**TJCTC RESPONSE TO TAA LETTER DATED 4-8-21**

TJCTC has received TAA’s letter regarding the effects of the expiration of the Texas Supreme Court’s 34th Emergency Order and what it means for the application of the provisions of the CDC eviction moratorium to eviction cases in justice court.

They believe justice courts may no longer abate eviction cases under the moratorium, since Rule 510 now applies to those cases, rather than the provisions of the 34th Emergency Order. However, they also believe justice courts may hold a hearing for the purposes of determining the truthfulness of a tenant’s Declaration. We disagree.

While the moratorium does not expressly prevent courts from holding such a hearing, Texas laws still apply. Under Texas law, justice courts cannot issue declaratory judgments which is what would result from a hearing on the truthfulness of the Declaration. The courts only had the authority to do this before because the Supreme Court Order gave them that authority. But the Supreme Court chose not to extend it.

Additionally, TAA argues that the CDC moratorium itself is unconstitutional, while simultaneously requesting that justice courts apply select provisions without any authority under Texas law. As we have explained, TJCTC’s position is that the Texas Supreme Court’s orders provided the mechanism for justice courts to apply the provisions of the moratorium. Without such an order, we believe courts are unable to do so. However, if a court were inclined to apply the provisions of the moratorium, it would seem more appropriate to apply all of the provisions rather than selectively applying some and not others, with no basis in any state or federal law for drawing the distinction on which to apply.

Ultimately, TJCTC is not a policy maker. We simply offer our best judgment and analysis concerning the applicable federal and state law. We share these positions from TAA and tenant advocacy groups to offer a full picture, since this situation, like the virus itself, is novel and these are uncharted waters. As always, judges are free and encouraged to review all relevant materials and decide what position to take as long as they are consistent from case to case.