

Rule 523, supra, clearly provides that the rules governing the district and county courts shall be applicable to justice court proceedings when not in conflict with the existing rules and statutes relating to civil procedure in the justice courts. Rule 525, however, provides that the pleadings in a justice court "shall be oral" except where otherwise specially provided. Rule 101, as amended, does not specifically require that pleadings in the justice courts shall be in writing.

Nor does Rule 101, as amended, in any way modify, supersede, or repeal Rules 525, 526, 527, 534, and 535, which exist unchanged to govern civil answers in the justice courts.

Therefore, it is the opinion of this office that Rule 101, as amended, does not require the answer to plaintiff's petition in civil suits in justice courts to be in writing.

You have called our attention to the language in Rule 535 which states that the answer of the defendant "shall be filed." Prior to the adoption of the Rules of Civil Procedure in 1940, it was clearly the rule that the defendant's answer in the justice court could be oral unless it set up a matter which was specially required to be pleaded in writing. Where the answer was pleaded orally, a brief statement of its contents was noted on the docket. Moore v. Jordan, 67 Tex. 394, 3 S.W. 317 (1887); Low v. Griffin, 41 S.W. 73 (1897). The official notes appended to Rule 535 show that the rewording of the prior articles in the civil statutes from which this rule was taken was for the purpose of changing the time of answering and not the manner of answering. It is our opinion that the change made by Rule 535 was not intended to require the filing of a written answer in the justice court.

SUMMARY

Rule 101 of the Texas Rules of Civil Procedure, as amended, does not require that answers to plaintiff's petition in civil suits in justice courts shall be in writing.

Yours very truly,

APPROVED:

PRICE DANIEL  
Attorney General

J. C. Davis, Jr.  
County Affairs Division

Mary K. Wall  
Reviewing Assistant

Charles D. Mathews  
First Assistant

By   
Chester E. Ollison  
Assistant

CEO:mh