Third Edition
October 2021

Published by the
Texas Justice Court Training Center

An educational endeavor of the
Justices of the Peace and Constables Association of Texas, Inc.

Funded by the Texas Court of Criminal Appeals

Address inquiries to: Permissions
Texas Justice Court Training Center
1701 Directors Blvd. Suite 530
Austin, TX, 78744

Table of Contents

User Notes

This deskbook on *Civil Procedure (3rd ed. October 2021)* represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

This deskbook is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter in civil cases in justice court.

This deskbook is not intended to replace original sources of authority, such as the Civil Practice and Remedies Code or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

Please note that all references to "Rule ___" are to the Texas Rules of Civil Procedure, and references to "TRE ___" are to the Texas Rules of Evidence.

Rather than including the citations to cases in the text of the deskbook, we have listed only the case name in the text but have included the entire citation in the appendix of cases.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in *Civil Procedure.*

Texas Justice Court Training Center
October 2021

Chapter 1: What is a Civil Case?

KEY POINT

A **civil case** is a lawsuit between two private parties, one of whom is typically claiming that the other one owes them money or refuses to return some item of personal property. A civil case may be contrasted with a criminal case, which is brought in the name of the State of Texas and alleges that a defendant has committed a criminal offense in violation of the laws of the state. The government is not normally a party to a civil case in justice court; the suit is between two private (that is, non-governmental) parties, which may be individuals or business entities. *Rule 500.3.*

Civil cases in justice court include:

- Small claims cases,
- Debt claim cases,
- Repair and remedy cases, **and**
- Eviction cases.

This deskbook explains small claims and debt claim cases. Repair and remedy cases and eviction cases are explained in the *Evictions Deskbook*.

Where can I find these rules?

CLICK HERE

Please note that whenever there is a reference to Rule _____ in this Deskbook, the reference is to the Texas Rules of Civil Procedure. You may find the rules at this link: https://www.txcourts.gov/rules-forms/rules-standards/

A. Small Claim and Debt Claim Cases

A **small claims case** is a suit to recover money damages, civil penalties, personal property, or other relief allowed by law and within the court's jurisdiction. *Rule 500.3(a).* For more information on how to determine if a claim is within the court's jurisdiction, please see ***pages 7-11***.

A **debt claim case** is a suit to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. *Rule 500.3(b).* For more information on how to determine if a claim is within the court's jurisdiction, please see ***pages 7-11***.


COMMON PITFALL

If a person brings a suit to recover a debt, but the person filing the suit is not an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest, then the case is treated as **a small claims case** rather than a debt claim case. What makes it a debt claim case is that:

- it is a suit to recover a debt, **and**
- it is brought by an assignee, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest.

B. Application of the Rules of Civil Procedure and Evidence

Rules 500 – 510 apply to civil cases in justice court. All the other Rules of Civil Procedure and the Rules of Evidence, other than the rules related to the enforcement of judgments, do not normally apply in a civil case in justice court. *Rule 505.2.* However, they may apply "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 "when otherwise specifically provided by law or these rules." *Rule 500.3(e).*

What About Administrative Cases?

Administrative cases, such as occupational driver's license hearings, tow hearings, and disposition of stolen property hearings, are explained in the *Administrative Proceedings Deskbook*.

For example, sometimes someone who is not a party to a suit wants to join the suit because they believe their rights may be affected by it. Such a party is called an "intervenor." Because this rarely happens in justice court, there is no rule in Rules 500 – 510 that addresses this situation for a case in justice court. But the judge could apply one of the other rules in the Texas Rules of Civil Procedure (in this case, Rule 60) to decide

whether or not to allow the intervenor to join the case.

1. Justice Court Must Make Rules Available

A justice court must make the Rules of Civil Procedure and the Rules of Evidence available for examination by the public, either in paper form or electronically, during the court's normal business hours. *Rule 500.3(f).*

Chapter 2: Jurisdiction

A. What is Jurisdiction?

KEY POINT

Jurisdiction is the ***power*** of a court to hear and decide a case. There are two types of jurisdiction:

- ***Subject matter jurisdiction*** means the authority of the court over the ***type of case*** before it.
- ***Personal jurisdiction*** means the authority of the court over the ***person*** who has been sued.

For example, the legislature has expressly provided that a justice court does not have jurisdiction to hear a case for slander or defamation or for title to land. *Government Code § 27.031(b)*. If such a case is filed in justice court, the court would not have subject matter jurisdiction over the case. This is also true if the suit exceeds the jurisdictional limit of the court, which is $10,000 for cases filed before September 1, 2020, and $20,000 for cases filed on or after that date.

Subject Matter v. Personal Jurisdiction

Subject Matter Jurisdiction is the court's authority to decide the case before it. **May not be waived.**

Personal Jurisdiction is the court's authority over the person who has been sued. **May be waived.**

When a court does not have **subject matter jurisdiction** over a case, it **must** dismiss the case on its own motion. This means the court does not have to wait for a motion from the defendant to dismiss the case – the court must dismiss it on its own whenever it realizes that it lacks subject matter jurisdiction.

Personal jurisdiction, on the other hand, means that even though the court has the power to hear that kind of case, the defendant is saying they should not have to defend themselves in that court. For example, suppose John Smith, who lives in Texas, drives to Oklahoma and while there is hit by Carol Careless, a resident of Oklahoma who has never been to Texas. John comes back to Texas and files suit against Carol in justice court in Texas for damages to his car. As long as John is not suing for more than the jurisdictional

limit, a justice court in Texas has **subject matter jurisdiction** to hear that case but the court does not have **personal jurisdiction** over Carol because the accident occurred in Oklahoma and she is a resident of Oklahoma and has never been to Texas. She does not have sufficient contacts with the State of Texas to permit a justice court to exercise **personal jurisdiction** over her.

Unlike subject matter jurisdiction, Carol has to raise the defense of personal jurisdiction by filing a **special appearance motion** with the court asking the court to dismiss her from the case. If she does not file such a motion (before or at the same time that she files her answer), then her objection to the court exercising personal jurisdiction over her is waived.

A "motion" is ….

…when a party requests the court to take some specific action.

B. What Cases Does a Justice Court Have Jurisdiction to Hear?

KEY POINT

A justice court has jurisdiction of civil matters in which exclusive jurisdiction is not in the district or county court and in which **the amount in controversy** does not exceed the jurisdictional limit of the court, which is $10,000 for cases filed before Sept. 1, 2020, and $20,000 for cases filed on or after that date. Statutory interest and court costs do not count when determining the amount in controversy. *Government Code § 27.031(a)(1).* For more on determining amount in controversy see ***pages 7-11*****.**

"Venue" means the place where the case may be heard provided the court has jurisdiction. It is waived if not raised by a timely motion to transfer. Venue is discussed on pages 40-45.

As mentioned above, civil cases in justice court include:

- Small claims cases,
- Debt claim cases,
- Repair and remedy cases, **and**
- Eviction cases.

Rule 500.3.

Civil cases in justice court also include suits for the "foreclosure of mortgages *(on personal property)* and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction." *Government Code § 27.031(a)(3).* A suit to foreclose a mortgage or lien on personal property is filed as a small claims case. ***See pages 159-160.***

Jurisdictional Limit – Repair and Remedy

While the jurisdictional limit was changed from $10,000 to $20,000 in 2020 for most justice court cases, Repair and Remedy cases continue to be limited to the $10,000 jurisdictional limit. *Property Code § 92.0563(e).*

1. How Does the Court Determine if a Case is Within the Jurisdictional Limit?

The amount in controversy is determined by the plaintiff's good faith pleading at the time the suit is filed. ***Peek v. Equipment Serv.***; ***French v. Moore.*** In calculating the amount in controversy, statutory interest and court costs are **excluded** but contractual interest and attorney's fees, if any, are **included**. *Government. Code § 27.031(a)(1); Rule 500.3;* ***Elkins v. Immanivong***; ***A-1 Parts Stop, Inc. v. Sims.***

a. Statutory and Contractual Interest

Statutory prejudgment interest only applies to the three types of cases listed in Finance Code Section 304.102: wrongful death, personal injury, and property damage cases**.** ***Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*** If claims for statutory interest are raised, the statutory interest **is not** included in calculating the amount in controversy. *Rule 500.3.*

Contractual interest is much more common in justice courts. When parties enter into a contract they are free to agree to any rate of prejudgment interest that is not usurious. ***Triton Oil & Gas Corp., v. E.W. Moran Drilling Co.*** A claim for contractual interest **is** included in calculating the amount in controversy.

Usury or Usurious Interest

This means a higher amount of interest than the law allows. For example, in Texas post-judgment interest cannot exceed 18 percent.

For example, assuming the case is filed on or after September 1, 2020, suppose Donny Deadbeat borrows

$18,000 from Caleb Cashman and signs a promissory note agreeing to pay Caleb the principal plus 5% interest per year. Let's say the note is due on December 31, and Donny owes one year of interest at that time. Caleb could sue for $18,000 plus $900 in interest. The court would count the $18,000 and the $900 in determining whether it has jurisdiction to hear this case (which it does). If Caleb retains a lawyer to file the suit and alleges that he has incurred reasonable attorney's fees of $500 at the time the suit is filed, then the court would include the attorney's fees in calculating the amount in controversy, which would be $19,400.00. ***Elkins v. Immanivong; A-1 Parts Stop, Inc. v. Sims.***

On the other hand, if Donny had borrowed $20,000 from Caleb and owed one year of contractual interest at 5% interest per year ($1000), and Caleb had incurred reasonable attorney's fees of $500 at the time the suit was filed, then Caleb's damages would be $20,000 + $1000 + $500 = $21,500. The court would not have jurisdiction to hear it.

To see whether the court has jurisdiction, the court simply reviews the good faith allegations of the petition to determine whether the plaintiff is seeking no more than the jurisdictional amount (excluding statutory interest and court costs). ***Bland Indep. Sch. Dist. V. Blue; Elkins v. Imannivong.***

The plaintiff's pleadings are generally determinative unless the defendant specifically alleges and proves the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction. This could also happen if, in developing the facts of the case, the judge determines the amount to be outside the jurisdictional limit. ***Bland Indep. Sch. Dist. v. Blue; Elkins v. Immanivong.***

What if the Jury Awards More Damages than the Jurisdictional Limit?
It depends. If there was no evidence that the damages were in an amount larger than the jurisdictional limit, then a judgment notwithstanding the verdict (JNOV) should be entered by the judge. A full discussion of JNOV, including examples, can be found in Chapter 6 of the *Trial Notebook*.

However, if there was evidence that the damages could be over the jurisdictional limit, the case should be dismissed for lack of jurisdiction. For example, in a case filed on or after September 1, 2020, if the plaintiff alleges that personal property that the defendant took from them was worth $19,000, but the defendant offers evidence that it is worth $22,000,

then the jury could believe that the personal property is worth $22,000.

BEST PRACTICE

TJCTC recommends holding a pretrial hearing in suits for personal property where the damages are close to the jurisdictional limit to avoid this issue at trial.

b. Mere Passage of Time Rule

KEY POINT

Again, assuming the case is filed on or after September 1, 2020, now suppose that at the time Caleb files suit his damages are $19,950.00, but contractual interest and attorney's fees continue to accrue while the case is pending so that the damages are more than $20,000 at the time the judgment is entered. Does the court lose jurisdiction? **No!**

This is called the "mere passage of time" rule: If the court had jurisdiction at the time the suit was filed, and the additional damages accrued as a result of "the mere passage of time," then the court continues to have jurisdiction even if the amount in controversy goes above the court's jurisdictional limit. ***Flynt v. Garcia***; ***Continental Coffee Prods. v. Cazarez***; ***Elkins v. Immanivong***; ***A-1 Parts Stop, Inc. v. Sims.***

The "Mere Passage of Time" Rule

If the plaintiff's damages were no more than the jurisdictional limit when the suit was filed, but due to ongoing contractual interest or attorney's fees the damages go over the jurisdictional limit while the case is pending, the court continues to have jurisdiction and may enter a judgment for more than the jurisdictional limit.

c. What if the Party Wants to Reduce the Amount of Their Claim to Fit Within the Justice Court Jurisdiction?

COMMON PITFALL

If a party alleges an amount of damages that is outside of the court's jurisdiction and the damages as alleged are **liquidated and non-severable**, then the party **cannot** reduce their claim to an amount within the trial court's jurisdiction. ***Failing v. Equity Management Corp.***; ***Williams v. Trinity Gravel Co.; Burke v. Adoue***. A party is not allowed to "manufacture" jurisdiction this way.

A party generally has the right to amend their pleadings freely. ***Lee v. Key West***

Towers, Inc.; Jago v. Indemnity Ins. Co. of N. Am.

Again, assuming the case is filed on or after September 1, 2020, if Donny borrowed (and signed a promissory note for) $22,000 from Caleb. Suppose Caleb files suit for $22,000 but upon realizing that the justice court's jurisdiction is limited to $20,000, he amends his petition to claim just $20,000 so his case falls within the jurisdictional limit of the justice court. May he do this? **No!**

The opposite generally holds true if the claimed damages are unliquidated. A party **may** freely reduce their **unliquidated** claim if the party pleads in good faith***. Lucey v. Southeast Tex. Emergency Physicians Assocs.***

What is the Amount of the Claim?

If Donny borrowed $22,000 from Caleb but paid back $13,000 before defaulting on the balance, then the amount of Caleb's claim is $9,000, and he can file his case in justice court. The case fits within justice court jurisdiction, because the amount of his claim is $9,000 even though the original note was for $22,000. Caleb is not "manufacturing" jurisdiction.

d. Liquidated vs. Unliquidated Damages

Liquidated: clearly able to be determined by a written instrument.
Unliquidated: need proof to determine amount of damages.

So, what is the difference between liquidated and unliquidated damages?
Let's say Donny is renting an apartment from Caleb for the sum of $500 per month. Donny fails to pay the rent for January and February, and Caleb sues to evict Donny. Caleb's damages are **liquidated** because they are clearly determined by looking at a written instrument (*the lease*). We know that they are $1,000.00. Awarding Caleb more or less than $1,000.00 wouldn't make sense. We don't need any evidence beyond the lease agreement to determine what his damages are.

On the other hand, let's say that Donny hits Caleb with his car as Caleb is riding his bicycle down the street. Caleb has to go to the hospital, and his doctor's bills are $5,500. His bicycle, which he paid $600 for, is also damaged. Caleb sues to recover damages and for pain and suffering. What will the judgment amount be? We don't know! These damages are **unliquidated**, because they cannot be determined based on the facts contained in

Caleb's petition alone. The court can't award Caleb damages of $5,500 just by looking at his medical bills. The court must ask whether all medical issues were caused by the accident and whether all medical services provided were necessary and reasonably priced. The court also can't simply award Caleb damages of $600 for the damage to his bicycle. What if he paid $600 for the bicycle in 1998? How much was it worth at the time of the accident? The court will need to hear evidence on the amount of damages since they cannot be readily determined by reference to a written instrument.

2. Causes of Action

For a plaintiff to receive a judgment in court, they must prove certain things. The things they must prove are determined by their **cause of action**, meaning "what they are suing for." Examples of different causes of action are: breach of contract, negligence, conversion (theft of personal property), and forcible detainer (eviction).

A single lawsuit may involve multiple causes of action. For example, in the same lawsuit, a dog owner might sue their dog boarder for breach of contract and conversion if when the owner returned to pick their dog up, the dog boarder refused.

There are many different causes of action that exist under Texas law, so many in fact, that they can't all be discussed in detail here. A good resource for courts to have on hand is ***O'Connor's Texas Causes of Action***. Additional information is published in online databases, such as LexisNexis and Westlaw.

C. What Relief Can the Court Order?

Justice courts have jurisdiction to:

- award monetary damages in a small claims or debt claim case;
- award possession of real property and back rent in an eviction case (discussed in the *Evictions Deskbook*);
- enforce liens and foreclose mortgages on personal property ***(see pages 159-160)***;
- issue writs of attachment, garnishment, sequestration ***(see pages 117-124)***, and execution ***(see pages 127-142)***;

- enforce deed restrictions that do not involve a structural change to a dwelling ***(see page 162);*** **and**
- issue orders in cases they are authorized to hear by statute (such as occupational driver's license hearings, tow hearings, or disposition of stolen property hearings) (discussed in the *Administrative Proceedings Deskbook*).

Government Code §§ 27.031(a), 27.032, 27.033, 27.034(a).


KEY POINT

Justice courts ***may not issue injunctions*** or writs of mandamus. ***Crawford v. Sandidge***; ***Poe v. Ferguson***; ***Kieschnick v. Martin.***

D. What Kind of Cases are Justice Courts Not Allowed to Hear?

Justice courts **do not** have jurisdiction to hear suits:

- on behalf of the State to recover penalties, forfeitures or escheats;
- for divorce;
- for slander or defamation;
- for title to land; **or**
- to enforce a lien on land.

Government Code § 27.031(b).

If any of these cases are filed in a justice court, the court **must** dismiss the case for lack of subject matter jurisdiction. If the court lacks subject matter jurisdiction, it should dismiss the case without waiting for a motion to dismiss from the defendant. As soon as the court realizes that it does not have subject matter jurisdiction it should dismiss the case on its own motion. ***See page 5.***

No Injunctive Relief

Justice courts may ***not*** issue an injunction!

An injunction is an order requiring a person to do or refrain from doing a specific act. For example, a person is about to cut down a tree on his neighbor's property; the neighbor asks a court to issue an injunction ordering them not to cut down the tree.

The only exception is where a statute expressly authorizes a justice court to order a party to do something, as in a repair and remedy case.

E. Statutes of Limitations

A **statute of limitations** is a time period that a person has to file a lawsuit after they suffer an injury, either physical or monetary. Statutes of limitations are generally specific to types of cases and for civil cases can be found in Chapter 16 of the Civil Practice and Remedies Code. The most common statutes of limitations related to justice courts are in the chart below.

There are certain events or statuses that will make a statute of limitations longer than it ordinarily would be usually for fairness. One of these is the death of a party to a potential lawsuit. The death of a person who could file a claim or have a claim filed against them extends the limitations period for 12 months. *Civil Practice and Remedies Code § 16.062.*

If a person is under 18 years of age or of unsound mind when a cause of action accrues, the limitations period does not begin until the disability is removed. However, if a disability occurs after the cause of action accrues, it does not stop the period from running. *Civil Practice and Remedies Code § 16.001.*

Statutes of Limitations for Common Justice Court Causes of Action			
Debt Claim	**4 years**	**CPRC 16.004**	**Calculated from the date that the "dealings between the parties" stop.**
Contract	**4 years**	**CPRC 16.004**	**The parties can contract for a different statute of limitations, but it cannot be for less than two years. CPRC 16.070**
Torts (injury to estate or property, conversion of personal property, personal injury, eviction)	**2 years**	**CPRC 16.003**	**The statute can be tolled (paused) if a party is unaware of the injury and there is no good reason why they should have been aware of it.**
***This is not a comprehensive list of statutes of limitations that can apply to civil cases. For more information, please see Chapter 16 of the Civil Practice and Remedies Code.*			

Chapter 3: Administrative Rules

A. What Records Must the Court Maintain?

1. Records in the Civil Docket

Each judge must keep a civil docket with a permanent record containing the following information:

- The title of all suits filed with the court;
- The date when the first process (such as the citation) was issued against the defendant, when the process was returnable and the nature of the process;
- The date when the parties (or one of them) appeared before the court;
- A description of the petition and any documents filed with the petition;
- Every adjournment, stating at whose request it was made and to what time;
- The date of the trial, stating whether it was before a jury or before a judge;
- The verdict of the jury, if any;
- The judgment signed by the judge and the date the judgment was signed;
- All applications for setting aside judgments or granting new trials and the orders (including dates) of the judge on those applications;
- The date of issuing execution, to whom directed and delivered, and the amount of debt, damages, and costs and, when any execution is returned, the date of the return and the manner in which it was executed; **and**
- 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 507.3(a).

2. Other Records

The judge must also keep:

- copies of all documents filed;
- other dockets, books and records as may be required by law or the rules of civil procedure; **and**
- a fee book in which all costs accruing in every suit commenced before the court are taxed.

Rule 507.3(b).

3. Records May be Kept Electronically

All records required to be kept may be maintained electronically. *Rule 507.3(c).*

Please see the *Recordkeeping and Reporting Deskbook* for additional information concerning recordkeeping.

B. When Does the Court's Power Over a Case End?


KEY POINT

A justice court loses plenary power over a case (that is, the general power to make rulings in a case) when an appeal is perfected or, if no appeal is perfected, **21 days** after the later of the date a judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied. *Rule 507.1.* ***See pages 96-98 for a discussion of these time periods.***

C. How Are Writs Issued?

A "**writ**" is a court's written order, in the name of the State of Texas, commanding the person to whom it is addressed to do or refrain from doing some specified act. *Black's Law Dictionary at 785 (3d Pocket Edition 2006).* Every writ from a justice court must be in writing and be issued and signed by the judge officially. The style of the writ must be "The State of Texas." Except where otherwise specifically provided by law or the Texas Rules of Civil Procedure, it must be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance. *Rule 507.4.* See ***pages 117-124*** and ***pages 127-142*** for a discussion of writs issued by justice courts.

D. Can the Court Provide Forms to the Parties?

Yes! The court may provide forms to enable a party to file documents that comply with the rules of civil procedure. No party may be forced to use the court's form. *Rule 507.2.* The forms may be provided in hard copy or on the court's website.

There is a page on TJCTC's website for self-represented litigants. This page includes packets explaining common justice court cases and forms in English and Spanish. It also includes links for online resources where self-represented litigants may be able to find a lawyer for little or no cost.

CLICK HERE

This page can be found at: ***https://www.tjctc.org/SRL.html***

Chapter 4: Civil Cases from Filing Up to Trial

A. Filing the Petition

1. Requirements of the Petition

In order to begin a civil suit in justice court, a person must file a **petition** with the court. *Rule 502.2(a).*

A petition **must** contain the following information:

- The name of the plaintiff;
- The address, telephone number and fax number, if any, of the plaintiff, and the name, address, telephone number, and fax number, if any, of the plaintiff's attorney, if the plaintiff has an attorney;
- The name, address and telephone number, if known, of the defendant;
- The amount of money, if any, the plaintiff is asking for;
- A description and the value of any personal property the plaintiff is suing to recover;
- A description of any other relief the plaintiff is requesting;
- The basis for the plaintiff's claim against the defendant, that is an explanation of why the plaintiff believes they are entitled to win their case; **and**
- If the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and their email contact information.

Rule 502.2(a).

Pleadings and Motions Must be in Writing

Except for oral motions made during trial **or** when all parties are present, all pleadings, motions and requests for relief from the court **must** be in writing, signed by the party or their attorney, and filed with the court. A document may be filed by personal or commercial delivery, by mail, or electronically if the court allows electronic filing. *Rule 502.1*

The court must accept the petition as it is filed, but if a petition does not contain everything that is required, the defendant may request that the court order the plaintiff to amend the petition while the case is pending. Either party can generally amend their pleadings until seven days before trial. *Rule 502.7.* See "Amendment and Clarification of Pleadings" on ***pages 50-51***.

Can a Plaintiff Sue More Than One Defendant in the Same Case?

Yes! If a party believes that whatever damages they are suing for were caused by more than one person or business, they can sue them all in one case, so long as the injury to the plaintiff occurred in the same transaction, occurrence, or series of occurrences. An example of this might be if a homeowner believes that during a recent renovation of their bathroom, the plumber that their general contractor hired damaged the electrical wiring, they may sue both the general contractor and the plumber in the same case. See Rule 40 (although this rule only applies if the judge chooses for it to under 500.3, in most cases it would encourage fairness and efficiency in the courts to apply it).

Likewise, multiple plaintiffs who believe that they are all entitled to some relief (usually money) because of the action of one defendant, could choose to sue in the same lawsuit. *Rule 40.*

2. Petitions in Debt Claim Cases

A petition in a debt claim case must contain certain information **in addition to** the information (listed above) that must be included in a petition in a small claims case.

The reason for requiring this additional information is to identify the debt and give the defendant enough information to know that the debt was incurred by them (for example, the plaintiff is suing for debt on a credit card that the defendant once used). Often in a debt claim case the plaintiff is not the bank or other business that issued the credit card or extended credit to the defendant; the debt has been assigned to a debt collector or other business that the defendant never heard of and doesn't recognize. So, it is important to give the defendant the information they need to know whether or not it is a debt they actually incurred.

Therefore, in a claim based on a credit card, revolving credit, or open account, the petition

must state:

- The account name or credit card name;
- The account number (which may be masked);
- The date of issue or origination of the account, if known;
- The date of charge-off or breach of the account, if known;
- The amount owed as of a date certain; **and**
- Whether the plaintiff seeks ongoing interest.

In a claim based upon a **promissory note** or other promise to pay a specific amount as of a date certain, the petition must state:

- The date and amount of the original loan;
- Whether the repayment of the debt was accelerated, if known;
- The date final payment was due;
- The amount due as of the final payment date;
- The amount owed as of a date certain; **and**
- Whether plaintiff seeks ongoing interest.

If a plaintiff seeks ongoing interest, the petition **must** state:

- The effective interest rate claimed;
- Whether the interest rate is based upon contract or statute; **and**
- The dollar amount of interest claimed as of a certain date.

Finally, if the debt that is the subject of the claim has been assigned or transferred, the petition **must** state:

- That the debt claim has been transferred or assigned;
- The date of the transfer or assignment;
- The name of any prior holders of the debt; **and**
- The name or a description of the original creditor.

Rule 508.2(a).

A Petition in a Debt Claim Case Must Contain More Information

A petition in a debt claim case must contain information that allows the defendant to recognize the debt as one that he incurred, including whether the debt was assigned and if so who all the prior debt holders were and the name of the original creditor (for example, the bank that issued a credit card).

KEY POINT

If the required information is not contained in a petition in a debt claim case, the court should not grant a default judgment because of the possibility that the reason the defendant did not answer was because the defendant did not recognize the debt as their own.

B. Filing and Service Fees or Statement of Inability to Afford Payment of Court Costs

1. Filing and Service Fees

On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. *Rule 502.3(a).* Only one filing fee is required for each case although a service fee must be assessed for **each** defendant.

Filing Fee

Effective January 1, 2022, in most counties the filing fee is $54 (it is $46 for cases filed before January 1, 2022). This fee is made up of:

- the State Consolidated Civil Fee ($21), **and**
- the Local Consolidated Civil Fee for Justice Court ($33).

Local Government Code §§ 135.103, 133.151(a-1).

Additionally, effective January 1, 2022, the filing fee must be charged upon filing an appeal or motion for new trial (see ***page* 101** and ***page* 97**).

A full discussion of all of the fines, fees, and costs in civil cases can be found in Chapter 3 of the *Fines, Fees, and Costs Deskbook*.

Court Costs When Governments Sue

State and federal agencies, as well as cities are exempt from posting court costs, appeal bonds, or other security for costs.

This includes counties, Veteran's Administration, and more. This also extends to bonds for writs of sequestrations, garnishment, or distress warrants. However, county or district attorneys must put up bonds for writs unless there is an exemption approved by the commissioners court or attorney general.

If the state wins, the defendant must pay any costs or fees that the state did not pay.

Civil Practice and Remedies Code § 8.02.

CLICK HERE

Service Fee

Fees for service of civil process are set by the commissioner's court under Local Government Code Section 118.131, and are listed in the Sheriffs' and Constables' fees listing published by the Comptroller's Office, which may be found at this link: ***https://comptroller.texas.gov/transparency/local/sheriffs/***

Can Clerks Charge Service Fees?

The Attorney General has stated that the "justice court clerk may not charge a fee for service of process by certified or registered mail [but] may collect advance payment for the expense of postage for serving process by mail unless another statute exempts the party from paying such costs." *Attorney General Opinions DM-250-A (1996) and DM-250 (1993)*. Therefore, under the Attorney General's opinions a clerk **may not** charge more than the actual cost of the mailing when serving a citation by certified or registered mail.

2. Statement of Inability to Afford Payment of Court Costs

KEY POINT

A plaintiff who is not able to afford to pay the filing and service fees may file a "Statement of Inability to Afford Payment of Court Costs." Upon the filing of the Statement, the clerk of the court must docket the action, issue citation, and provide any other customary services. *Rule 502.3(a).*

Form

The plaintiff must use the Supreme Court form or include the information required by that form. The clerk must make the form available to all persons without charge or request. *Rule 502.3(b).* The Statement must either be sworn to before a notary or made under penalty of perjury and include the following statement: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." *Rule 502.3(a).*

A copy of the Supreme Court's form may be found on the TJCTC website.

If a plaintiff files a Statement of Inability to Afford Payment of Court Costs at the time they file a petition, then a copy of the Statement should be served on the defendant with the citation. *Rule 501.1(a).*

a. Contest of the Statement of Inability to Pay

KEY POINT

When a Statement May Not be Contested

A Statement of Inability to Afford Payment of Court Costs **accompanied by a legal aid provider certificate may not be contested**.

The certificate is provided by an attorney, and it confirms that the legal aid provider screened the person for eligibility under the income and asset guidelines established by the provider. The attorney must be providing free legal services because of the person's indigence, and without a contingent fee arrangement, either directly or by referral from a legal aid provider. *Rule 502.3(c).*

When a Statement May be Contested

If a legal aid provider certificate is **not** filed, then the defendant may file a contest of a Statement filed with the petition. The contest must be filed **within seven days after the day the defendant's answer is due**. *Rule 502.3(d).*

Limit on What May be Contested

If the Statement says the plaintiff receives a government entitlement based on indigence, then the only challenge that can be made is to whether or not that is true – in other words, if the person is actually receiving the government entitlement. *Rule 502.3(d).*

Hearing

If a contest is filed, the judge must hold a hearing on the contest to determine the plaintiff's ability to afford the fees, and the burden is on the plaintiff to prove such inability. **The judge may conduct a hearing on their own even if the defendant does not contest the Statement.** *Rule 502.3(d).* But a judge is not required to contest a Statement on their own and may never deny a Statement without a hearing. ***In re Heaven Sent Floor Care.***

If the Judge Determines that the Plaintiff Can Afford the Fees

If the judge determines that the plaintiff is able to afford the filing and service fees, the judge must enter a written order listing the reasons for that determination. The plaintiff must then pay the fees in the time specified in the order or the case will be **dismissed without prejudice** (meaning the plaintiff is not barred from filing the suit again). *Rule*

502.3(d).

If the Judge Determines that the Plaintiff Cannot Afford the Fees

If the judge determines the plaintiff is not able to afford the filing and service fees, the judge should enter a written order denying the contest of the statement and approving the Statement of Inability.

C. Issuance and Service of the Citation

When a petition is filed, the clerk of the court must promptly issue a citation for delivery to each defendant ***(See pages 24-27 for methods of delivery)***. *Rule 501.1(a).*

1. Contents of the Citation

The citation must:

- be styled "The State of Texas;"
- be signed by the clerk under seal of the court or by the judge;
- contain the name, location, and address of the court;
- state the date the petition was filed;
- state the date the citation was issued;
- show the file number and names of the parties;
- be directed to the defendant;
- state the name and address of the attorney for the plaintiff, or if the plaintiff does not have an attorney, the address of the plaintiff;
- 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; **and**
- contain 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**

REQUIRED LANGUAGE

against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

Rule 501.1(c).

2. Copies of the Citation

The plaintiff must provide enough copies of the citation to be served on **each** defendant. If the plaintiff fails to do this, the clerk may make copies and charge the plaintiff the allowable copying cost. *Rule 501.1(d).*

3. Service of the Citation on the Defendant

Who May Serve the Citation

The citation may be served by:

- a sheriff or constable;
- a process server certified under an order of the Texas Supreme Court;
- the clerk of the court if the citation is served by registered or certified mail; **or**
- a person authorized by court order who is 18 years of age or older.

Rule 501.2(a).

KEY POINT

No one who is a party to the suit or interested in the outcome of the suit may serve a citation in that suit. *Rule 501.2(a).*

Primary Method of Service of the Citation

The citation must be served by:

- delivering a copy of the citation to the defendant **in person** along with a copy of the petition; **or**

- **mailing** a copy of the citation, along with a copy of the petition, by **registered or certified mail**, restricted delivery, with return receipt or electronic return receipt requested.

Rule 501.2(b).

a. Alternative Service

Request for Alternative Service

If the primary method of service is not sufficient to serve the defendant, then the plaintiff or the constable, sheriff, process server, or other person authorized to serve process may request that the court allow alternative service. This request must include a sworn statement describing the methods of service attempted and stating the defendant's usual place of business or residence or another place where the defendant can probably be found. *Rule501.2(e).*

A citation may not be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings. For more information on these proceedings, see pages 117-124 and pages 127-142 of this volume, and Chapter 9 of the Evictions Deskbook.

Alternative Method for Service of the Citation

KEY POINT

Following a request for alternative service the court may authorize service:

- by 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 a copy of the petition 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; **or**
- by 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 it by any other method the court finds is reasonably likely to provide the defendant with notice of the suit.

Rule 501.2(e).

2019 Legislative Change

During the 86th Legislative Session, a bill passed that requires the Texas Supreme Court to adopt rules to allow service via social media by December 31, 2020.

Rule 106 was updated to allow alternative service by email, social media, or other electronic means if that would reasonably effect service. A court may, but does not have to, apply Rule 106 to allow this type of service.

b. Service by Publication

If a defendant may not be located or is a nonresident of Texas and the plaintiff has been unable to serve them, then service by publication may be necessary. This process is governed by the rules in county and district court. *Rule 501.2(f).* Those rules include Rules 109, 116, and 117. These rules were revised in 2020 to add publication on the public information internet website developed and maintained under Government Code 72.034.

CLICK HERE

The new Texas Online Public Information – Courts (TOPICs) website can be found here: ***https://topics.txcourts.gov/***

Generally, citation by publication will be required to appear in a newspaper and on the public information internet website.

Newspaper Publication

A sheriff, constable, or court clerk must serve the citation if served by newspaper publication. The citation is published once each week for four consecutive weeks, starting at least 28 days before the return date of the citation in the county where the suit is pending unless it is a suit involving land title or real estate partition (which will not be tried in justice courts). *Rule 116(c).*

A citation served by publication is **not** required to appear in the newspaper if:

- The party requesting citation files a Statement of Inability to Afford Payment of Court Costs;
- The total cost of the required publication exceeds $200 each week, or an amount set by the Supreme Court, whichever is greater; **or**
- The county in which the publication is required does not have any newspaper published, printed, or generally circulated in the county.

Rule 116(b)(2).

The officer or clerk who served the citation by newspaper publication must state in the return how the citation was published, specify the dates of publication, sign the return, and attach an image of the publication. *Rule 117(a).*

Public Information Internet Website Publication

The clerk of the court in which the case is pending must serve the citation. The citation must be published on the website for at least 28 days before the return is filed. The court must also follow any other guidelines provided by the Office of Court Administration (OCA). *Rule 116(d).*

The return will be generated by OCA and must specify the dates the citation was published on the Public Information Internet Website. *Rule 117(b).*

Access to Texas Online Public Information - Courts

The Office of Court Administration (OCA) will provide one person from each court with access to the new TOPICs website. That person will then be responsible for adding additional users from their office. For more information or for a user account to be generated for your court, contact ***OCA-Legal@txcourts.gov.***

Default Judgments

Before granting a judgment based upon service by publication, the court must inquire into the sufficiency of the diligence exercised by the plaintiff in attempting to ascertain the residence or whereabouts of the defendant, or to obtain service on a nonresident. *Rule 109.*

Where service has been made by publication, the court must appoint an attorney to defend the suit on behalf of the defendant prior to entering a default judgment. The appointed attorney's reasonable fees shall be taxed as court costs. *Rule 244, 501.2(f).*

CITATION SERVICE METHODS (RULE 501.2)		
Who Serves?	A sheriff or constable; A certified process server; The clerk of the court (if served by registered or certified mail); ***or*** A person authorized by court order who is 18 years of age or older.	
Primary	**Alternative**	**Publication**
• Deliver a copy **in person** to the defendant; **or** • Mail a copy by **registered or certified mail**, restricted delivery, return receipt requested.	Mail a copy by **first class mail** to the defendant and also: • **leave** at defendant's residence or place where he can be found **with someone over 16**; **or** • serve by any other method the court finds reasonably likely to provide notice to the defendant.	The citation is published once each week for four consecutive weeks, starting at least 28 days before the return date of the citation, in a newspaper in the county where the suit is pending, as well as on ***https://topics.txcourts.gov***. *Rule 116.*

4. Return of Service

Requirements for the Return of Service

The officer or other person serving the citation must:

- note the date and time when they received it;
- execute (that is serve) and return the citation without delay; **and**
- complete a return of service.

Rule 501.3(a).

What Does the Return of Service Have to State?

The return of service must include the following information:

- The case number and case name;
- The court in which the case is filed;
- A description of what was served;

- The date and time the citation was received for service;
- The person or entity served;
- The address served;
- The date of service or attempted service;
- The manner of delivery of service or attempted service;
- The name of the person who served or attempted service;
- If the person is a process server certified under Supreme Court Order, their identification number and the expiration date of their certification; **and**
- Any other information required by rule or law.

Rule 501.3(b).

If the citation was served by registered or certified mail, then the return must also contain the receipt with the addressee's signature. *Rule 501.3(c).*

What if the Person is Unable to Serve the Citation?

When the officer or authorized person has not served the citation, the return of service must show the diligence they used to execute the citation and the reason they were unable to execute it and where the defendant is to be found if that information is available. *Rule 501.3(d).*

Signature and Verification on the Return of Service

The return must be signed by the officer or person authorized to serve the citation. If the return is signed by someone other than a sheriff, constable, or clerk of the court, then the return must either be verified or signed under penalty of perjury. *Rule 501.3(e).* The form of the statement required on the return is included in Rule 501.3(e).

Return of Service Where Alternative Service was Used

If service was executed by an alternative method of service, proof of service must be made in the manner ordered by the court. *Rule 501.3(f).*

Filing the Return with the Court

The return and any document to which it is attached must be filed with the court. They may be filed electronically or by fax if those methods of filing are available. *Rule 501.3(g).*

5. No Default Judgment Unless Proof of Service *has* Been on File for Three Days

KEY POINT

No default judgment may be granted in any case until proof of service of the citation has been on file with the clerk of the court for three days, exclusive of the day of filing and the day of judgment. *Rule 501.3(h).*

No Default Judgment

No default judgment may be entered unless proof of service of the citation has been on file for at least three days!

Example: The proof of service must have been filed Monday for a default judgment to be entered on Friday. Monday is not counted, because it is the day of filing. Friday is not counted, because it is the day of judgment.

Tuesday, Wednesday, and Thursday = 3 days.

D. How Does the Court Compute Time?

Rules for Computing Deadlines

To compute time, the court should:

- not count the day of the event that triggers the period;
- count every day, including Saturdays, Sundays, and legal holidays; **and**
- include the last day of the period, **but**
  - 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**
  - if the last day **for a party to file a document** 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.

Rule 500.5(a).

A defendant could drop his answer in the mail on the last day for filing and under the "mailbox rule" it would be considered filed on time as long as it is received by the court within 10 days of the due date.

The following calendar illustrates how to count the days between the service of a citation on a defendant in a small claims or debt claim case and the day the defendant's answer must be filed (14 days after service of the citation):

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
13	14 **(Day 0) Citation Served**	15 (Day 1)	16 (Day 2)	17 (Day 3)	18 (Day 4)	19 (Day 5)
20 (Day 6)	21 (Day 7)	22 (Day 8)	23 (Day 9)	24 (Day 10)	25 (Day 11)	26 (Day 12)
27 (Day 13)	28 **(Day 14) Memorial Day: Court Closed**	29 **(Day 15) Answer Must be Filed if Court Closes at 5:00 p.m.**	30 **(Day 16) Answer Must be Filed if Court Closes before 5:00 p.m.**	31		

1. Mailbox Rule

COMMON PITFALL

A document that is required to be filed by a given date is considered to be timely filed if it is put in the U.S. mail on or before that date, and received by the court within 10 days of the due date. *Rule 500.5(b).* This means that a party may actually file a document by mailing it to the court on the day it is due, as long as the court receives it within 10 days. It was still filed on time by being dropped in the mail on the due date! Please note that this rule works differently in an evictions case. See the discussion in Chapter 4 of the *Evictions Deskbook*.

2. Extension of Time Periods

On a showing of good cause, the judge may extend any time period under the rules except those relating to new trial and appeal. *Rule 500.5(c).*

E. Who May Represent a Party in Justice Court?

1. Representation of an Individual

An ***individual*** who is a party to a civil case in justice court may be represented by:

- Himself or herself,
- An attorney, **or**
- An authorized agent in an eviction case (but not in a small claims case, debt claim case, or repair and remedy case).

Rule 500.4(a).

2. Representation of a Corporation or Entity

A ***corporation or other entity*** - such as a partnership or an LLC (a limited liability company) - that is a party to a civil case in justice court may be represented by:

- An employee, owner, officer, or partner of the entity who is not an attorney,
- An attorney, **or**
- A property manager or other authorized agent in an eviction case (but not in a small claims case, debt claim case, or repair and remedy case).

Rule 500.4(b).

3. Assisted Representation

A justice court may also allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated. The court may do this when it finds there is good cause to allow the individual to be assisted in court. *Rule 500.4(c).* For example, an elderly person might need some assistance from a relative to understand the proceedings and to submit documents or other evidence helpful to their side of the case.

Assisted Representation Limitations

A person assisting a party ***cannot***:

- Sign pleadings,
- Represent the party in court without the party present,
- Examine witnesses, **and/or**
- Negotiate a settlement on behalf of a party

This rule **does not** allow the unauthorized practice of law; it simply allows the court to permit someone to assist a party who needs help in understanding the proceedings or presenting their case to the court or jury.

4. Can a Child Sue or be Sued?

Generally, the age of majority in civil cases in Texas is 18 years old. Therefore, a person who is 17 years old or younger and who has not been emancipated does not have legal capacity to sue or be sued in their own name. A parent or guardian could file a lawsuit on behalf of their child. When this happens, the parent will usually be listed as the "next friend" of the child in the style of the case. *Civil Practice and Remedies Code § 129.001.*

Texas law also protects a child's cause of action by tolling (or pausing) the statute of limitations until the child is 18 years old. Once the child turns 18, the normal statute of limitation for that cause of action applies. ***Weiner v. Wasson*****.** See also the discussion of Statutes of Limitations on ***page 13***.

Minors are also civilly liable for their own torts. An example of this is if a 16-year-old ran a red light and crashed into another car. Even though the child is liable, they would still be sued through their parent or guardian as "next friend." ***Brown v. Dellinger*****.**

If the child defendant does not have a guardian, then a guardian ad litem needs to be appointed. Note that the minor (and not just their parent) must still be served with citation in order for the court to have jurisdiction over the minor. Filing an answer does ***not*** waive the requirement for service of citation on a minor**.** ***Taylor v. Rowland***; ***Wright v. Jones.***

F. Pretrial Discovery

1. What is Pretrial Discovery?

Pretrial discovery is the process by which the parties to a civil case can obtain information about the case from the other side before the trial. That way, they are able to develop the facts they will present at trial and avoid being unfairly surprised by facts the other side

presents.

Discovery is routinely used in civil cases filed in district court or county court to help the parties prepare their cases for trial. It is far less common in justice court because the cases in justice court are less complex and the cost of the discovery might be more than the amount in dispute.

However, sometimes there is a legitimate need for pretrial discovery in a civil case in justice court.

Discovery may also be taken after a judgment has been entered. ***This is discussed on page 116.***

2. What Types of Discovery *are* There?

The most common forms of discovery are:

- Requests for Disclosure
- Requests for Admissions
- Interrogatories
- Requests for Production of Documents
- Depositions

Discovery is discussed in detail in Chapter 2 of the *Trial Notebook* as well as below.

a. Requests for Disclosure

A Request for Disclosure requires the other side to provide some basic information about the case including:

- The correct names of the parties and whether there are any other potential parties;
- The names of any potential witnesses and the information they may have;
- The legal theories the party is relying on;
- How damages are calculated;
- Whether there are any insurance policies;
- Medical bills if the party is claiming personal injury; **and**

- Information about expert witnesses, if any.

Rule 194.2.

b. Requests for Admissions

Requests for admissions are written requests that the other party admit that something is true. For example, "Please admit that you signed this contract." The party responding to the request must "admit" or "deny" the request.

What if a party doesn't respond?

If a party doesn't respond, the court could give them time to answer and direct them to answer. The court could also use Rule 500.3(e) to apply Rule 198.2 and consider that fact admitted. *Rule 198.2*. This is known as a "deemed admission."

If a self-represented litigant failed to answer or they would like to change their response, the court may allow them to answer or modify their response. Rule 198.3 of the Texas Rules of Civil Procedure allows this when:

- The party shows "good cause" for the withdrawal or amendment, **and**
- The court finds that the party relying on the responses will not be unfairly prejudiced.

KEY POINT

The option to withdraw a response is only available in a Request for Admission.

COMMON PITFALL

"Good cause" in this case has been addressed by the Texas Supreme Court. Even though self-represented litigants are not usually held to a different standard than attorneys, the Texas Supreme Court recognizes that there is a difference [between attorneys and self-represented litigants] and a court may take that difference into account when ruling on a motion to withdraw or amend "deemed admissions," which are admissions that occurred because the party failed to respond on time to the request for admission. ***Wheeler v. Green.***

c. Interrogatories

Interrogatories are written questions that the responding party must answer under oath. For example: "How fast were you going when you rear-ended me?" An interrogatory may

only ask about the facts of the case or about the other side's legal theories. *Rule 197.1.*

d. Requests for Production of Documents

A Request for Production of Documents asks the other party to produce documents or tangible things or to make them available for inspection and copying. The request must be specific enough to allow the responding party to know what is being asked for. *Rule 196.1.* For example, in a credit card case a defendant might request production of all documents the plaintiff has relating to the defendant's use of the credit card and any charges or payments on the account.

e. Depositions

A deposition is the actual taking of testimony of a witness or a party under oath before trial in the presence of a court reporter who prepares a transcript of the testimony. *Rule 199.2.* A deposition is normally taken in the office of an attorney for one of the parties. Depositions are rarely used in cases in justice court because of the time and expense involved in taking the deposition and paying the court reporter.

3. When Is a Party Allowed to Take Pretrial Discovery in a Civil Case in Justice Court?


KEY POINT

Pretrial discovery in justice court is limited to what the judge considers reasonable and necessary for that case. Here is the procedure that must be followed for discovery in justice court:

- The party (either the plaintiff or the defendant) must file a written motion for discovery with the judge.
- The party must serve (that is, mail or otherwise deliver) the motion to the opposing party. For example, if the party requesting the discovery is the plaintiff, they have to send a copy of the motion requesting

No Pretrial Discovery Without the Court's Permission

A party may not take pretrial discovery in a civil case in justice court without the judge's prior approval. The judge should only allow discovery that is reasonable and necessary for that case.

discovery to the defendant.

  - If a party forgets or otherwise fails to deliver the discovery motion on the opposing party, the court may order them to do so and make reasonable accommodations that are necessary such as resetting a discovery hearing.

- Unless a hearing is requested, the judge may rule on the motion without a hearing. The judge may allow the discovery, not allow the discovery, or allow some portions of the discovery and not allow other portions of it.
- The discovery requests are not supposed to be served on the responding party unless the judge issues a signed order approving the discovery. This does not mean that the discovery requests should not be attached to the motion to the court requesting approval to conduct the discovery. It simply means that the discovery requests are not to be served on the responding party for the purpose of requiring a response until the court signs an order approving the discovery.
- If the discovery requests are allowed, TJCTC recommends that the court send an order to all parties explaining which discovery requests are approved, when the responses are due, and where to send the responses. This is not expressly required by Rule 500.9(a), but it may save a lot of time and effort for both the court and the parties if the parties have explicit direction on how the case will proceed.

BEST PRACTICE

- If the court allows discovery requests, and the party on whom they are served ignores them and fails to comply with a discovery order (for example, an order from the court requiring them to respond to the discovery), then the party requesting the discovery can seek sanctions including dismissal of the case or an order to pay their discovery expenses.

Rule 500.9(a).

G. Service of Documents Other Than the Citation

After the citation is served on the defendant in a civil case, pleadings, motions or notices may be filed with the court and, as discussed above, in some cases discovery might be served on the other party. How do these pleadings, motions and other documents have to be served?

1. How to Serve Documents Other Than the Citation

Other than the citation or oral motions made during trial or when all the parties are present, every notice and every pleading, motion, or other request or application to the court must be served on all the other parties in one of the following ways:

- **In person.** A copy may be delivered to the party, or the party's duly authorized agent or attorney, in person.
- **Mail or courier.** A copy may be sent by courier-receipted delivery (such as FedEx) 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.
- **Fax.** A copy may be faxed to the recipient's current fax number.
- **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.
- **Other.** A copy may be delivered in any other manner directed by the court.

Rule 501.4(a).

Service of Documents After the Citation

Other than the citation or oral motions made when all parties are present, all notices, pleadings, motions, and requests for an order by the court must be served on the other party in person, by courier or registered or certified mail, by fax, by email if they have agreed to service by email, or as ordered by the court. *Rule 501.4(a).*

Time for Response After Service by Mail

If a document is served by mail, three days are 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 three days before the time specified for the hearing. *Rule 501.4(b).*

Hearings Requested by a Party

An example of a hearing that could be requested by a party is a default judgment hearing. All parties must get at least three days' notice of the hearing. Default judgment hearings are discussed on ***pages 51 -60***.

Who May Serve the Document?

Documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or any other person competent to testify. *Rule 501.4(c).* It is the responsibility of the person filing the document to serve it.

Certificate of Service

The party or the party's attorney must include a signed statement on all documents filed with the court describing the way the document was served on the other party and the date of service. This is called a "Certificate of Service." The Certificate of Service by a party or the party's attorney, or the return of an officer (such as a Sheriff or Constable), or the sworn statement of any other person showing service of a notice is proof of service. *Rule 501.4(d).*

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 three days from the date of mailing.

If a court finds that the document was not served, received, or received within three days of mailing, the court may extend the time for taking the action required of the party or grant other relief as it deems just. *Rule 501.4(e).*

What if the Parties Fail to Serve a Filing on the Opposing Party?

If a party either doesn't know or fails to serve the other party by mistake, it does not make the pleading or motion invalid. Instead, the court should grant any continuances or other relief needed for a party who didn't get served with the document. If both parties are in court when the court becomes aware of the service issue, the party can be served a copy that day in court.

Examples

Suppose a defendant files their answer 14 days after they were served with the citation. An answer is a "pleading" and therefore the defendant must serve a copy of the answer on the plaintiff using one of the methods listed above (in person, courier, registered or certified mail, fax, email if the plaintiff agreed to service by email, or a method ordered by the court).

Or suppose the defendant files a motion to transfer venue (discussed below). The

defendant must serve a copy of the motion on the plaintiff using one of the listed methods.

Suppose the court sets a hearing on the motion to transfer venue. It must serve both parties at least three days' notice of the hearing using one of the methods listed above.

H. Venue

1. What is Venue?


KEY POINT

Venue means the ***place*** where a case may be heard. As discussed above, venue is not the same as ***jurisdiction***, which means whether or not the court has the power to decide the case that has been filed. ***See pages 5-12.*** If the plaintiff files a suit for breach of contract for $30,000, the court does not have subject matter jurisdiction to hear that case. The court must dismiss the case on its own motion. ***See page 5***

Three Types of Venue Motions

- Defendant's motion (filed in wrong county or precinct)
- Fair Trial Venue Motion
- Consent of all parties

Even when the court has jurisdiction to decide a case, the defendant can put venue at issue by claiming that the case needs to be heard by another court because it was filed in the wrong place.

For example, suppose the plaintiff sues for breach of contract for $5,000 and files the suit in a justice court in Dallam County where the plaintiff lives. The contract was signed and performed in Orange County, and the defendant lives in Orange County. The court has **jurisdiction** to hear that case. The court **may not** dismiss the case. However, the defendant may argue that the court does not have **venue** to hear it because nothing happened in Dallam County relating to the case, and the defendant does not live in Dallam County. **If the defendant files a timely motion** to transfer venue, the court would transfer the case to a justice court in Orange County. The same kind of court (a justice court) will hear the case, just in a different location.

KEY POINT

Unlike subject matter jurisdiction (which can never be waived), an objection to venue **is waived** if not properly raised by a party. Therefore, if the defendant in the case described above who lives in Orange County does not file a motion to transfer venue, then the court in Dallam County can still hear the case and the defendant will have to go all the way across Texas to defend himself in court.

2. What are the General Rules for the Proper Venue of a Case?

Generally, the defendant in a small claims or debt claim case is entitled to be sued in one of the following venues:

- The county and precinct where the defendant lives;
- The county and precinct where the incident (or majority of incidents) that gave rise to the claim occurred;
- The county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; **or**
- The county and precinct where the property is located in a suit to recover personal property.

Rule 502.4(b).

If the defendant is a non-resident of Texas, or if the defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides. *Rule 502.4(c).*

In some cases, other more specific venue laws may apply under the Civil Practice and Remedies Code Chapter 15. *Rule 502.4(a).*

3. What is the Procedure on a Motion to Transfer Venue?

If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by the plaintiff by filing a motion to transfer venue. *Rule 502.4(d).*

COMMON PITFALL

When Does the Motion Have to be Filed?

The motion to transfer venue must be filed before trial, no later than **21 days after the defendant's answer is filed.** *Rule 502.4(d).*

What Does the Motion Have to State?

The motion to transfer venue must contain a sworn statement that the venue chosen by the plaintiff is improper and it must identify a specific county and precinct of proper venue to which transfer is sought. *Rule 502.4(d).*

What if the Defendant Fails to Name the County and Precinct to Which Transfer is Sought?

KEY POINT

If the defendant fails to name a county and precinct to which transfer is sought, then **the court must instruct the defendant to do so** and give the defendant **seven days** to cure this defect. If the defendant fails to correct the defect, then the court should deny the motion and the case will proceed in the county and precinct where it was originally filed. *Rule 502.4(d).*

The Judge Must Set a Hearing on the Motion

If a defendant files a motion to transfer venue, the judge must set a hearing on the motion, which may be conducted telephonically or electronically. *Rule 502.4(d)(1)(A).*

Response by the Plaintiff

The plaintiff may (but is not required to) file a response to the defendant's motion to transfer venue. *Rule 502.4(d)(1)(B).*

Hearing on the Motion

The parties may present evidence at the hearing. A witness may testify at the hearing either in person or, with the court's permission, by means of telephone or an electronic communication system. *Rule 502.4(d)(1)(C).*

The Judge's Decision on the Motion

KEY POINT

If the motion is **granted**, the judge must sign an order designating the court to which the case will be transferred. The court must also state the reasons for the transfer. If the motion is **denied**, the case proceeds where it was filed by the plaintiff. *Rule 502.4(d)(1)(D), 502.4(1)(G).*

No Appeal of the Judge's Decision

A motion for rehearing or an interlocutory appeal (meaning an appeal in the middle of the case) of the judge's ruling on a motion to transfer venue are not allowed. *Rule*

502.4(d)(1)(E).

Time for Trial of the Case after Ruling on the Motion

A trial of the case may not be held until **at least the 14th day** after the judge's ruling on the motion to transfer venue. *Rule 502.4(d)(1)(F).*

a. Procedure by the Transferring Court if the Motion is Granted

When the court grants an order transferring the case, the judge who issued the order must immediately prepare a transcript of all the entries made on the docket of the case, certify the transcript and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. *Rule 502.4(d)(1)(G).*

b. Procedure by the Receiving Court

The court receiving the case must notify the plaintiff that the case has been received. If the case has been transferred to a different county, then the plaintiff has to pay a new filing fee in the new court. The court receiving the case must notify the plaintiff that **they have 14 days after receiving the notice to pay the new filing fee** or file a statement of inability to afford payment of court costs. The plaintiff is not entitled to a refund of any fees already paid. If the plaintiff fails to pay the new filing fees or to file a statement of inability to afford payment of court costs, then the case should be dismissed without prejudice (meaning the plaintiff is free to file a new lawsuit). *Rule 502.4(d)(1)(F).*

Note that the plaintiff is **not** required to pay a new filing fee if the case is transferred to a different precinct within the same county.

4. Fair Trial Venue Change


KEY POINT

What is a Fair Trial Venue Change?

This is a motion to change the venue of a case or to change the judge hearing the case because a party believes they cannot get a fair trial in that precinct or before that judge. These motions are specific to justice courts.

What Has to be Filed?

A party requesting a fair trial venue change must:

- File a sworn motion stating that they believe they cannot get a fair trial in a specific precinct or before a specific judge;
- File sworn statements of two other credible persons in support of the motion; **and**
- Specify whether they are requesting a change of location or a change of judge.

Rule 502.4(e).

When Does the Motion Have to be Filed?

The motion has to be filed no less than seven days before trial. But if the party shows good cause for filing the motion less than seven days before trial, the court may still consider the motion. *Rule 502.4(e).*

What Does the Court Do if the Motion is for a Change of Judge?

If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to hear the case, then the county judge must appoint a visiting judge to hear the case. *Rule 502.4(e).*

What Does the Court Do if the Motion is for a Change of Location?

If the party seeks a change in location, the case must be transferred to the nearest justice court in the county that is not subject to the same or some other disqualification. If there is only one precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, then the county judge must appoint a visiting judge to hear the case. *Rule 502.4(e).*

What if This Precinct is the Only One Where the Case May be Filed?

In cases where exclusive jurisdiction is in a specific precinct, such as an eviction case, the only remedy is a change of judge; a change of location is not available. *Rule 502.4(e).*

How Often May a Party File a Motion for a Fair Trial Venue Change?

A party may apply only **one time** in any given case for a Fair Trial Venue Change. *Rule 502.4(e).*

5. Transfer of Venue by Consent

The parties may also file a written consent by all of the parties or their attorneys to transfer the case to another justice court. If they file such a consent, the case must be transferred to the court of any other justice of the peace of the county, or to any other county. *Rule 502.4(f).*

I. The Defendant's Answer

1. What is an Answer?

An answer is the defendant's written response to the petition filed by the plaintiff.

What is the Defendant Required to Include in the Answer?

The defendant must include in the answer:

- the name of the defendant;
- the address, telephone number, and fax number, if any, of the defendant, and the name, address, telephone number, and fax number, if any, of the defendant's attorney, if he has an attorney; **and**
- if the defendant consents to email service, a statement consenting to email service and the email contact information.

Rule 502.5(a).

The Answer

An answer is the defendant's written response to the petition.

All it needs to say is: "I deny that I owe anything" or words to that effect.

KEY POINT

A General Denial is Sufficient

An answer that denies all of the plaintiff's allegations without specifying the reasons is a sufficient answer. The defendant is free to raise any defense at trial. *Rule 502.5(b).*

So, the defendant may simply state: "I don't owe anything to the plaintiff" or "I deny the allegations of the petition" or words to that effect, and this is enough to constitute an answer.

A defendant in justice court is not required to plead affirmative defenses (such as the statute of limitations or the statute of frauds) in order to present such defenses at trial.

The Answer Must be Docketed

When an answer is filed, the defendant's appearance must be noted on the court's docket. *Rule 502.5(c).*

2. When is the Answer Due?

The defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and the petition. However:

- if the 14th day is a Saturday, Sunday, or legal holiday, then the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; **and**
- 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.

Rule 502.5(d). ***See page 31 for a calendar showing how to calculate these due dates.***

3. Service of the Answer

The defendant must file a written answer with the court and **must** serve a copy of the answer on the plaintiff. *Rule 502.5(a).* ***See pages 37-39 explaining how the defendant must serve the answer.***

What if the Defendant Fails to Serve Their Answer on the Plaintiff?

If the plaintiff is not served with the defendant's answer, the court should grant reasonable accommodations, such as a postponement if requested, for the plaintiff to prepare their case based on the defendant's answer. *Rule 501.4(e).* The court will usually become aware of this situation when the answer is filed without a certificate of service, when the plaintiff files a request for default judgment, or if the case is set for a hearing.

Service by Publication

If the defendant was served by publication, then the answer is due by the end of the 42nd day after the day the citation was issued. However, if the 42nd day falls on a Saturday, Sunday or legal holiday, then the answer is due on the next day that is not a Saturday,

Sunday or legal holiday; and if the 42nd day falls on a day during which the court is closed before 5:00 p.m., then the answer is due on the court's next business day. *Rule 502.5(e).*

J. Counterclaims, Cross-Claims, and Third-Party Claims

Counterclaim

A filing fee is required but no citation is issued since the plaintiff (against whom the counterclaim is filed) is already a party to the case.

1. Counterclaims

a. What is a Counterclaim?

A counterclaim is a separate claim for damages or other relief by the defendant against the plaintiff. A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not it is related to the claims in the plaintiff's petition. *Rule 502.6(a).*

COMMON PITFALL

The counterclaim and original claim by the plaintiff must each be within the justice court's jurisdictional limit individually. It is okay if added together they are above the jurisdictional limit.

For example, in a case filed on or after September 1, 2020, if a contractor sues a homeowner claiming that he is owed $13,000 for installation of a new roof, and the homeowner claims the roof is defective and that he has suffered damages of $14,000 as a result of water leaking into the house and warping the floors, the homeowner may assert his claim against the contractor as a counterclaim in the same lawsuit, even though the total of the two claims exceeds the jurisdictional limit.

b. What are the Procedures for a Counterclaim?

The counterclaim petition must meet the same requirements for a petition filed by a plaintiff. *Rule 502.6(a).* ***See pages 17-18.*** The defendant must pay the same filing fee that would apply to the filing of a petition or file a statement of inability to afford payment of court costs. *Rule 502.6(a).* ***See pages 20-22.***

KEY POINT

When a counterclaim is filed the court does **not** issue a citation. *Rule 502.6(a).* This is because the plaintiff is already a party to the case and a citation is not required to notify them that they have been sued. However, the defendant **is** required to serve a copy of the counterclaim on the plaintiff under Rule 501.4. *Rule 502.6(a).* ***See pages 37-39 for an explanation of how the defendant must serve the counterclaim.***

The plaintiff is not required to file an answer to a counterclaim. *Rule 502.6(a).* The allegations are automatically considered to be denied.

2. Cross-Claims

a. What is a Cross-Claim?

A cross-claim is a claim by one defendant against another defendant or by one plaintiff against another plaintiff.

Cross-Claim

A filing fee is required and a citation must be issued and served on any party that has not yet filed a pleading (an answer or a petition) in the case.

For example, if a person injured in an automobile accident sues the driver for negligence and the owner of the car for negligently entrusting the car to the driver, the owner may have a claim against the driver for indemnification. This claim would be asserted by the owner as a cross-claim against the driver, both of whom are defendants in the case. The owner would allege that in the event he is found liable to the plaintiff, the driver must indemnify the owner for any damages the plaintiff recovers against the owner.

b. What are the Procedures for a Cross-Claim?

The cross-claim petition must meet the same requirements for a petition filed by a plaintiff. *Rule 502.6(b).* ***See pages 17-18.*** The party filing the cross-claim must pay the same filing fee that would apply to the filing of a petition or file a statement of inability to afford payment of court costs. *Rule 506.2(b).* ***See pages 20-22.***

When a cross-claim is filed the court does issue a citation for any party that has not yet

filed an answer or a petition in the case (whichever applies), and the citation must be served on that party in the same manner as a citation is served on a defendant when the case is first filed. *Rule 502.6(b).* ***See pages 24-27.*** If the party against whom the cross-claim is filed has already entered an appearance in the case by filing an answer or petition, then the court does not issue a citation for that party, and the party filing the cross-claim just serves a copy of the cross-claim on them under Rule 501.4 (that is, service of documents other than a citation). *Rule 502.6(b).* ***See pages 37-39 for an explanation of how such documents must be served.***

3. Third-Party Claims

a. What is a Third-Party Claim?

A party who is defending a claim has a right to bring a third party into the case and assert that the third party is liable for all or part of the damages. The party asserting the claim is the third-party plaintiff and the party against whom it is asserted is the third-party defendant.

Third-Party Claim

A filing fee is required, and a citation must be issued and served on the third-party defendant.

For example, suppose a person injured in an automobile accident does not sue the driver of the car but does sue the owner of the car for negligently entrusting it to the driver. The owner who has been named as the only defendant in the case may file a third-party claim against the driver, who would be a third-party defendant. The owner could allege that in the event he is found liable to the plaintiff, then the driver must indemnify him (the owner) for any damages the plaintiff recovers against him.

b. What are the Procedures for a Third-Party Claim?

The third-party petition must meet the same requirements for a petition filed by a plaintiff. *Rule 502.6(c).* ***See pages 17-18.*** The party filing the third-party petition must pay the same filing fee that would apply to the filing of a petition or file a statement of inability to afford payment of court costs. *Rule 506.2(c).* ***See pages 20-22.***

When a third-party petition is filed the court must issue a citation for the third-party defendant and the citation must be served on the third-party defendant in the manner provided in Rule 501.2. *Rule 506.2(c).* ***See pages 24-27.***

K. Amendment and Clarification of Pleadings

1. When May a Party Amend Their Pleadings?

Party May Always Amend At Least 7 Days Before Trial

A party may amend their petition or answer by adding something to it or withdrawing something from it, as long as the amended pleading is filed and served on the opposing party under Rule 501.4 not less than seven days before trial. *Rule 502.7(a).* ***See pages 38-40.***

KEY POINT

The Court May Allow Amended Pleadings Less than 7 Days Before Trial

The court may allow a pleading to be amended less than seven days before trial only if the amendment will not operate as a surprise to the opposing party. *Rule 502.7(a).*

For example, suppose John Smith sues Doug Brown for not paying back $2,000 he loaned him under a promissory note with 5% interest per year. The morning of trial John wants to amend his petition to include the additional amount of interest that has accrued since he filed the suit. This would not operate as a surprise to Doug so the court should allow it.

But what if on the morning of trial John decides he wants to add an entirely different claim against Doug – for "borrowing" a shotgun and never returning it? Doug could legitimately say he had no idea John wanted to throw that claim in this case and the court could require John to file a new, separate suit against Doug if he wants to pursue that claim.

2. Clarification of Insufficient Pleadings

Party May File a Motion

A party may file a motion with the court asking that another party be required to clarify their pleading. *Rule 502.7(b).*

For example, suppose John Smith sues Doug Brown for conversion (theft) but doesn't state clearly what it is he is claiming Doug took (was it his shotgun or something else?). Doug could ask the court to order John to clarify what he's claiming Doug took and the facts that John relies on in alleging that it was wrongful.


COMMON PITFALL

The Court Must Decide Whether the Pleading is Sufficient

If the defendant files a motion to clarify, then the court must then decide whether the pleading is sufficient to place all parties on notice of the issues in the lawsuit. The court may hold a hearing, which may be conducted telephonically or electronically, to make that determination. *Rule 502.7(b).*

If the Pleading is Insufficient

If the court decides that the pleading is insufficient, then the court must order the party to amend their pleading. The court must also set a date by which the amendment must be filed and served on the other side. *Rule 502.7(b).*

If the Party Fails to Comply with the Court's Order

If a party that is ordered to amend their pleading fails to do so, then the pleading may be stricken. *Rule 502.7(b).* If the party is the plaintiff, this could mean that their case will be dismissed.

L. Default Judgment

1. What is a Default Judgment?


KEY POINT

A default judgment is an order granting a judgment to the plaintiff when the defendant fails to file an answer or otherwise respond to the petition after being **properly served** with the citation. *Rule 503.1.*

2. General Procedure and Requirements

The procedure the court must follow in granting a

Small Claims Case Default – Hearing or No Hearing

A hearing is **not** required if the plaintiff's claim *is* based on a written document signed by the defendant.

A hearing **is** required if the plaintiff's claim *is not* based on a written document signed by the defendant.

With the court's permission, a party may appear at the hearing by means of telephone or an electronic communication system. *Rule 503.1(a)(2).*

default judgment in a small claims case depends on whether or not the plaintiff's claim is based on a written document signed by the defendant (for example, a suit on a promissory note or a contract).

The procedure for granting a default judgment is a little different in a debt claim case (***See pages 55-58)*** and in an eviction case (see Chapter 4 of the *Evictions Deskbook).*

Default When No Answer Has Been Filed

While the procedures are slightly different depending on the type of case, the following must **always** be true for the court to grant a default judgment where no answer has been filed:

- The petition contains all required information;
- The defendant has failed to file an answer by the date in Rule 502.5;
- Service was proper under Rule 501.2;
- The plaintiff has proven the amount of damages owed to the plaintiff;
- The plaintiff has filed the required military service affidavit and the court is not barred from granting a default judgment under the Servicemembers Civil Relief Act ***(see pages 59-61 for more information)***.

Rule 503.1.

Default When an Answer Has Been Filed (Post-Answer Default)

If a defendant who has answered fails to appear for trial, then the court may proceed to hear the case just as they would at a normal trial and render judgment according to the evidence submitted. *Rule 503.1(c).*

No Default Judgment Without Proper Service of the Citation

A default judgment may **never** be entered if it is not clear that there was proper service of the citation on the defendant! If the court has a question about whether service of the citation was proper, the court may hold a hearing and require the process server or other person who served the citation to attend.

No Default Judgment if the Defendant Appears

The court must **never** enter a default judgment if the defendant shows up for a hearing or otherwise appears in court – even if the defendant failed to file a written answer on time.

What if the Defendant Appears Before a Default Judgment is Entered?

KEY POINT

Sometimes a defendant fails to file an answer within 14 days of being served with the citation but shows up in court for the hearing on a motion by the plaintiff to enter a default judgment. If the defendant appears in a case, or files an answer, at any time before a default judgment is entered by the court, then the court **must not enter the default judgment**! The defendant has appeared, and the case must now be set for trial. *Rule 503.1(b).*

If the Petition is Missing Something

COMMON PITFALL

If a plaintiff's petition is missing a required fact (such as a description and the value of any personal property the plaintiff is seeking to recover), the court may allow the plaintiff to orally amend their pleading and provide evidence of the missing information under oath at the default hearing if the amendment will not operate as a surprise to the other party. *Rule 502.1 and 502.7(a).*

If the plaintiff seeks to amend some part of the petition, and the amendment would cause unfair surprise to the defendant, the amendment should be made, and the hearing should be reset. ***This is true even if the defendant isn't present.*** The defendant should then receive service of the amended petition and new hearing date. An example of this might be if the plaintiff made an error in the original creditor's legal name and seeks to amend it in the petition. This might be a surprise to the defendant. They may have seen the original creditor listed and believed that the plaintiff had sued them mistakenly, since they never had a debt with that creditor.

a. Notice of Default Hearings and Judgments

Notice of any hearing requested by a party must be served on all other parties at least three days before the date of the hearing. *Rule 501.4(b).*

BEST PRACTICE

The rule does not require the court to provide the notice, but if the requesting party does not do it, the hearing will have to be rescheduled. For this reason, many courts find that it may be most efficient for the court to send the hearing notice to all parties.

Notice to the Defendant After Default

When the plaintiff requests a default judgment, the plaintiff must provide to the clerk of

the court in writing the last known mailing address of the defendant at or before the time the judgment is signed. *Rule 503.1(d).*

When a default judgment is signed, the clerk of the court must immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and the clerk must note on the docket that the notice has been mailed. *Rule 503.1(d).*

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. *Rule 503.1(d).*

3. Default in Small Claims Case Based on a Written Document Signed by the Defendant

If the general requirements for a default judgment are met ***(see pages 51-54)***, then the judge must render judgment for the plaintiff in the requested amount **without any necessity for a hearing if**:

- the claim is based on a written document signed by the defendant;
- a copy of the document has been filed with the court and served on the defendant; **and**
- the plaintiff has filed a sworn statement that this is a true and accurate copy of the document, that the relief sought by the plaintiff is owed, and that all payments, credits and offsets due to the defendant have been accounted for.

Rule 503.1(a)(1).

COMMON PITFALL

The plaintiff's attorney may also submit an affidavit supporting the award of attorney's fees to which the plaintiff is entitled, if any, and the court may award reasonable attorney's fees. *Rule 503.1(a)(1).*

4. Default in a Small Claims Case Not Based on a Written Document Signed by the Defendant

A hearing **is** required if the plaintiff's claim is not based on a written document signed by

the defendant.

With the court's permission, a party may appear at the hearing by means of telephone or an electronic communication system. *Rule 503.1(a)(2).*

If the plaintiff's claim is not based on a written document signed by the defendant, then the following conditions apply in addition to the general requirements for a default judgment ***(see page 51)***:

- The plaintiff must request a hearing, either orally or in writing;
- The plaintiff must appear at the hearing and provide evidence of its damages;
- If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven;
- If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

Rule 503.1(a)(2).

COMMON PITFALL

Remember, notice of any hearing requested by a party must be served on all other parties at least three days before the date of the hearing. *Rule 501.4(b).*

BEST PRACTICE

The rule does not require the court to provide the notice, but if the requesting party does not do it, the hearing will have to be rescheduled. For this reason, many courts find that it may be most efficient for the court to send the hearing notice to all parties.

5. Default Judgment Procedure in a Debt Claim Case

In addition to the general requirements for default judgments ***(see pages 51-54)***, specific rules apply for entering a default judgment in a debt claim case.

General Rule

KEY POINT

The general rule in a debt claim case is that if the defendant does not file an answer or otherwise appear by the answer date, the judge must render a default judgment **upon plaintiff's proof of the amount of damages.** *Rule 508.3(a).*

a. How Does the Plaintiff Prove the Amount of Damages in a Debt Claim Case?

The Evidence of Damages Must Either be Served on the Defendant or Submitted to the Court

The evidence of plaintiff's damages must either be attached to the petition and served on the defendant with the citation or submitted to the court after the defendant's failure to answer by the answer date. *Rule 508.3(b)(1).*

How Does the Plaintiff Establish the Amount of Damages?

The amount of damages is established by evidence:

- That the account or loan was issued to the defendant and the defendant is obligated to pay it;
- That the account was closed or the defendant breached the terms of the account or loan agreement;
- Of the amount due on the account or loan as of a date certain after all payments, credits and offsets have been applied; **and**
- That the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

Rule 508.3(b)(3).

The Form of the Evidence

The evidence of plaintiff's damages may be offered in a sworn statement (an affidavit) or in live testimony in court. The evidence may include documentary evidence, as long as it is supported with a sworn statement, as described below. *Rule 508.3(b)(2).*

When May the Court Consider Documentary Evidence?

The court may consider documentary evidence if it is attached to a business record affidavit which is a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

- The documents were kept in the regular course of business;
- It was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in the record;

- The documents were created at or near the time of the events recorded or reasonably soon thereafter; **and**
- The documents attached are the original or exact duplicates of the original.

Rule 508.3(b)(4).

When May the Court Reject an Affidavit?

A judge is not required to accept a sworn statement (an affidavit) if the source of the information or the method or circumstances of preparation indicate a **lack of trustworthiness.**

But a judge may **not** reject a sworn statement **only** because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff. *Rule 508.3(b)(5).*

For example, if the affidavit indicates that the person who signed the affidavit has no personal knowledge of any of the facts contained in the affidavit, or does not tie the debt to this particular defendant, the court is not required to accept the affidavit. But a judge may not reject an affidavit solely because the person signing it is an officer or employee of a business or entity that bought the debt from the original creditor (such as a bank or credit card company) or an assignee of the original creditor.

Does the Court Have to Hold a Hearing Before Granting a Default Judgment?

No! In a debt claim case, the judge may enter a default judgment without a hearing **if the plaintiff submits sufficient written evidence of its damages** and the court should do so to avoid undue expense and delay.

Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages at the hearing. *Rule 508.3(c).*

COMMON PITFALL

Remember, notice of any hearing requested by a party must be served on all other parties at least three days before the date of the hearing. *Rule 501.4(b).*

BEST PRACTICE

The rule does not require the court to provide the notice, but if the requesting party does not do it, the hearing will have to be rescheduled. For this reason, many courts find that it may be most efficient for the court to send the hearing notice to all parties.

KEY POINT

What is the Outcome of the Hearing?

If the plaintiff proves their damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove their damages, the judge must render judgment in favor of the defendant. *Rule 508.3(c).*

This means that even though the defendant did not file an answer or appear in the case, the judge should enter a judgment in favor of the defendant if the plaintiff fails to prove their damages in a debt claim case.

What if the Defendant Appears Before a Default Judgment is Signed?

If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must **not** render a default judgment and must set the case for trial. *Rule 508.3(d).*

This means that even if the defendant failed to file their answer within 14 days after the citation was served on them, if they show up for a default judgment hearing, or if they otherwise appear or answer, then default judgment is off the table and the court must set the case for trial.

What if the Defendant Files an Answer but Does Not Show Up for Trial? If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on both liability and damages and render judgment accordingly.

Judgment for Plaintiff or Judgment for Defendant

If plaintiff proves their damages in a debt claim case (and meets all the other requirements for a default judgment), they are entitled to a judgment.

If the plaintiff fails to prove their damages in a debt claim case, judgment must be entered in favor of the defendant even though the defendant never answered or appeared in the case.

6. Affidavit and Procedures Regarding Defendant's Military Status (Servicemembers Civil Relief Act)

The Servicemembers Civil Relief Act ("SCRA") imposes certain procedural requirements in all civil cases in justice court. *50 U.S.C. § 3931(b).*

Affidavit Requirements

In any civil case in which the defendant does not make an appearance, before entering a default judgment, the court "shall require the plaintiff to file with the court an affidavit:

- stating whether or not the defendant is in military service **and showing necessary facts to support the affidavit**; **or**
- [s]tating that the plaintiff is unable to determine whether or not the defendant is in military service."

50 U.S.C. § 3931(b).

The affidavit may be a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. *50 U.S.C. § 3931(b)(4).*

COMMON PITFALL

CLICK HERE

Typically, plaintiffs will attach a printout from the Department of Defense website, ***(https://scra-e.dmdc.osd.mil/scra),*** but they are not required to use that form as long as they show "necessary facts" to support the affidavit. For example, in one case a plaintiff submitted an affidavit from the defendant's mother stating that he was not in military service!

What Does the Court Do Once the Affidavit is filed?

If a proper affidavit under the SCRA is filed, there are three possibilities:

- *The defendant is **not** in military service:* The court may enter a default judgment.
- *The court is **unable to determine** whether the defendant is in military service:* The court may – but does not have to – require the plaintiff to post a bond in an amount approved by the court to protect the defendant if it turns out that he is in military service. *50 U.S.C. § 3931(b)(3).*
- *It appears that the defendant **is** in military service:* The court may not enter a judgment until after the court appoints an attorney to represent the defendant. *50*

U.S.C. § 3931(b)(2).

- In this situation, on the request of the attorney or on the court's own motion, the court must grant a stay of proceedings for a minimum of 90 days under certain circumstances.

KEY POINT

What if No Affidavit is Filed or the Affidavit Doesn't Show "Necessary Facts to Support"?
If the plaintiff fails to file an affidavit under the SCRA, the court **may not** grant a default judgment.

If the plaintiff files an affidavit stating that the defendant is not in military service but fails to "show necessary facts to support the affidavit," the court **may not** grant a default judgment.

What if The Court Entered a Default Judgment When It Shouldn't Have?
If a default judgment is entered against a service member who did not have notice of the action during his period of military service, or within 60 days after termination of or release from military service, the court must re-open the judgment upon application of the service member for the purpose of allowing the service member to defend the action if it appears that:

- The service member was materially affected in making a defense to the action by reason of military service; **and**
- The service member has a meritorious or legal defense to the action or some part of it.

50 U.S.C. § 3931(g)(1).

A request to vacate a default judgment must be made by or on behalf of the service member no later than 90 days after the date of termination of or release from military service. *50 U.S.C. § 3931(g)(2).*

COMMON PITFALL

Obviously, if this situation arises, a justice court could be faced with setting aside a default judgment and re-opening a case even though the court would – in the absence of the SCRA – have lost plenary power to set aside a default judgment. But the SCRA pre-empts the usual limitations in Rule 507.1 and allows the court to do this.

7. Default Judgment Flowcharts

Click Here to Open the Default Judgment Flowcharts

M. Summary Disposition

1. What is a Summary Disposition?

Summary Disposition

Summary disposition is a way to decide a case without a trial because the material facts are not genuinely disputed, or there is no evidence of an essential element of a plaintiff's claim or a defendant's defense.

A summary disposition is a way to decide a case without having a trial. Either side may move for a summary disposition. If the court grants the motion, then the court will enter judgment for the party that filed the motion on some or all the claims in the case. If the court denies the motion, then the case proceeds to trial. *Rule 503.2.*

Who May Move for Summary Disposition?
Either party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. *Rule 503.2(a).*

What Does the Motion Have to Show?
The motion must set out all the supporting facts and all the documents on which the motion relies must be attached to the motion. *Rule 503.2(a).*

What is the Procedure After a Motion for Summary Disposition is Filed?
Response: The party opposing the motion may file a sworn written response to the motion but the party opposing the motion is not required to do so.

Hearing: The court must not consider a motion for summary disposition unless it has been on file for at least 14 days. By agreement of the parties the judge may decide the motion and response without a hearing. Otherwise, the court should set a hearing on the motion. The judge may consider evidence offered by the parties at the hearing. *Rule 503.2(c).*

What Can the Judge Order?

The judge may grant the motion and enter judgment on the entire case. Or the judge may specify the facts that are established and direct further proceedings in the case on any remaining issues. Or the judge may deny the motion and order the case to proceed to trial on all the claims the parties have asserted in the case. *Rule 503.2(d).*

2. When Should the Court Grant a Motion for Summary Disposition?

KEY POINT

The motion must be granted at the hearing if the court finds that:

- There are no genuinely disputed facts that would prevent a judgment in favor of the party;
- 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**
- There is no evidence of one or more essential elements of the plaintiff's claim.

Rule 503.2(a).

If the motion does not show one of these things, then the court should deny the motion.

What Does this Process Look Like in Real Life?

Suppose John Smith sues Bob Jones claiming he loaned him $1,000 and Bob signed a promissory note stating that he would pay it all back no later than December 31st. Bob fails to pay the money back and John files a suit to recover the amount he loaned Bob. Suppose further that Bob admits he got the money, admits he signed the promissory note and admits he didn't pay it back by December 31st. His only "defense" is that he doesn't have the money right now and needs a "little more time" before he can pay it back. John could move for summary disposition: there are no material facts in dispute and no need to go to trial. The court would grant a summary disposition in favor of John and sign a judgment in his favor. The case is over.

However, suppose now that Bob claims he sent a text message to John on December 30 telling him he needed a "little more time" to pay back the loan and John sent a text message back saying "Okay and happy New Year!" Now, if John moves for a summary disposition, Bob could argue that John agreed to an extension of the due date of the loan. There is a fact issue that must be decided at trial: was there a valid and binding

agreement to extend the due date? If so, for how long? The motion for summary disposition would be denied and the case would proceed to trial.

N. Other Common Issues

1. Dismissal Dockets (DWOP)

What happens if a plaintiff files a case and then nothing else happens? Ultimately the court can put the case on what is called a dismissal docket, otherwise referred to as a dismissal for want of prosecution (DWOP) docket. This is simply a docket where the parties receive notice to appear and show cause why the judge should not dismiss the case.

How do Cases End Up on Dismissal Dockets?

Most of the time cases end up on dismissal dockets for one of three reasons:

- The plaintiff is not able to properly serve the defendant;
- The parties came to some sort of agreement;
- The plaintiff is in the business of filing a lot of cases and it is a clerical oversight that they have not requested a default judgment (*common in cases filed by debt collection agencies);* **or**
- The plaintiff may not know that they have to ask for a default hearing in a small claims case if the defendant does not answer.

There is no set amount of time by rule or statute by which a citation in a civil case must be served in Texas. Therefore, it is up to the discretion of the court to decide how long to wait to set the case on a dismissal docket. The court should take into consideration the type of case and the court's current caseload when considering when to put cases on a dismissal docket. One thing to consider is that even though there is no rule or statute in Texas, the Federal Rules of Civil Procedure allow for the court to require a plaintiff to show good cause why the case should not be dismissed if the defendant hasn't been served 90 days after the complaint has been filed, so three to six months is reasonable in most courts. *Federal Rule of Civil Procedure 4(m).*

2. What Happens When a Defendant Files for Bankruptcy?

When a court receives notice that a defendant in a civil case has filed for bankruptcy, the pending civil case is automatically stayed as of the date of the bankruptcy filing. The stay means that the court can't issue anything or proceed on any request until the court receives proof that the bankruptcy proceeding is over, or the bankruptcy court "lifts the stay," meaning it allows the case in your court to proceed. *11 U.S.C. § 362.*

The court may want to set the case for periodic status hearings (maybe once every few months), so the court can keep up with the status of the bankruptcy proceedings.

If an order from the bankruptcy order is issued, a copy must be provided to the justice court before the small claims or debt claim case can proceed. The judge must review the bankruptcy order and make sure not to enter any orders that conflict with it. For example, if the bankruptcy case discharges the debt at issue in a debt claim case pending in justice court, then the plaintiff may not obtain a judgment for that debt. *11 U.S.C. § 362.*

3. What Happens if One of the Parties Dies?

BEST PRACTICE

TJCTC recommends that Rules of Civil Procedure 150-152 be applied in cases where one of the parties dies during the pendency of a civil case in justice court. Under the Rules, a case does not automatically get dismissed or end upon the death of one of the parties.

If the Plaintiff Dies While a Case is Pending

If a plaintiff dies while they have a small claims case pending in justice court, the heirs, administrator, or executor of the deceased's estate may appear in court, provide proof of the plaintiff's death, and may be substituted in as plaintiff on the case. The case will then go forward as it usually would. *Rule 151.*

If the plaintiff's heirs, administrator, or executor does not appear in court to be substituted in on the case,

A Scire What?

"Scire facias" means "to be made known," and in this situation it means that these people should make it known to the court if they intend to appear in the case in place of the deceased party. (It is also used in another context concerning revival of a dormant judgment which is discussed on ***pages 150-153***.)

the defendant may request that the court issue a scire facias for the heirs, administrator, or executor to appear and proceed with the civil case. If the heirs, administrator, or executor fails to enter an appearance with the court within the time frame provided in the scire facias, the court may dismiss the case. *Rule 151.*

If the Defendant Dies While a Case is Pending

If the defendant dies, and the plaintiff petitions the court and informs the court of the death, the court must issue a scire facias for the heirs, administrator, or executor of the defendant to appear and defend the suit in court. Once the heirs, administrator, or executor receive service of the scire facias and the return is filed with the court, the case will go forward against the heirs, administrator, or executor. *Rule 152.*

O. Prejudgment Procedure Flowchart

A chart that gives an overview of the procedures that the court must follow prior to judgment in a civil case can be downloaded by clicking the button below.

Click Here to Open the Prejudgment Procedure Flowchart

Chapter 5: Trial Setting and Pretrial Conference

A. How Does a Case Get Set for Trial?

Setting the Case for Trial

After the defendant answers, the case should be set on the trial docket at the discretion of the judge. *Rule 503.3(a).*

COMMON PITFALL

Note that the court cannot set the case for a trial setting without an answer from the defendant. Instead, the court must follow proper default judgment procedures ***(see pages 51-60)***. Also, the court does not have to wait for a party to request a trial setting and can do it on its own motion, as long as the defendant has answered.

Notice of the Trial Date

KEY POINT

The court must send a notice of the date, time, and place for the trial to all the parties to the case at their address on file with the court. The notice must give the parties at least 45 days' notice of the trial setting unless the judge determines that an earlier setting is required in the interest of justice. *Rule 503.3(a).*

Notice of any Subsequent Settings

Reasonable notice of all subsequent settings (that is, any change in the trial date or any hearings in the case) must be sent to **all** parties at their address on file with the court. *Rule 503.3(a).*

B. When May a Trial be Postponed (or "Continued")?

A judge may, for good cause, postpone (or "continue") any trial for a reasonable time. The court has broad discretion in determining what is good cause and what is a reasonable time to postpone the trial. If a party files a motion requesting a postponement (or "continuance") of the trial, the motion must state why a postponement is necessary. *Rule 503.3(b).*

The court may also postpone the trial on its own motion for the convenience of the court. Please note that in an eviction case the trial may not be postponed more than seven days

unless both parties agree in writing. *Rule 510.7(c).* See Chapter 4 of the *Evictions Deskbook*.

C. What is the Purpose of a Pretrial Conference and When Should the Court Have One?

The court may hold a pretrial conference at the request of any party, or on its own, in any case once all the parties have appeared in the case (normally this will occur by the defendant filing an answer). *Rule 503.4(a).*


KEY POINT

It is within the court's discretion to hold or not hold a pretrial conference in any specific case. The primary reasons to do so are:

- To identify and possibly narrow down the issues for trial;
- To simplify the presentation of the evidence at trial (for example, by making sure that both sides have exchanged trial exhibits in advance); **and**
- For the court to be aware of any unusual issues or requirements for trial (for example, will any of the witnesses need to be subpoenaed or will an interpreter be required).

The court may also ask the parties at the pretrial conference whether they are able to settle the case on their own without a trial or through mediation.

Pretrial conferences can be especially useful in cases where one or both parties are self-represented litigants. The judge can explain what the process will be like on the day of trial, determine what witnesses and evidence to expect, and discuss any other relevant issues with the parties.

A pretrial conference in a civil case may be helpful in order to identify and narrow the issues for trial, to simplify the presentation of the evidence at trial, and to make sure the judge is aware of any unusual issues or requirements for trial.

Appropriate issues for a pretrial conference include:

- Discovery;
- The amendment or clarification of pleadings;
- The admission of facts and documents to streamline the trial process;
- A limitation on the number of witnesses at trial;
- The identification of facts, if any, which are not in dispute between the parties;
- Mediation or other alternative dispute resolution services;
- The possibility of settlement;
- Trial setting dates that are amenable to the court and all parties;
- The appointment of interpreters, if needed;
- The application of a Rule of Civil Procedure not in Rules 500 – 510 or a Rule of Evidence; **and**
- Any other issue that the court deems appropriate.

Rule 503.4(a).

Note that in an eviction case the court must not schedule a pretrial conference if it would delay the trial. *Rule 503.4(b).*

D. When Can the Court Issue a Subpoena?

1. What is a Subpoena?

A subpoena is an order for a person or an entity to attend and give testimony at a hearing or trial. *Rule 500.8(a).*

2. General Procedure and Requirements

What is the Range of a Subpoena?

A person may not be required by a subpoena to appear in a county that is more than 150 miles from where the person resides or is served. *Rule 500.8(a).*

This means the radius of a subpoena is 150 miles, that is, if a person lives more than 150 miles from the court where the case will be tried, they cannot be subpoenaed for trial. Instead, one of the parties would have to take their deposition before trial and offer their

testimony from the deposition at trial since the witness cannot be compelled to attend in person. But this rarely happens in civil cases in justice court because of the expense involved in taking a deposition.

Who Can Issue a Subpoena?

A subpoena may be issued by the clerk of a justice court, or an attorney licensed to practice law in Texas. *Rule 500.8(b).*

Why Do We Need Subpoenas?

A subpoena may be necessary if a person is needed to testify as a witness at a trial or hearing and will not appear voluntarily. The subpoena requires them to show up and testify.

What is the Form of a Subpoena?

A subpoena is issued in the name of the State of Texas and must:

- state the name of the lawsuit and its case number;
- state the court in which the case is pending;
- state the date on which the subpoena is issued;
- identify the person to whom the subpoena is directed;
- state the date, time, place, and nature of the action required (for example, testimony and/or production of documents) by the person to whom the subpoena is directed;
- identify the party who issued the subpoena and the party's attorney, if any;
- state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both;" **and**
- be signed by the person issuing the subpoena.

Rule 500.8(c).

Who Serves a Subpoena and How Is It Served?

A subpoena may be served anywhere within the State of Texas by any sheriff or constable 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 the fees required by law.

If the witness is a party and is represented by an attorney, then the subpoena may be served on the attorney.

Proof of service is made by filing with the court either the witness's signed statement attached to the subpoena showing the witness accepted service or a statement made by the person who served the subpoena stating the date, time, manner of service, and the person served. *Rule 500.8(d).*

What Does the Subpoena Require the Witness to Do?

A person who has been subpoenaed to appear and give testimony must remain at the hearing or trial until discharged by the court or the person who issued the subpoena. If a corporation or other entity is subpoenaed, and the matters for which testimony is required are described with particularity, then they must designate a person to testify on their behalf. *Rule 500.8(e).*

May a Person Object to a Subpoena?

Yes. A person who is subpoenaed may object or move for a protective order before the court at or before the time for compliance. The court must provide to the person served with the subpoena adequate time for compliance and protection from undue burden or expense. *Rule 500.8(f).*

How is a Subpoena Enforced?

If a person fails to obey a subpoena without an adequate excuse, the person may be deemed in contempt of the court from which the subpoena was issued or of a district court in the county in which the subpoena was served, and may be punished by a fine or confinement in jail or both. *Rule 500.8(g).*

E. When Should the Court Order Mediation?

1. What is Mediation?

Mediation is a process used to try to reach an amicable settlement of a lawsuit without having to go to trial. A mediator is appointed by the court and the mediator meets with both sides of the case (usually separately) and listens to their statement of the facts and

their demands and tries to find a middle ground that the parties can agree upon to reach a settlement. The parties may be required by the court to go through mediation, but the mediator may not impose a settlement on the parties. All the mediator can do is recommend what they believe is a fair settlement or a likely outcome if the case goes to trial, and the parties themselves have to agree voluntarily to the settlement or the case is not settled. If the parties do not reach a voluntary settlement through mediation, then the case proceeds to trial.

What is the State's Policy on Mediation?

The policy of the State of Texas is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. *Rule 503.5.*

KEY POINT

To further this policy a judge may order any case to mediation or another appropriate generally accepted alternative dispute resolution process. The court should also be mindful of the additional costs of mediation and whether or not it is appropriate in light of the nature of the case and the positions of the parties.

County Mediation Programs

Mediation or other alternative dispute resolution programs can be set up under Civil Practice and Remedies Code Chapter 152. They must be set up by a county's commissioners court, and once there is a program in place, the judge can refer cases based on their own motion or a motion of the parties.

A county that sets up a program may use the County Dispute Resolution Fund to establish and maintain the program. *Local Government Code § 135.157*; See *Fines, Fees and Costs Deskbook* Chapter 3.

2. General Procedure and Requirements

Who Pays the Mediator's Fee?

The parties split the mediator's fee.

COMMON PITFALL

What Should the Court Consider in Deciding Whether to Order Mediation?

The court should consider the nature of the case and whether mediation is likely to result in a voluntary settlement without the need for a trial, or whether the parties are so far apart that mediation is unlikely to succeed. The court should not order mediation if the

expense of mediation to the parties outweighs any probable benefit of the mediation process.

CLICK HERE

For more information about alternative dispute resolution and a list of Community Dispute Resolution Centers, see the State Bar of Texas Alternative Dispute Resolution Section's website: ***https://texasadr.org/***.

F. When Should the Court Order Arbitration?

1. What is Arbitration?

Arbitration is another form of alternative dispute resolution. It is more like a trial than mediation, because the arbitrator can issue an award. At the actual arbitration, the parties will present their cases to the arbitrator by calling witnesses and offering evidence, and the arbitrator will act in place of a judge and render a decision.

In Texas, arbitration is non-binding unless the parties agree in writing prior to the arbitration that it will be binding. *Civil Practice and Remedies Code § 154.027.*

TJCTC does not recommend sending a case to arbitration unless it is for a contract dispute that specifically requires arbitration. If parties have this type of agreement, then the court should order arbitration.

KEY POINT

However, if the contract was for goods, services, money, or credit of less than $50,000, the parties are not required to arbitrate their dispute unless the arbitration agreement is in writing, and it is signed by both parties (and their attorneys if applicable). *Civil Practice and Remedies Code § 171.002(b).*

2. Enforcing Arbitration Awards

KEY POINT

Parties who participate in an arbitration may file an application for an order enforcing the arbitration award as a civil filing, even if they have no case pending in justice court. Upon filing the application, they pay the standard filing fee, and the court issues process to be served on the other party with the application attached. The clerk will docket this case as a

civil proceeding. The application can be filed before, during, or after the actual arbitration takes place. *Civil Practice and Remedies Code §§ 171.081, 171.082, 171.083.*

The court may require that an application for an order enforcing an arbitration award:

- shows the jurisdiction of the court,
- has the arbitration agreement attached,
- defines the issue in the dispute,
- specifies the arbitration status, **and**
- shows the need for the order.

Civil Practice and Remedies Code § 171.085.

How Does the Court Decide Whether or Not to Confirm the Arbitration Award?
Generally, the court should confirm the award. However, there are some circumstances in which the award should be vacated, modified, or corrected. *Civil Practice and Remedies Code § 171.087.*

If a party believes that the award should be vacated, modified, or corrected, they may file an application for vacating, modifying, or correcting the award with the court. A party has until the 90th day after the delivery of a copy of the award to that party. This means that this application could be filed without an earlier application to enforce the arbitration. *Civil Practice and Remedies Code §§ 171.088, 171.091.*

An arbitration award should be vacated only if one of the following is true:

- The award was obtained by corruption, fraud, or other undue means;
- The rights of a party were prejudiced by an impartial arbitrator, corruption in the arbitrator, or misconduct or willful misbehavior of an arbitrator;
- The arbitrator exceeded their powers;
- The arbitrator refused to postpone the hearing after a showing of sufficient cause for postponement;
- The arbitrator refused to hear evidence material to the case;
- The arbitrator conducted the hearing contrary to the rules in Chapter 171 so that it substantially affected the rights of a party; **or**
- There was no agreement to arbitrate, the same issue was not already decided adversely in a motion to compel arbitration, and the party did not participate in

the arbitration without objection.

Civil Practice and Remedies Code § 171.088.

If the application to vacate the award is denied and there is no application to modify or correct the award pending, then the court shall confirm the award.

An arbitration award should be modified or corrected only if one of the following is true:

- The award contains an evident miscalculation of numbers or an evident mistake in the description of a person, thing, or property referred to in the award;
- The arbitrators have made an award on a matter that was not submitted to them and a correction would not affect the decisions on the matters that were submitted to them;
- The form of the award is imperfect in a manner not affecting the merits of the case.

Civil Practice and Remedies Code § 171.091.

If the application to modify or correct the award granted, then the court should modify or correct the award and confirm it as modified or corrected. If the application is denied, then the court shall confirm the award. *Civil Practice and Remedies Code § 171.091.*

Judgment on the Award

COMMON PITFALL

If the court confirms, modifies, or corrects an arbitration award or denies any application for the same, the court must enter a judgment. The court may award court costs in the judgment but may not award attorney's fees. *Civil Practice and Remedies Code § 171.092,* ***Monday v. Cox.***

A judgment under this chapter may be appealed in the same manner as an appeal from a judgment in a civil action. *Civil Practice and Remedies Code § 171.098;* See ***Chapter 8*** for a discussion on civil appeals.

Chapter 6: Trial

A. How Does the Court Call the Case for Trial?

Calling the Case for Trial

On the day of trial, the judge must call all of the cases set for trial that day. *Rule 503.6(a).* The judge calls the case by calling the name of the case and the docket number of the case. If all parties are present, the judge may ask if they are ready to proceed with the trial.

1. A Party is Not Present

What if the Plaintiff is Not Present?

If the plaintiff fails to appear when the case is called for trial, the judge may either postpose the trial to another day or dismiss the case for want of prosecution. *Rule 503.6(b).* ***See pages 63-64 for a discussion of dismissal of cases for want of prosecution.***

BEST PRACTICE

For the court to dismiss the case, the plaintiff must have received notice of the trial date. TJCTC also believes that it is a best practice for the notice to inform the plaintiff that failure to appear for trial could result in dismissal.

What if the Defendant is Not Present?

If a defendant who has filed an answer fails to appear when the case is called for trial, the judge may either postpone the case or may proceed to take evidence from the plaintiff. If the judge proceeds to take evidence and the plaintiff proves their case, then the judge must award a judgment for the plaintiff in the amount proven. If the plaintiff fails to prove their case, then the judge must render a judgment against the plaintiff even though the defendant did not appear. *Rule 503.6(c).*

B. Jury Trials

1. Who is Entitled to a Jury?

Any party (for example, the plaintiff, the defendant, or a third-party defendant) is entitled

to a trial by jury in a civil case in justice court. *Rule 504.1(a).*

What Does the Party Have to Do to Have a Jury Trial?

In order to have a trial by jury, a party must file a written demand for a jury no later than 14 days before the date a case is set for trial. The demand may be included in a pleading, such as a petition or an answer. If the demand is not timely, then the right to a jury trial is waived unless the late filing is excused by the judge for good cause. *Rule 504.1(a).*

What is the Fee for a Jury Demand?

A party demanding a jury must pay a fee of $22 **or** file a Statement of Inability to Afford Payment of Court Costs at or before the time the party files their jury demand. *Rule 504.1(b).* For more information on the jury fee and other fines, fees, and costs in civil cases, see Chapter 3 of the *Fines, Fees, and Costs Deskbook.*

When Does a Party Get a Jury Trial in a Civil Case?

Any party to a civil case is entitled to a jury trial. But, they have to file a request for a jury at least 14 days before the trial date and pay a $22 jury fee or file a Statement of Inability to Afford Payment of Court Costs.

What Happens if a Party Withdraws Their Demand for a Jury?

If a party who demands a jury and pays the $22 fee withdraws the demand, the case remains on the jury docket unless all the other parties agree to try the case without a jury. A party who withdraws their demand for a jury is not entitled to a refund of the jury fee. *Rule 504.1(c).*

What Happens if No One Demands a Jury?

If no party files a timely demand for a jury and pays the $22 jury fee (or files a Statement of Inability to Afford Payment of Court Costs), then the judge will try the case without a jury. *Rule 504.1(d).*

2. How Does the Court Empanel a Jury?

The procedure for empaneling a jury in a civil trial is explained in detail in Chapter 4 of the *Trial Notebook*. Here is a summary of that procedure:

Step 1: Select the Jury Panel

A **jury panel** (also sometimes called a *venire*) is the group of all prospective jurors who have been summoned for jury duty and from whom a jury will be selected after appropriate questioning. The first step is to draw the names of the prospective jurors; this may be done by an electronic draw method if that has been implemented in your county. If an electronic draw has not been implemented, then the judge must write down the names of all the prospective jurors who have been summoned on separate slips of paper, place them in a box, mix them, and then draw the names one by one from the box. The judge must then list the names drawn and give a copy of the list to each of the parties or their attorneys. *Rule 504.2(a).*

Step 2: Swear in the Jury Panel

After drawing the names and making the list, the judge must swear in the jury panel as follows:

REQUIRED LANGUAGE

"You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror."

Rule 504.2(b).

Step 3: Pre-Jury Selection Instructions to the Jury Panel (Optional)

A justice court is not required to give instructions to the jury panel but may do so. Please see Rule 226a of the Texas Rules of Civil Procedure for helpful instructions at this phase of the case. The judge may use some or all of the jury panel instructions contained in that rule. TJCTC believes it is helpful to let the jury panel know:

BEST PRACTICE

- what the case is about generally;
- what the next steps will be;
- that this is a civil case (no one is accused of a crime);
- not to use their cell phones to look up information on the parties;
- that the parties or lawyers will have a chance to question them;
- they may come up to the bench if they wish to answer a question privately; **and**
- that they should not talk to the parties, lawyers, or witnesses outside the courtroom.

Step 4: Excuse any Members of the Jury Panel Who are Not Qualified to Serve as Jurors

The judge should question the jury panel as a whole to make sure that they are qualified to serve as jurors. A person is **disqualified** to serve as a juror unless the person:

- is at least 18 years of age;
- is a citizen of the United States;
- is a resident of Texas and of the county in which the person is to serve as a juror;
- is qualified to vote in the county in which the person is to serve as a juror (this does not mean they must be registered to vote, only that they must be qualified);
- is of sound mind and good moral character,
- is able to read and write,
- has not served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court,
- has not been convicted of misdemeanor theft or a felony, **and**
- is not under indictment or other legal accusation for misdemeanor theft or a felony.

Government Code § 62.102.

Step 5: Excuse any Members of the Jury Panel Who Claim an Exemption from Jury Service

The judge should question the jury panel as a whole to determine whether any of the prospective jurors are eligible for an exemption from jury service **and** wish to claim that exemption. If a person who qualifies still wishes to serve, they are entitled to remain on the panel for jury selection (*voir dire*).

A person qualified to serve as a juror is exempt from jury service if the person:

- is over 70 years of age;
- has legal custody of a child younger than 12 years of age and the person's service on the jury requires leaving the child without adequate supervision;
- is a student of a public or private secondary school;
- is a person enrolled and in actual attendance at an institution of higher education;
- is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is summoned for service in a county with a population of at least 200,000 and the

person has served as a juror in the county during the 24-month period preceding the date the person is to appear for jury service, unless that county uses a jury plan involving an electronic method of jury selection and the record of names for jury service is maintained under that plan for more than two years;

- is the primary caretaker of a person who is unable to care for himself or herself;
- is summoned for service in a county with a population of at least 250,000 and the person has served as a juror in the county during the three-year period preceding the date the person is to appear for jury service (unless the jury wheel in the county has been reconstituted after the date the person served as a juror); **or**
- is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence.

Government Code § 62.106.

Step 6: Ask the Jury Panel if Anyone Has a Reason They Cannot Serve

KEY POINT

Once there is a panel of qualified potential jurors who have not invoked an exemption from service, the judge may ask the jury panel if anyone has a reason (or excuse) why they cannot serve. Generally, missing work is not a valid reason. Have any jurors who say they have a reason for not serving raise their hands and come up to the bench to explain their excuse privately to the judge rather than stating their excuse out loud where other jurors might hear and imitate them.

Step 7: Questioning the Jury (Voir Dire)

The parties or their attorneys, as well as the judge, are allowed to question the potential jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. This is commonly referred to as *voir dire*. The judge has discretion to allow or disallow specific questions and determine the amount of time each side will have to question the jurors (for example, 10 minutes per side). *Rule 504.2(c).*

Step 8: Challenges for Cause or Strikes for Cause

A party may challenge or strike any juror for cause. A challenge for cause is an objection made to a juror alleging some fact, such as a **bias or prejudice**, that disqualifies the juror from serving in the case or that **renders the juror unfit to sit on the jury**.

The challenge must be made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury.

The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused. *Rule 504.2(d).*

Step 9: Peremptory Challenges or Strikes

After the judge determines any challenges for cause, each party may select up to three jurors to strike for any reason or no reason. These are known as **peremptory challenges or strikes.** *Rule 504.2(e).*

When May a Juror Not be Struck?


KEY POINT

A party may **not** strike a prospective juror solely because the juror belongs to a constitutionally protected class. *Rule 504.2(e).* This means they may not be struck solely because of their race, ethnicity, or gender. ***Batson v. Kentucky***; ***Edmonson v. Leesville Concrete.***

If a juror belonging to a protected class is struck through a peremptory challenge/strike, the opposing party may ask the judge to require the party striking the juror to give a non-discriminatory reason for the strike, and if the party is unable to do so, then the judge may order the juror to remain as a potential juror.


KEY POINT

Any discussion of peremptory strikes or the validity of a strike should be conducted at the bench and out of the hearing of the jurors.

Step 10: Seating the Jury

After all of the challenges and strikes have been made, the first six prospective jurors remaining on the list constitute the jury to try the case. *Rule* 504.2(f).

Step 11: If the Jury is Incomplete

If challenges reduce the number of prospective jurors below six, then the judge may direct the sheriff or constable to summon other persons and allow them to be questioned and challenged by the parties in the same manner until at least six jurors remain. *Rule 504.2(g).*

Step 12: Swear the Jury

Once the jury has been selected, the judge must require them to take substantially the following oath: "You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented."

Step 13: More Pretrial Instructions to the Jury (Optional)

BEST PRACTICE

A justice court is not required to give instructions to the jury but may do so. Please see Rule 226a of the Texas Rules of Civil Procedure for helpful instructions at this phase of the case. The judge may use some or all of the jury instructions contained in that rule. TJCTC believes it is helpful to remind the jury of procedures and let them know how the case will proceed including:

- to remind them of the previous instructions, for example, not to use their cell phones to look up information on the parties;
- that they should not talk to the parties, lawyers, or witnesses outside the courtroom;
- to let them know about restroom breaks and when the court will recess for lunch; **and**
- that the case will proceed with the plaintiff going first to present their evidence, then the defendant will present their evidence.

C. How Does the Court Conduct the Trial?

The procedure for conducting a civil trial is explained in detail in the *Trial Notebook*. Here are the key aspects:

1. What is the Role of the Judge?

KEY POINT

In a civil case in justice court the judge may "develop the case." *Rule 500.6.* This means that "a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition." *Rule 500.6.*

Where Can I Find These Rules?

Please note that whenever we refer to TRE in this deskbook, we are referring to the Texas Rules of Evidence. You may find them at this link: ***https://www.txcourts.gov/rules-forms/rules-standards/***

So, if a party to a civil case does not call a witness whom the judge needs to hear from in order to decide the case, the judge may summon the witness on their own and obtain that testimony before making a decision. The judge is not required in a civil case in justice court to be a mere passive observer but is free to ask questions and develop the facts of the case if that is necessary to ensure a correct judgment!

2. When Should Witnesses be Excluded from the Courtroom?

KEY POINT

It is standard practice in a civil trial to exclude witnesses from the courtroom who have not testified yet, until it is time for the witness to take the stand. The reason for this is to prevent a witness from shaping their testimony based upon what previous witnesses have said. This procedure is commonly referred to as **"invoking the rule"** at trial; so when a lawyer says, "Your Honor, I wish to invoke the rule," what they are asking for is to exclude all the witnesses from the trial unless they have a right to be present.

This rule applies in justice court: "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." *Rule 500.7.*

However, this rule does not authorize the exclusion from the trial of the following persons:

- a party who is a natural person or the spouse of a natural person (for example, a plaintiff or defendant who is an individual);
- an officer or employee who is designated as a representative of a party who is not a natural person (for example, the president or other officer or employee of a corporation or an LLC); **and**
- a person who is shown by a party to be essential to the presentation of the party's case (for example, an expert witness who needs to hear the testimony of the other witnesses in order to form their opinion).

Rule 500.7.

COMMON PITFALL

The people listed above have a right to be present at the trial and **may not** be excluded from the courtroom. So "the rule" applies to any witnesses other than these.

3. What if a Party or Witness Needs an Interpreter?

When May the Court Appoint an Interpreter?

KEY POINT

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation is to be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed as costs, at the discretion of the court. *Rule 183.* Courts may use the Language Access Fund to help pay for required interpreter services. *Local Government Code § 135.155.* See Chapter 3 of the *Fines, Fees, and Costs Deskbook* for more information.

Does the Interpreter Have to be a Licensed Court Interpreter?

The court must appoint a "licensed court interpreter for an individual who can hear but does not comprehend or communicate in English if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil . . . proceeding in the court." *Government Code § 57.002(b-1).*

A court may appoint a spoken language interpreter **who is not a licensed court interpreter**:

- in a county with less than 50,000 residents;

- in a county with more than 50,000 residents if the language is not Spanish and the court finds that there is no licensed court interpreter within 75 miles who can interpret in that language; **or**

- in a county that:
  - is part of two or more judicial districts, that has two or more district courts with regular terms, and that is part of a district in which a county borders on the international boundary of the United States and the Republic of Mexico;

  - borders on the international boundary of the United States and the Republic of Mexico and that is in a judicial district composed of four counties;

  - borders on the international boundary of the United States and the

Republic of Mexico and that has three or more district courts or judicial districts wholly within the county; **or**

- borders on the Gulf of Mexico and that has four or more district courts or judicial districts of which two or more courts or districts are wholly within the county.

Government Code §§ 57.002, 57.002(d-1); Civil Practice and Remedies Code § 21.021.

What are the Requirements for a Licensed Interpreter?

CLICK HERE

The requirements for a licensed interpreter are explained at this link: ***http://www.txcourts.gov/jbcc/licensed-court-interpreters/frequently-asked-questions.aspx***

Interpreters for Trial or for a Hearing

The same rules apply whether an interpreter needs to be appointed for a hearing or for trial.

What are the Requirements for an Interpreter who is not Licensed?

A person who is not a licensed interpreter:

- must be qualified by the court as an expert;
- must be at least 18 years old; **and**
- may not be a party.

Government Code § 57.002(e).

What About a Sign Language Interpreter?

A sign language interpreter must be a "certified court interpreter" which means:

- a qualified interpreter under Art. 38.31 of the Code of Criminal Procedure,
- a qualified interpreter under Civil Practice and Remedies Code § 21.003,
- certified by the Department of Assistive and Rehabilitative Services, **or**
- a sign language interpreter certified as a CART provider.

Government Code §§ 57.001, 57.002.

KEY POINT

How Do I Find an Interpreter?

The Office of Court Administration (OCA) offers the Texas Court Remote Interpreter Service (TCRIS), which provides:

- **Free** Spanish language interpreting services, by advanced scheduling or on demand, as available. The service is provided by state licensed court interpreters in *all* types of cases, only for short, **non-contested** and non-evidentiary hearings that would typically last 30 minutes or less.
- To schedule a court interpreter through this program, go to this link: ***http://www.txcourts.gov/tcris/.***
  A bench card with information about this program is available at: ***http://www.txcourts.gov/tcris/bench-card/***.

CLICK HERE

Scheduling Interpreters

For courts in more rural counties, it may be helpful to work with your other JP's and county and district court coordinators to schedule interpreters for all of your cases on the same days, especially if each court only needs the interpreter for a short hearing. The county and district court coordinators also likely have a list of interpreters that they have used in your area.

If you need an interpreter for a trial, or for a language other than Spanish, the court must secure an individual interpreter. A list of interpreters can be found at the following websites:

CLICK HERE

Texas Department of Health and Human Services

Office of Court Administration

Texas Association of Judiciary Interpreters and Translators

CLICK HERE

Additional resources and information about court interpreters and translators are available at:
http://www.txcourts.gov/programs-services/interpretation-translation/

Not only are interpreters required by law in many cases, but a court must also comply with

CLICK HERE

the Americans with Disabilities Act (ADA). Part of this act requires a court to take steps to communicate effectively with people who have disabilities. More information about this and the **ADA Update: A Primer for State and Local Governments** can be found here: ***https://www.ada.gov/ta-pubs-pg2.htm***

4. Control by the Court

KEY POINT

The court should exercise reasonable control over all proceedings in the courtroom, including how long a case takes for a hearing or trial, and protecting a witness from harassment or undue embarrassment. While a judge should allow both sides to fully present their case, the courtroom should be controlled by the judge during all stages of a case, whether before trial, during trial, or after trial. For example, if a party (or counsel) keeps asking the same question of a witness over and over again after the witness has already answered it, the judge may simply tell the questioner to ask another question or to "move on." *TRE 611.*

Although Rule 500.3(e) states that the Rules of Evidence do not apply unless the court determines that a particular rule must be followed to ensure the proceedings are fair to all parties, the court should apply Rule 611 of the Texas Rules of Evidence to maintain control over the proceedings.

5. Requests for a Court Reporter or to Record the Proceedings

Sometimes a lawyer will ask the court if they may bring a court reporter to a hearing or a trial. Or a party may ask if they may make an audio or video recording of the proceedings. Whether or not to allow this is up to the judge and falls within the court's authority to control the courtroom and the proceedings. There is no specific statute that addresses this issue for civil cases in justice court. **(But please note that Section 65.016 of the Family Code expressly states that the proceedings in a truancy case may not be recorded).**

Some judges believe that a court reporter should not normally be allowed since a justice court is not a court of record and either party is entitled to a trial de novo on appeal. Also, the presence of a court reporter may be a distraction to the parties. This consideration may also apply to the use of audio or video recording equipment.

But a judge has discretion to allow a court reporter or an audio or video recording. Of course, the party requesting the presence of a court reporter would be responsible for the cost of the reporter.

6. Applying Certain Rules Related to Evidence

The Rules of Evidence do not automatically apply in justice court in civil cases. Therefore, there should be few objections to evidence in most cases. However, two rules should generally be followed:

a. Compromise or Offers to Compromise

An offer to settle a claim is not admissible to prove or disprove the validity or amount of a disputed claim, and neither are conduct or statements made during any settlement negotiations. *TRE 408.*

There are generally two widely accepted reasons why it is important that courts not allow this sort of information at trial. First, the existence or details of a settlement generally don't show a person's position on the merits but rather how much they are willing to compromise in order not to have the hassle of a trial. A very risk averse person might take a deal even if they have a great case, because of the potential to lose at trial and end up with nothing. Second, it is good public policy to encourage parties to work things out in settlement to save the expense going through a trial if possible. If discussion about settlement negotiations is allowed into evidence at trials, people would be less likely to try to settle cases, because they wouldn't want to hurt their case at trial. A more detailed discussion of this topic can be found in the ***Texas Rules of Evidence Handbook.***

For example, if John Smith claims he suffered damages of $6,000 due to Tom Brown's negligent driving which resulted in an automobile accident, and Tom offers $4,000 to settle the claim, Tom's offer is not admissible and the court should apply Rule 408 of the Texas Rules of Evidence to exclude any evidence of the offer or any statements made in settlement negotiations if John tries to use the offer or any such statements at trial.

b. Liability Insurance

Evidence of the Defendant's Insurance

Evidence that a person was or was not insured against liability is not admissible to determine whether the person acted negligently or otherwise wrongfully. *TRE 411.*

Information about insurance is generally not admissible during a trial for some of the same reasons as discussed above related to settlement. It isn't a good indicator of whether a person acted negligently or not which is generally the issue where insurance might come up during a trial.

In the above example, if John tries to show that Tom had insurance at the time of the accident, the court should not allow that evidence. Whether or not Tom had insurance is irrelevant to whether he acted negligently and is liable to John for damages he sustained in the accident.

Evidence of the Plaintiff's Insurance and the Collateral Source Rule

The fact that the plaintiff has insurance that will cover their damages may not be considered in determining whether to award damages against the defendant. This is called the collateral source rule. ***Haygood v. DeEscabedo***.

But, doesn't this let the plaintiff recover twice? **No**, because if the insurance company has already paid for damages, they will have a claim for reimbursement against any recovery the plaintiff receives in a lawsuit.

Going back to the above car accident example with John and Tom, John doesn't have to pay less in damages to Tom, just because an insurance company has already paid to have Tom's car repaired. Tom should be awarded the full amount of damages, and he should then either reimburse the insurance company or they can sue Tom for what they paid out.

The plaintiff can recover medical health care expenses that were actually paid or incurred. If an insurance company paid them, the plaintiff can recover the amount that the insurance company paid. However, this evidence should be put on without discussing the insurance, simply that the services were provided and cost X amount.
Texas Civil Practice and Remedies Code § 41.0105; ***Haygood v. DeEscabedo***.

For more information and discussion of the Rules of Evidence see Chapter 7 of the *Trial Notebook*.

7. Motion in Limine

A motion in limine is a request before trial (often at a pretrial conference) that certain inadmissible evidence may not be referred to or offered at trial. A party may ask for a motion in limine if they believe mention of an issue will be prejudicial (for example, that they have liability insurance). If the opposing party discusses this fact anyway in the presence of the jury, it may result in a mistrial. The opposing party may ask the court to reconsider the ruling excluding the evidence if other evidence at trial makes it relevant.

8. Presentation of the Evidence

The judge may allow the parties to make opening statements if they wish to do so. The plaintiff then puts on any evidence in support of its case. The plaintiff's witnesses testify on direct examination and are subject to cross-examination by the defendant. When the plaintiff rests, the defendant is entitled to put on any evidence in support of its defenses. The defendant's witnesses testify on direct examination and are subject to cross-examination by the plaintiff. When the defendant rests, the parties may present closing arguments to the jury or the court.

How Does the Jury Know What to Do Without a Jury Charge?

A good verdict form will help the jury in their deliberations, because it will have blanks for the answers to all of the questions that they should be deciding. A good verdict form can also help a jury stay on task.

Sample verdict forms are available on the TJCTC forms page.

9. Jury is Not Charged

The judge must not **charge the jury** in a civil case tried in justice court. *Rule 504.3.* This means the judge does not explain in detail what the law is to the jury before the jury deliberates.

10. The Verdict

A verdict may be rendered by five or more members of a six-person jury. If less than six jurors render a verdict, the verdict must be signed by each juror agreeing with the verdict. If the verdict is unanimous, only the foreperson of the jury is required to sign the verdict form. *Rule 292.*

If the suit is for the recovery of specific articles of personal property and the jury finds for the plaintiff, then the jury must assess the value of each article separately, according to the evidence presented at trial. *Rule 504.4.*

Chapter 7: Judgment

A. How Does the Court Render Judgment?

1. Requirements for a Judgment

KEY POINT

A judgment must:

- clearly state the determination of the rights of the parties in the case,
- state who must pay the costs,
- be signed by the judge, **and**
- be dated the date of the judge's signature.

Rule 505.1(c).

Judgment After a Jury Trial

When a jury returns a verdict, the judge must announce the verdict in open court, note the verdict in the court's docket, and render judgment. The judge may render judgment on the verdict (that is, a judgment in favor of the party the jury found in favor of) or, if the verdict is contrary to the law or the evidence, the judge may render a **judgment notwithstanding the verdict (JNOV)** (that is, a judgment in favor of the party whom the jury found against). *Rule 505.1(a).*

This is a very rare action to take. Even if you do not agree with the jury, they rarely are wrong on the law or the facts. The judge cannot enter a JNOV just because they don't believe a witness was credible or a piece of evidence wasn't persuasive or merely because the judge would have reached a different result. A full discussion of JNOV, including examples, can be found in Chapter 6 of the *Trial Notebook*.

Judgment After a Bench Trial

When the case was tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly. Remember, the judge must determine the value of any specific articles of personal property awarded in the judgment. *Rule 505.1(b).*

What Should be Included in the Judgment?
The amount of money awarded **or** **The personal property awarded (with a value as determined by judge or jury)**
Court costs
Attorney's fees, if applicable *See page 91 for a discussion of when a court may award attorney's fees.*
Post-judgment interest rate There must be an interest rate even if that rate is zero. *For a discussion of post-judgment interest, see page 92.*
Pre-judgment interest rate, if applicable. *See pages 6-7 for a discussion of pre-judgment interest.*
What Should Not be Included in the Judgment?
Payment plans Parties are free to make agreements with each other, but those agreements are separate from the judgment.
Injunctive relief A party cannot be ordered to do or refrain from doing something in a justice court judgment. The only time this is included is when there is a specific statute stating it is allowed, such as an order to make repairs in a Repair and Remedy case. (see Chapter 10 of the *Evictions Deskbook*)

2. Judgment for Specific Items of Personal Property

If the judgment is for the recovery of specific articles, or items, of personal property, then the judgment must order that the plaintiff recover those specific articles, if they can be found, and if not, then the plaintiff shall recover their value as assessed by the judge or jury with interest at the prevailing post-judgment interest rate. *Rule 505.1(e)*.

3. Court Costs and Fees

Costs

The judge must award costs allowed by law to the successful party, even if they don't specifically ask for them. *Rule 505.1(c).*

Attorney's Fees

When a party is awarded a judgment in a civil case, a judge may also award them reasonable attorney's fees in certain cases, as provided for in a statute or an agreement of the parties.

In general, attorney's fees may be awarded in claims for:

- Rendered services,
- Performed labor,
- Furnished material,
- Freight or express overcharges,
- Lost or damaged freight or express,
- Killed or injured stock,
- A sworn account, **or**
- An oral or written contract.

Civil Practice and Remedies Code § 38.001.

Private Process Server Fees as Costs

Private process server fees can be assessed as court costs. The court must have evidence (affidavit or testimony) that the fees are reasonable and necessary. See ***O'Connor's Causes of Action pg. 1457***; ***Operation Rescue-Natl. v Planned Parenthood of Houston and S.E. Texas, Inc.***

To recover attorney's fees, a party must be represented by an attorney and must make a claim for the attorney's fees to the opposing party. The opposing party must also have been given an opportunity to pay the attorney's fees within 30 days of the claim prior to attorney's fees being awarded. *Civil Practice and Remedies Code § 38.002; Business and Commerce Code §§ 17.49(h) and 17.555;* ***Findlay v. Cave***.

Usual and customary attorney's fees are presumed to be reasonable, but the opposing party may rebut that presumption. Generally, a party who is requesting attorney's fees will offer testimony at trial or an affidavit that describes: the number of hours the attorney

worked, how much their hourly rate is, and that the amount of hours and rate is customary or usual in their field. *Civil Practice and Remedies Code § 38.003;* ***Auz v. Cisneros.***

4. Post-Judgment Interest

Generally, when a court awards one party money through a judgment, the judgment debtor does not pay right away. For this reason, Texas law allows judgment creditors to collect post-judgment interest to compensate for their loss of use of the money.

COMMON PITFALL

Judgments awarding money in Texas (a "money judgment") are required to specify the post-judgment interest rate that applies to that judgment. *Tex. Finance Code. § 304.001*. The post-judgment interest accrues from the date the judgment is rendered to the date that the judgment is fully satisfied or paid. *Tex. Finance Code 304.005.* Post-judgment interest in Texas compounds annually. *Tex. Finance Code § 304.006.* The entire judgment amount, including costs, is subject to post-judgment interest. Please see Chapter 2 of the *Practical Guide to Writs of Execution* for more on calculation of post-judgment interest.

The post-judgment interest rate may be the "statutory rate" published by the Texas Office of Consumer Credit Commissioner, or it may be the rate agreed to by the parties in a contract unless the plaintiff or the parties jointly waive their right to post-judgment interest.

The "statutory rate" is published on the 15th of each month and can be found here, listed as the "judgment rate": ***https://www.occc.texas.gov/publications/interest-rates***.

a. How to Determine the Proper Post-Judgment Interest Rate

In order to apply the proper post-judgment interest rate under the Finance Code to a money judgment, the court should ask the following questions:

- Is the judgment a "money judgment . . . **on a contract**?"
    - If the answer to this question is **No** (for example, in a personal injury case), then the statutory post-judgment interest rate applies.
    - If the answer to this question is **Yes**, go to the next question.

- Does the contract on which the suit was brought "provide for interest or [a] time price differential?"
    - If the answer to this question is **No**, then the statutory post-judgment interest rate applies. An example of this would be a suit to recover unpaid medical bills which is a suit on a contract but one that does not provide for interest or a time price differential.

    - If the answer to this question is **Yes**, then go to the next question.

- What is the interest rate or time price differential in the contract on which the suit was brought?
    - If it is more than 18%, then the post-judgment interest rate is 18%; if it is less than 18%, then the post-judgment interest rate is the rate specified in the contract.

b. Determining Post-Judgment Interest in Specific Situations in Justice Court

BEST PRACTICE

TJCTC recommends the following approaches in common situations related to post-judgment interest in justice court.

- **Judgment after trial**: court answers the three questions above. If it is not a suit on a contract, or it is a suit on a contract that does not provide for interest, then the court would enter the statutory rate. If it is a suit on a contract that provides for interest and the parties did not submit evidence of the interest rate in the contact, then the court would ask the parties to submit evidence on that issue or "stipulate" (agree) to the interest rate provided in the contract.
- **Judgment after trial but plaintiff waives post-judgment interest**: court accepts waiver and specifies 0% as post-judgment interest rate.
- **Default judgment where plaintiff waives post-judgment interest and submits zero as rate on proposed default judgment**: court accepts waiver and specifies 0% as post-judgment rate.
- **Default judgment where plaintiff leaves post-judgment interest rate blank**: court sends plaintiff the Order Concerning Post-judgment Interest; if plaintiff fails to respond within 10 days, court enters 0% as the post-judgment interest rate.

- **Agreed judgment which requests zero as post-judgment interest rate**: court specifies 0% as the post-judgment interest rate.
- **Agreed judgment where post-judgment interest rate is blank**: court sends parties the Order Concerning Post-judgment Interest; if parties stipulate to contract interest rate, court enters the stipulated rate or 18% whichever is less; if plaintiff waives recovery of post-judgment interest or parties fail to respond within 10 days, court specifies zero as post-judgment rate.

The Order Concerning Post-judgment Interest Rate is available on the TJCTC forms page under Civil Procedure Forms, in the Trial, Judgment, and Appeals section, under Judgments and Verdicts.

c. Post-Judgment Interest Rate Flowchart

Click Here to Open the Post-Judgment Interest Rate Flowchart

B. What Motions May be Filed After a Case is Dismissed or a Judgment is Entered?

1. What Motions May be Filed?

KEY POINT

There are three possible motions that a losing party may file after a case is dismissed or a judgment is entered:

- **Motion by the Plaintiff to Reinstate the Case After Dismissal**
  A plaintiff whose case is dismissed may file a written motion to reinstate the case no later than 14 days after the dismissal order is signed. The plaintiff must serve a copy of the motion on the defendant no later than the next business day. The court may reinstate the case for good cause shown. *Rule 505.3(a).*
- **Motion by the Defendant to Set Aside a Default Judgment**
  A defendant against whom a default judgment has been granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve a copy of the motion on the plaintiff no later than the next

business day. The court may set aside the judgment and set the case for trial for good cause shown. *Rule 505.3(a).*

- **Motion for New Trial**
  A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve a copy of the motion on all other parties no later than the next business day. 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. *Rule 505.3(a).* **(Note: A motion for new trial may not be filed in an eviction case. *Rule 510.8(e).*)**

  Additionally, beginning January 1, 2022, the party filing a motion for new trial must also pay the same filing fee required to file a civil case in order to file the motion (unless they filed a Statement of Inability when filing the case or the motion). See Chapter 3 of the *Fines, Fees, and Costs Deskbook* for more information.

Procedure on the Motions

The judge may, but is not required to, hold a hearing on these motions. If the judge does not rule on any of these motions by 5:00 p.m. on the **21st day after the day the judgment or order of dismissal was signed** (not the 21st day after the motion was filed), then the motion is automatically denied. *Rule 505.3(e).* So, by simply not acting on a motion to reinstate, a motion to set aside a default judgment, or a motion for a new trial, the result is that the motion is denied on the 21st day after the day the order of dismissal or judgment was signed.

Motions Automatically Denied if Not Ruled Upon

A motion to reinstate, a motion to set aside a default judgment, or a motion for a new trial is automatically denied on the 21st day after the day the judgment or order of dismissal was signed if not ruled upon by the judge.

Must a Party File One of These Motions in Order to Appeal?

No! The failure of a party to file such a motion does not affect the party's right to appeal the underlying judgment. *Rule 505.3(d).*

2. How to Calculate Time for Post-Judgment Motions

The rules for computing time discussed above *(see pages 30-32)* apply to the calculation of time to file a post-judgment motion or appeal.

Here is an example where a judgment was entered and a motion to set aside the judgment or a motion for new trial was filed:

May

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6	7	8 **(Day 0) Judgment Signed**	9 (Day 1)	10 (Day 2)	11 (Day 3)	12 (Day 4)
13 (Day 5)	14 (Day 6)	15 (Day 7)	16 (Day 8)	17 (Day 9)	18 (Day 10)	19 (Day 11)
20 (Day 12)	21 (Day 13)	22 (Day 14) **Motion to Set-Aside Judgment or Motion for New Trial Must be Filed**	23 (Day 15)	24 (Day 16)	25 (Day 17)	26 (Day 18)
27 (Day 19	8 (Day 20) **Memorial Day: Court Closed**	29 **(Day 21) Motions Denied if Court Has Not Ruled**	30	31		

C. What is a Judgment Nunc Pro Tunc and When May the Court Enter One?

KEY POINT

To Correct a Clerical Error

A judgment nunc pro tunc ("now for then") is a means of amending a judgment to correct a **clerical error** either before or after the court's plenary power has expired. ***See page 15 for more information on plenary power.***

What is a Clerical Error?

A clerical error is a discrepancy between the entry of a judgment in the official record and the judgment as it was actually rendered. ***Butler v. Contiental Airlines, Inc.*** Here are some examples:

- An error in the date of signing a judgment, such as "January 3, 2020" when the judgment was actually signed on January 3, 2021;
- A mistake in the party designations, such as listing John Smith as a defendant when he is really a third-party defendant; **or**
- A mistake in a party's name in the judgment, such as mistakenly entering "David Jenkin" when the party's real name is "David Jenkins."

These types of clerical errors may be corrected by a judgment nunc pro tunc. ***Claxton v. (Upper) Lake Fork Water Control & Imprv. Dist. No. 1.***

COMMON PITFALL

Not for Correcting Judicial Error

A judgment nunc pro tunc is **not a means of correcting judicial error**, which occurs when the court considers an issue and makes an erroneous decision. ***Comet Aluminum Co. v. Dibrell.***

Examples of judicial error are:

- A mistake in an award of prejudgment interest;
- An erroneous statement in support of a default judgment, such as that the defendant failed to appear and answer when

Nunc pro Tunc

A judgment nunc pro tunc is to correct a clerical error, such as putting the wrong date in a judgment. It may not be used to correct judicial error, such as entering a default judgment when the defendant had filed an answer in the case.

he in fact did answer, or that the defendant was served with the citation but did not answer when he in fact was not served; **or**

- A dismissal with prejudice instead of without prejudice. (A dismissal with prejudice means the plaintiff is not free to re-file the same case. A dismissal without prejudice means the plaintiff is free to file the same case again.)

Comet Aluminum Co. v. Dibrell.

The way to correct judicial error is to file a motion to modify the judgment, not a motion for a judgment nunc pro tunc. An order modifying a judgment **may only** be entered within the court's plenary power.

No Deadline for Filing

KEY POINT

There is no deadline for filing a motion for judgment nunc pro tunc. *Rule 316.* (Note: There is no rule for a nunc pro tunc judgment within Rules 500-510 but under Rule 500.3(e) the court may apply the other rules of civil procedure, including Rule 316, "to ensure that the proceedings are fair to all parties.")

If a judgment as rendered by the trial court is not faithfully transcribed into the records of the court, the court has inherent authority to correct or amend the records by nunc pro tunc judgment so the court's records accurately reflect the judgment as rendered***. Perry v. Nueces County.***

Chapter 8: Appeal

A. When and How an Appeal May Be Filed

A party may appeal a judgment in a small claims or debt claim case **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 by:

- filing a bond,
- making a cash deposit, **or**
- filing a Statement of Inability to Afford Payment of Court Costs. Either party is entitled to file an appeal.

Rule 506.1(a).

KEY POINT

Additionally, beginning January 1, 2022, the party filing an appeal must also pay the same filing fee required to file a civil case in order to file the appeal (unless they filed a Statement of Inability when filing the case or the appeal). See Chapter 3 of the *Fines, Fees, and Costs Deskbook* for more information.

1. How to Calculate the Time for Appeal

Here is an example where a judgment was entered and a motion to set aside the judgment or a motion for new trial was **not** filed:

May

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6	7	8 **(Day 0) Judgment Signed**	9 (Day 1)	10 (Day 2)	11 (Day 3)	12 (Day 4)
13 (Day 5)	14 (Day 6)	15 (Day 7)	16 (Day 8)	17 (Day 9)	18 (Day 10)	19 (Day 11)
20 (Day 12)	21 (Day 13)	22 (Day 14)	23 (Day 15)	24 (Day 16)	25 (Day 17)	26 (Day 18)
27 (Day 19	28 (Day 20) **Memorial Day: Court Closed**	29 **(Day 21) Appeal Must be Filed if Court Closes at 5:00 p.m.**	30 **(Day 22) Appeal Must be Filed if Court Closes before 5:00p.m.**	31		

COMMON PITFALL

Keep in mind that if the judgment had been signed on Monday, May 7, the appeal would still be due on the same day because the 21st day would fall on Memorial Day, May 28th, and if the time for filing the appeal falls on a Saturday, Sunday or legal holiday, the deadline shifts to the next day that is not a Saturday, Sunday or legal holiday. ***See pages 30-32.***

Now suppose a motion for a new trial is filed 14 days after the judgment is signed and the court never rules on the motion, which means it is denied automatically on the 21st day after the judgment was signed. The appeal time is as follows:

May-June

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6	7	8 **(Day 0) Judgment Signed**	9 (Day 1)	10 (Day 2)	11 (Day 3)	12 (Day 4)
13 (Day 5)	14 (Day 6)	15 (Day 7)	16 (Day 8)	17 (Day 9)	18 (Day 10)	19 (Day 11)
20 (Day 12)	21 (Day 13)	22 **(Day 14) Motion for New Trial Filed**	23 (Day 15)	24 (Day 16)	25 (Day 17)	26 (Day 18)
27 (Day 19)	28 (Day 20) **Memorial Day: Court Closed**	29 **(Day 21) Motion for New Trial Automatically Denied**	30 (Day 1)	31 (Day 2)	1 (Day 3)	2 (Day 4)
3 (Day 5)	4 (Day 6)	5 (Day 7)	6 (Day 8)	7 (Day 9)	8 (Day 10)	9 (Day 11)
10 (Day 12)	11 (Day 13)	12 (Day 14)	13 (Day 15)	14 (Day 16)	15 (Day 17)	16 (Day 18)
17 (Day 19)	18 (Day 20)	19 **(Day 21) Appeal Must be Filed if Court Closes at 5:00 p.m.**	20 **(Day 22) Appeal Must be Filed if Court Closes before 5:00 p.m.**	21	22	23

Finally, suppose a motion for a new trial is filed six days after the judgment is signed and the court denies the motion four days later. The appeal time is as follows:

May-June

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6	7	8 **(Day 0)** **Judgment Signed**	9 (Day 1)	10 (Day 2)	11 (Day 3)	12 (Day 4)
13 (Day 5)	14 **(Day 6)** **Motion for New Trial Filed**	15 (Day 7)	16 (Day 8)	17 (Day 9)	18 **(Day 10)** **Judge Denies Motion for New Trial**	19 (Day 1)
20 (Day 2)	21 (Day 3)	22 (Day 4)	23 (Day 5)	24 (Day 6)	25 (Day 7)	26 (Day 8)
27 (Day 9)	28 (Day 10)	29 (Day 11)	30 (Day 12)	31 (Day 13)	1 (Day 14)	2 (Day 15)
3 (Day 16)	4 (Day 17)	5 (Day 18)	6 (Day 19)	7 (Day 20)	8 **(Day 21)** **Appeal Must be Filed if Court Closes at 5:00 p.m.**	9 (Day 22)
10 (Day 23)	11 **(Day 24)** **Appeal Must be Filed if Court Closes before 5:00 p.m.**	12	13	14	15	16

The rules for computing time discussed above ***(see pages 30-32)*** apply to the calculation of time to file an appeal.

B. Appeal Bond, Cash Deposit, or Statement of Inability to Afford Payment of Court Costs

1. Appeal Bond


KEY POINT

Amount of the Appeal Bond
A plaintiff must file a $500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. *Rule 506.1(b).*

Conditions of the Bond
The appeal bond must be payable to the appellee and must be conditioned on the appellant's prosecution of the appeal to effect and payment of any judgment and all costs rendered against it on appeal. *Rule 506.1(b).*

The appeal bond must be supported by a surety or sureties approved by the judge. *Rule 506.1(b).*

2. Cash Deposit Instead of Bond

Instead of filing an appeal bond, an appellant may deposit with the clerk of the court cash in the amount required for the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of the appeal to effect and payment of any judgment and all costs rendered against it on appeal. *Rule 506.1(c).*

Notice of Filing the Appeal Bond or Making a Cash Deposit
Within **seven days** of filing an appeal bond or making a cash deposit, **the appellant** must serve written notice of the appeal on all other parties using a method approved under Rule 501.4 ***(see pages 37-39).*** *Rule 506.1(e).*

3. Statement of Inability to Afford Payment of Court Costs

a. What Has to be Filed?

An appellant who cannot furnish a bond or pay a cash deposit in the amount required may

instead file a Statement of Inability to Afford Payment of Court Costs. The Statement must be on the form approved by the Supreme Court or include the information required by the Court-approved form and it may be the same statement that was filed with the petition. *Rule 506.1(d).*

Note, this process is different in evictions cases. Please see Chapter 4 of the *Evictions Deskbook* for details.

COMMON PITFALL

Notice of the Statement of Inability to Afford Payment of Court Costs

If a Statement of Inability to Afford Payment of Court Costs is filed, **the court must provide notice** to all other parties that the Statement was filed **no later than the next business day.** *Rule 506.1(e).*

b. Contest of Statement of Inability to Afford Payment of Court Costs

The Statement of Inability to Afford Payment of Court Costs may be contested as provided in Rule 502.3(d) within **seven days** after the opposing party receives notice that the statement was filed. *Rule 506.1(d)(2).*

As explained above, this means that the statement may not be contested if a legal aid provider certificate is filed with the statement. And if the statement attests to receipt of a government entitlement based on indigence, then the only challenge that can be made is with respect to whether or not the person is actually receiving the government entitlement. *Rule 502.3(d).* ***See pages 22-23.***

The judge may conduct a hearing on their own even if the appellee does not contest the statement. *Rule 502.3(d).*

Hearing

The judge must, if contested, and may on their own motion hold a hearing on the contest to determine the appellant's ability to afford the appeal bond or cash deposit. At the hearing, the burden is on the appellant to prove such inability.

If the Judge Sustains the Contest of the Statement

If the judge sustains the contest, they must enter a written order listing the reasons for

the determination. *Rule 502.3(d).* The appellant may appeal that decision to the county court by filing a notice with the justice court **within seven days** of the justice court's written order. The justice court must then forward all related documents to the county court for resolution. *Rule 506.1(d)(3).*

Appeal of Judge's Ruling Sustaining the Contest

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). If the appeal is granted, the county court must direct the justice court to transmit to the clerk of the county court the transcript, records and papers of the case. *Rule 506.1(d)(3).*

If Appellant Does Not Appeal Ruling Sustaining the Contest or if the County Court Denies the Appeal

If the appellant does not appeal the justice court's ruling sustaining the contest, or if the county court denies the appeal, then the appellant may, **within five days,** perfect the appeal by paying the required filing fee and:

- posting an appeal bond, **or**
- making a cash deposit in compliance with the rules.

Rule 506.1(d)(4).

KEY POINT

Please note that if the justice of the peace sustains a contest, then an appellant has only **five days** to perfect an appeal by filing an appeal bond or making a cash deposit but the appellant has **seven days** to appeal the decision on the contest to the county court. In order to give effect to both time periods, the appellant should first be allowed seven days to appeal the judge's decision disallowing the statement of inability to afford payment of court costs. If the appellant does not appeal that decision within seven days, then the appellant has **five additional days** in which to perfect the appeal by filing an appeal bond or making a cash deposit.

C. When is the Appeal Perfected?

1. General Rule

An appeal is **perfected** when an appeal bond, a cash deposit, or a Statement of

Inability to Afford Payment of Court Costs is filed in accordance with Rule 506.1. *Rule 506.1(h).* Unless a Statement of Inability is filed with the petition or the appeal, beginning **January 1, 2022**, the party filing an appeal must also pay the same filing fee required to file a civil case when filing the appeal. See Chapter 3 of the *Fines, Fees, and Costs Deskbook* for more information.

2. What if the Appellant Fails to Pay the Filing Fee in the County Court?

An appellant must pay the county court filing fees on appeal to a county court in accordance with Rule 143a. *Rule 506.1(i).*

Rule 143a states that if the appellant fails to pay the filing fees within 20 days after being told to do so by the county clerk, the appeal "shall be deemed **not perfected** and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted."


KEY POINT

So, if the appellant does not pay the filing fee in the county court, then the county court will dismiss the appeal as **not perfected**. In that case, the judgment of the justice court **is still in effect** and may be enforced through a writ of execution or other process issued by the justice court.

However, the justice court may only take the case back as not perfected if the appellant fails to pay the county court's filing fees **within 20 days of when they receive notice to pay the filing fees from the county court**. So, if the county court never gave that notice, they can't send the case back to the justice court, because the clock on the deadline to pay the filing fees hasn't even started yet.

Note, however, that if the appellant appealed by filing a Statement of Inability to Afford Payment of Court Costs, and the statement was approved, the county court may accept the statement or may require a new one.

D. What Happens When an Appeal is Perfected?

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 506.2.*

Trial De Novo - Justice Court Judgment is Void

When an appeal is perfected, the judgment of the justice court is **null and void**. "[I]t is well-settled that perfection of an appeal to county court from a justice court for trial de novo vacates and annuls the judgment of the justice court." ***In re Garza***; ***Williams v. Schneiber***; ***Mullins v. Coussons***; ***Poole v. Goode***.

So, if an appeal is properly perfected from the justice court to the county court, there is no longer any judgment that may be executed or enforced by the justice court. The justice court judgment is void.

E. What if the Appeal was Sent to County Court Even Though it was *Not* Properly Perfected?

KEY POINT

If the appeal was not properly perfected, but is sent to the county court, then the proper procedure is for the county court to **dismiss** the appeal. ***Cavazos v. Hancock***; ***Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc.***; ***In re A.J.'s Wrecker Service of Dallas***.

For example, suppose a defendant files an appeal bond in the justice court to appeal a judgment but the defendant files the appeal bond three days after the due date. If the case is sent to county court, the county court may dismiss the appeal on the grounds that the appeal was not properly perfected. ***Cavazos v. Hancock***. In that case, the judgment of the justice court **is not null and void and may be enforced** through a writ of execution or other process issued by the justice court.

However, the county court **must not** dismiss an appeal for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after seven days' notice from the court, the opportunity to correct such defects. *Rule 506.1(g).*

F. What is a Writ of Procedendo?

A writ of procedendo is "an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment in a case, without attempting to control the inferior court as to what the judgment should be." A writ of procedendo "is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment." "While originally 'procedendo' was a writ to compel a judge to proceed to judgment, in Texas 'procedendo' has come to mean an appeals court's order to an inferior court to execute judgment." *38 Tex. Jur. 3d Extraordinary Writs § 408 (2016)*.

County courts sometimes issue a writ of procedendo (or "an order of remand") to a justice court without realizing that if an appeal was properly perfected from the judgment of a justice court, then the judgment of the justice court is null and void and there is no longer any judgment that may be executed or enforced! So, if a county court issues a writ of procedendo after an appeal has been **perfected**, there is no judgment pending or that may be revived in the justice court.

"If the Appeal Was Not Properly Perfected …"

If an appeal is not properly perfected but is sent to the county court, or if the appellant fails to pay the filing fee in the county court (in which case the appeal will be treated as not properly perfected), the proper procedure for the county court is to **dismiss** the appeal. And in that case the justice court judgment is **not** null and void and may be enforced by the justice court. ***Cavazos v. Hancock***; ***Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc.; In re A.J.'s Wrecker Service of Dallas.***

G. Post-Judgment Procedure Flowchart

Click Here to Open Post-Judgment Procedure Flowchart

Chapter 9: Other Post-Judgment Remedies

A. Writ of Certiorari

1. What is a Writ of Certiorari (and How Do You Even Pronounce it)?

A writ of certiorari (pronounced "Sir-Sure-Rahr-Ree") is a way to remove a case to county court from justice court after final judgment. *Rule 506.4(a); Civil Practice and Remedies Code § 51.002.*

The writ of certiorari commands 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 to the county court, together with the original papers and a bill of costs. *Rule 506.4(e).*

A writ of certiorari is not available in an eviction case. *Rule 506.4(a); Civil Practice and Remedies Code § 51.002(d).*

A Writ of What?

A writ of **certiorari** is a way for a party to have a county court review a justice court judgment within 90 days after the judgment was signed where the justice court did not have jurisdiction to hear the case or the judgment causes an injustice not due to the defendant's neglect.

2. General Procedure and Requirements

Where is the Application Filed?

An application for a writ of certiorari is filed in the county court (or the district court in a county where civil jurisdiction has been transferred from the county court to the district court). *Rule 506.4(a); Civil Practice and Remedies Code § 51.002(b).*

When May an Application be Filed?

An application for a writ of certiorari must be filed in the county court **within 90 days** after the date the final judgment is signed by the justice court. *Rule 506.4(d).*

What Must the Applicant Show?

An application for a writ of certiorari to the county court may be granted only if it contains a sworn statement showing that either:

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

Rule 506.4(b); ***Centro Jurici de Instituto Tecnologico v. Intertravel, Inc.***

What Happens if the County Court Grants the Writ of Certiorari?

When the application is granted, and the applicant has filed a bond, made a cash deposit or filed a Statement of Inability to Afford Payment of Court Costs with the county court, the clerk of the county court issues the writ of certiorari to the justice court and a citation to the adverse party. *Rule 506.4(c),(f).*

Proceedings in Justice Court are Stayed

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. *Rule 506.4(g).* This means the judgment of the justice court **may not** be executed or otherwise enforced at that point.

The Case is Docketed in the County Court

The case is then docketed in the county court in the name of the original plaintiff as the plaintiff and the original defendant as the defendant. *Rule 506.4(h).*

If the Certiorari is Dismissed

Within 30 days after service of the citation on the writ of certiorari, the adverse party may file a motion to dismiss in the county court on the ground that there is not sufficient cause in the affidavit or that the bond is not adequate. If the certiorari is dismissed, the county court must direct the justice court to proceed with execution of the judgment entered in the justice court. *Rule 506.4(i).*

Trial de Novo in County Court

If the case is **not** dismissed, then the case is tried de novo in the county court and a judgment is rendered by the county court just as in an appeal from a justice 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(k).*

B. Bill of Review

1. What is a Bill of Review?


KEY POINT

A bill of review is an action by a party to a former suit who is seeking to have a default judgment set aside after the time to file a motion for a new trial or an appeal has passed. ***Baker v. Goldsmith***; *Rule 329b(f).* It is an independent action seeking to set aside a default judgment. ***Caldwell v. Barnes***.

2. General Procedure and Requirements

When May a Bill of Review be Filed?

A petition for a bill of review may be filed after the court's plenary power expires but ordinarily within four years of the judgment. *Rule 329b(f);* ***Baker v. Goldsmith***. However, if there was extrinsic fraud that caused the party not to become aware of the judgment, then the party might be able to file a bill of review more than four years after the judgment. ***Valdez v. Hollenbeck***; ***PNS Stores, Inc. v. Rivera.***

Extrinsic fraud is fraud that denies a litigant the opportunity to fully litigate at trial all the rights or defenses that could have been asserted. ***PNS Stores, Inc. v. Rivera;*** ***King Ranch, Inc. v. Chapman***. It occurs when a litigant has been misled by his adversary by fraud or deception, or was denied knowledge of the suit. ***PNS Stores, Inc. v. Rivera***; ***Alexander v. Hagedorn***.

Bill of Review

A bill of review is a way for a party to have a default judgment set aside, normally within four years after the judgment was signed, where there was a violation of due process (for example, the citation was never served) or the defendant was not able to present a meritorious defense through no fault or negligence of his own.

For example, suppose a plaintiff and the plaintiff's process server fail to serve the citation

on a defendant altogether and then falsely swear to the court that the defendant was served with the citation. Suppose a default judgment is then entered against the defendant and six years later (after the normal deadline for filing a bill of review) the defendant discovers the judgment when the plaintiff attempts to execute the judgment. The defendant **would** be allowed in this situation to bring a bill of review. Otherwise, the defendant's due process rights would be violated. ***Peralta v. Heights Medical Center, Inc.***

What Does the Party File?

The party seeking a bill of review must file a sworn pleading stating the grounds that constitute "sufficient cause" for setting aside the judgment. ***Beck v. Beck.***

"**Sufficient cause**" may be based on:

- a violation of due process, **or**
- a meritorious defense that the party did not have an opportunity to present where its failure to present the defense was justified and the default judgment was not rendered as a result of any fault or negligence of the party.

Caldwell v. Barnes; State v. 1985 Chevrolet Pickup Truck.

If There Was a Due Process Violation

When a defendant claims a due process violation in a bill of review, such as no effective service of process, he is not required to prove that he had a meritorious defense or that his failure to present that defense was justified***. Caldwell v. Barnes.*** For example, if the defendant had no notice of the trial setting, he is not required to prove that he had a meritorious defense. ***Lopez v. Lopez.***

When a defendant claims he was not served with the citation, he must prove only that the default judgment was not rendered as a result of his own fault or negligence. This element is conclusively established if the party proves he was not served. A defendant who was not served with process cannot be at fault or negligent in allowing a default judgment to be rendered. ***Caldwell v. Barnes.***

If There Was Not a Due Process Violation

When a defendant does not claim a due process violation, he must do the following:

- Present a prima facie meritorious defense to the action. A party establishes a meritorious defense when he proves that:

    - his defense is not barred as a matter of law; **and**
    - he will be entitled to judgment on retrial if no contrary evidence is offered.
- Justify his failure to present the defense by alleging fraud, accident or wrongful act of the plaintiff, or official mistake. For example, in one case a letter that constituted an answer was misplaced at the courthouse. ***Baker v. Goldsmith***.
- Show that the default judgment was not rendered as a result of his own fault or negligence.

Caldwell v. Barnes; ***Baker v. Goldsmith***.

Procedure for a Bill of Review

If the bill of review meets the requirements discussed above, then the court should docket it as a new case, issue a citation to the defendant (the former plaintiff) on the bill of review and set the case for trial (by jury if requested) as with any new case.

Fees and costs are the same as in a new civil case.

At the trial, the petitioner will prove that there is "sufficient cause" to set aside the judgment as described above. If the petitioner proves his claims at trial, then a judgment is issued, and it replaces the former default judgment. ***State v. 1985 Chevrolet Pickup Truck.***

Chapter 10: How are Judgments Enforced?

A. Authority to Enforce Judgments

Justice court judgments are enforceable using the same methods as in county and district court, unless otherwise provided by law. *Rule 505.2.*

These methods will be further discussed in this chapter.

B. Post-Judgment Discovery

Post-Judgment Discovery Does Not Require the Court's Prior Approval


KEY POINT

Unlike pre-judgment discovery, which the court must approve in advance, post-judgment discovery may be conducted without the court's prior approval. The party requesting the discovery must give the responding party at least **30 days** to respond to the discovery request. The responding party may file written objections with the court within 30 days of receiving the request. *Rule 500.9(b).*

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 500.9(b).*

Sometimes a defendant upon whom a post-judgment discovery request has been served fails to respond at all to the request. In that case, the plaintiff may file a motion for sanctions with the court, including ultimately the possibility of holding the defendant in contempt for refusing to respond to the discovery requests. See Chapter 3 of the *Officeholding Deskbook* for more information on contempt.

C. Enforcing Judgments for Personal Property

Many of the methods used to enforce money judgments (discussed later in this chapter) can also be used to enforce judgments for personal property. These include writs of execution, writs of garnishment, turnover orders, and receivership orders and are discussed later in this chapter.

However, there are also special enforcement tools used only for judgments for personal property, and these are discussed in this section. Also note, some of these enforcement tools are used prior to the judgment to protect the personal property that the case is about, so that it may be later awarded in a judgment.

1. Special Writs and Writs of Execution for Specific Property

When the judgment is for personal property, the court may award a **special writ** for the seizure and delivery of such property to the plaintiff. A writ of execution for specific property may also be issued to order a constable or sheriff to seize the item and deliver it to the plaintiff. *Rules 505.2, 632.*

BEST PRACTICE

Special writs are only granted in justice courts and are handled similarly to writs of execution for specific property except that there is no time frame (30, 60 or 90 days) that applies to the special writ. Therefore, a best practice for the court is to specify in the special writ a reasonable time that the constable or sheriff has to execute the special writ.

A writ of execution for specific property is handled in the same way and under the same rules as other writs of execution, but instead of an officer selling the property at auction to satisfy a judgment, they take custody of the specific property in the writ and turn it over to the person entitled to it. See a full discussion of the rules and other issues related to writs of execution on ***pages 127-132***.

See the Practical Guide to Writs of Execution for more information.

2. Writ of Sequestration

a. What is a Writ of Sequestration?

KEY POINT

A writ of sequestration is an order directing a sheriff or constable to seize and hold personal property that is the subject of a lawsuit **before judgment**. The purpose of the writ is to preserve and protect the value of the property until the suit is tried. ***American Mortgage Corp. v. Samuell.***

May a Justice Court Issue a Writ of Sequestration?

Yes! A justice court has authority to issue a writ of sequestration. *Civil Practice and Remedies Code § 62.021; Rule 505.2.*

b. General Procedure and Requirements

What Happens to the Property That is Seized?

A writ of sequestration does not create a lien against the property subject to the lawsuit. Instead, the property itself is seized and deposited into the custody of the constable or sheriff until the court decides the rights of the parties to it. ***Harding v. Jesse Denning, Inc.***

When is a Writ of Sequestration Available?

A writ of sequestration is available in justice court in a lawsuit for title, possession, or foreclosure or enforcement of a lien or security interest of personal property or fixtures. To be entitled to the writ, there must be an immediate danger that the defendant, or party in possession of the property, will:

- conceal,
- dispose of,
- ill-treat,
- waste or destroy the property, **or**
- remove it from the county during the suit.

Civil Practice and Remedies Code § 62.001.

For example, suppose Handy Dan Car Repair replaces the transmission in John Smith's car. Let's assume Handy Dan has a mechanic's lien for the value of the repairs (say $1,500). If John is able to drive the car away without paying what he owes, Handy Dan could file a suit in justice court to enforce the mechanics lien it holds on the car. If Handy Dan believes John is about to drive off into the sunset, he could file an application for a writ of sequestration with a justice court to have the car seized and held until the court decides whether the mechanics lien may be enforced.

When May a Request for a Writ of Sequestration be Filed?

An application for a writ of sequestration may be made at any time **after the commencement of a suit** or during its progress. *Rule 696.* A suit must therefore be

pending when an application is filed, or the application and the suit can be filed together at the same time. *Civil Practice and Remedies Code § 62.002.*

What is the Procedure for Issuance of a Writ of Sequestration?

- **Application Filed:** An application for a writ of sequestration must be supported by an affidavit establishing the statutory grounds for issuance of the writ (listed above). *Rule 696.*
- **Court Hearing:** The writ may be issued only upon a written order of the court after a hearing, which may be ex parte. *Rule 696.*
- **Bond:** The plaintiff must file a bond payable to the defendant in an amount fixed by the court conditioned upon the plaintiff prosecuting his suit to effect and paying all damages and costs assessed against him if the writ of sequestration was wrongfully issued. *Rule 698.*
- **Replevy Bond:** The defendant has a right of replevy (meaning they can get their property back while the case is pending). To do this the defendant has to post a replevy bond in an amount that is the lesser of either:
    - the value of the property that is sequestered; **or**
    - the amount of plaintiff's claim plus one year's interest (if interest is allowed by law on the claim).

  The court should then add estimated court costs. *Rule 696.*

Written Order of the Court

The court should issue a written order granting or denying the application for the writ of sequestration. If the court decides to grant the application, the court must include in its order:

- Specific findings of fact to support the statutory grounds for issuing the writ;
- A description of the property to be sequestered with such certainty that it may be distinguished from similar property (for example, a VIN number for a motor vehicle);
- The value of each article of property;
- The county in which the property is located;
- The amount of the bond the plaintiff is required to post; **and**
- The amount of a replevy bond for the defendant.

The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties. *Rule 696.*

How is the Writ Executed?

The sheriff or constable is to take into his possession the property and hold it subject to further order of the court unless it is replevied (see below). *Rule 699.* In levying the writ the officer may bodily remove the defendant and his family, goods and possessions from the property, but the officer must use ordinary care to avoid injury and may not use excessive force such as kicking in a door or committing assault on the defendant. *Rule 699*; ***Patton v. Slade***; ***Mendoza v. Singer Sewing Mach. Co.***

Officer's Duty of Care

An officer who executes a writ of sequestration must care for and manage the property in a prudent manner. If the officer entrusts the property to another person, he is responsible for the acts of that person relating to the property. The officer is liable for damage to the sequestered property resulting from his neglect or mismanagement or that of a person to whom he entrusted the property. *Civil Practice and Remedies Code § 62.061.*

Officer's Compensation

An officer who retains custody of sequestered property is entitled to compensation and reasonable charges to be determined by the court that issued the writ. The officer's compensation and charges are to be taxed and collected as a cost of suit. *Civil Practice and Remedies Code § 62.062.*

Defendant's Right to Replevy

The defendant has a right to replevy the property (that is, have it returned to him) by posting a bond payable to the plaintiff in an amount fixed by the court. *Rule 701.*

Plaintiff's Right to Replevy

If the defendant does not replevy the property within 10 days after the property was seized, then the plaintiff may replevy the property (that is, have it turned over to him) by posting a bond payable to the defendant in an amount fixed by the court. *Rule 708.*

Motion to Dissolve or Stay the Writ

The defendant may also move to dissolve or stay the writ. *Civil Practice and Remedies Code § 62.041*; ***Rexford v. Holliday.*** Unless the parties agree to an extension, the court must conduct a hearing on the motion and determine the issue **not later than the 10th day** after the motion is filed. *Civil Practice and Remedies Code § 62.042.*

D. Writ of Attachment

1. What is a Writ of Attachment?

KEY POINT

A writ of attachment is a means of seizing and holding non-exempt property **before judgment** in a suit on a debt to ensure that the property will be available to satisfy the judgment once a final judgment has been rendered. *Civil Practice and Remedies Code § 61.001*.

COMMON PITFALL

Sometimes people refer to a writ of attachment when they really mean a writ of sequestration. ***Writs of Sequestration are discussed on page 117-120.***

May a Justice Court Issue a Writ of Attachment?

Yes! A justice court has power to issue a writ of attachment. *Civil Practice and Remedies Code § 61.021*; *Rule 505.2; **Cook v. Waco Auto Loan Co.***

2. General Procedure and Requirements

What Must the Plaintiff Show?

For a writ of attachment to issue the plaintiff must

Sequestration vs. Attachment

A **writ of sequestration** is an order to have a specific piece of property seized and preserved while a trial is pending related to that piece of property. For example, if a Rent-a-Center sues a customer for return of a television that they are no longer paying for, they may seek a writ of sequestration to prevent the customer from selling or damaging the property.

A **writ of attachment** is an effort by a plaintiff to preserve their ability to enforce a judgment when the defendant is hiding or moving their assets. For example, if a plaintiff is suing someone for $5,000 on a promissory note, and that person starts moving their property out of Texas, the plaintiff could seek a writ of attachment, which works like a writ of execution. Non-exempt property is seized, and then sold if the defendant doesn't pay the judgment, if and when one is rendered against them.

The difference is sequestration is for a specific piece of property, where attachment is for any non-exempt property that can eventually be sold for the amount of the future judgment.

show the following:

- The defendant is indebted to the plaintiff;
- The attachment is not sought for the purpose of injuring or harassing the defendant; **and**
- The plaintiff will probably lose his debt unless the writ of attachment is issued.

Civil Practice and Remedies Code § 61.001.

The plaintiff also must show that at least **one** of the following specific grounds exists:

- The defendant is not a resident of Texas or is a foreign corporation;
- The defendant is about to move from the state permanently and has refused to pay or secure the debt due the plaintiff;
- The defendant is in hiding so that ordinary process of law cannot be served on him;
- The defendant has hidden or is about to hide his property for the purpose of defrauding his creditors;
- The defendant is about to remove his property from the state without leaving an amount sufficient to pay his debts;
- The defendant is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors;
- The defendant has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;
- The defendant is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors;
- The defendant owes the plaintiff for property obtained by the defendant under false pretenses.

Civil Practice and Remedies Code § 61.002.

When May a Writ of Attachment be Issued?

The writ may be issued after the suit has been filed and before final judgment. *Rule 592*; *Civil Practice and Remedies Code § 61.003.*

The debt must be liquidated (that is, the amount of debt must be readily ascertainable by reference to a document signed by the defendant). A writ of attachment is generally not available if the claim is for an unliquidated debt. ***Sharman v. Schuble***. The writ is also not normally available for tort claims because the claim is not liquidated in such cases. ***Stewart***

v. Forrest.

Affidavit and Bond

The application for the writ must be supported by an affidavit setting forth the grounds for issuance (see above). *Rule 592*; *Civil Practice and Remedies Code § 61.022.*

The plaintiff must also execute a bond having two or more good and sufficient sureties, payable to the defendant in an amount set by the judge and conditioned on the plaintiff prosecuting his suit to effect and paying all damages and costs adjudged against him if the attachment is wrongful. *Rule 592, 592a*; *Civil Practice and Remedies Code § 61.023*; ***Carpenter v. Carpenter.***

Hearing and Order

A writ of attachment may only be issued after a court hearing, which may be ex parte. *Rule 592.* In its order granting the application, the court must make specific findings of fact to support the statutory grounds found to exist and must specify the maximum value of property that may be attached. *Rule 592.*

What Property May be Attached?

The writ may be levied only on property that is subject to levy under a writ of execution, i.e. non-exempt property ***(See page 158)***. *Civil Practice and Remedies Code § 61.041.* The effect of the writ is to create a lien on the property attached. *Civil Practice and Remedies Code § 61.061.*

What Must the Constable or Sheriff Do?

The writ is directed to the sheriff or constable and commands him to attach and hold the amount of the defendant's non-exempt property, as determined by the court, which is found in the county. *Rule 593, 594.* The sheriff or constable must immediately proceed to execute the writ, in the same manner as a writ of execution, by levying upon (i.e. seizing) so much of the defendant's property found in the county as necessary to satisfy the writ. *Rule 597, 598.*

The officer must first call upon the defendant, if he can be found, or his agent to point out the property to be levied upon. If in the opinion of the officer, that property is not sufficient to satisfy the writ, the officer may require the defendant to designate additional

property. *Rule 598, 637.* If the defendant refuses to point out any property, the officer should levy on any property he finds that is subject to attachment. *Rule 598, 637.*

Return of the Writ

The officer executing the writ of attachment must return the writ, signed by him, and stating what action he took, to the court by 10:00 a.m. on the Monday after the expiration of **15 days** from issuance of the writ. *Rule 606*. The return should describe the property attached with sufficient certainty to identify it and state when it was attached and whether any personal property remains in his hands. *Rule 606*.

Right of Replevy

The defendant has the right to replevy (that is, to recover possession of the property) at any time before judgment by posting a bond with sufficient sureties, payable to the plaintiff in the amount set by the court, or, at the defendant's option, for the value of the property sought to be replevied, plus one year's interest at the legal rate from the date of the bond. The bond is to be conditioned on the defendant satisfying any judgment rendered against him in the action. Upon posting the replevy bond, the property, and any proceeds from the sale of the property, are returned to the defendant and the lien on the property is released. *Rule 599.*

E. Abstract of Judgment

1. What is an Abstract of Judgment?

An abstract of judgment is a document prepared by the judge or the clerk of the court that rendered a judgment. The document is prepared at the request of the person in whose favor the judgment was rendered (or their agent, attorney or assignee) and then certified by the court and delivered to the person so that they may file it with the county clerk. *Prop. Code § 52.002.*

What is the Purpose of an Abstract of Judgment?

KEY POINT

The purpose of an abstract of judgment is to create a lien on non-exempt property of the defendant in the county in which the abstract is filed. *Prop. Code § 52.001*; ***C.I.T. Corp. v. Haynie.*** The judgment itself does not create a lien; a lien is created only when an

abstract of judgment is properly filed and indexed in the appropriate county records. ***C.I.T. Corp. v. Haynie***. An abstract of judgment may be filed in more than one county and typically a plaintiff would file an abstract in any county in which the plaintiff believes the defendant owns non-exempt property ***(See page 158).***

How Does an Abstract of Judgment Help a Plaintiff?
By placing a lien on the defendant's property in the county, the plaintiff is able to prevent the defendant from selling that property with a free and clear title unless and until the lien is released. So, the advantage to the plaintiff is that if the defendant wants to sell their property, they may first have to pay off the judgment in order to get the lien released.

What is a Lien?

A **lien** is a legal claim or right against property. The classic example is purchasing a house with a mortgage. The bank who lends the buyer the money to purchase the house has a lien against the house, and if the buyer stops paying the mortgage, the bank can foreclose on the mortgage and take the house.

2. General Procedure and Requirements

Who Creates the Abstract of Judgment?
An abstract of judgment may be prepared by the court or an attorney.

If the court prepares the document, it is prepared by the judge or clerk at the request of the person who is owed the judgment (or their agent, attorney, or assignee) and then certified by the court. The abstract of judgment is then given to the party who requested it, so they may file it with the county clerk. *Property Code § 52.002(a).*


COMMON PITFALL

If an abstract of judgment is prepared by an attorney, the court does not have any involvement. The attorney must include with the abstract of judgment an affidavit or statement that confirms the abstract is correct. The document would then be filed with the county clerk. *Property Code § 52.002(b).*

What Needs to be Included in the Abstract of Judgment?

The abstract must include:

- the names of the plaintiff and defendant,
- if available, the defendant's birth date and the last three numbers of the defendant's driver's license and social security number,
- the number of the suit, the date and amount of the judgment,
- the balance due on the judgment, **and**
- the rate of interest specified in the judgment.

Prop. Code § 52.003.

Abstract of Judgment

An **abstract of judgment** creates a lien on non-exempt property of the defendant in the county in which the abstract is filed. It may be filed as soon as a judgment is signed; the plaintiff does not have to wait until the time for an appeal has expired.

When May an Abstract of Judgment be Issued?

An abstract of judgment may be issued when a final judgment has been entered. There is no limit on the number of abstracts that can be issued on a given judgment, as long as they are issued when the judgment is not dormant. *Property Code § 52.002*.

The plaintiff does not have to wait until the time for appeal has expired. But, if an appeal is filed after the abstract has been issued, the abstract is no longer valid because the judgment of a justice court is void once an appeal has been perfected.

3. Common Issues

a. Does Filing an Abstract of Judgment Extend the Life of the Judgment?

No. The life of the judgment (10 years) is only extended by the issuance of a writ of execution, not by an abstract of judgment.

b. What if a Party Asks the Justice Court for a Release of Abstract or a Release of the Lien?

First, the party will go through the procedure to get a release of judgment, see ***pages 148-149.*** The party will then take that release of judgment to the county clerk's office for the

lien to be released. The justice court is not involved in releasing the lien on the judgment after the release of judgment is obtained by the party.

F. Writ of Execution

1. What is a Writ of Execution?

A writ of execution is a writ signed by a judge directing the enforcement of a judgment. *Rule 621.* It orders the sheriff or constable to seize (that is, "levy on") the defendant's non-exempt property, sell it, and deliver the proceeds of the sale to the plaintiff to be applied toward satisfaction of the judgment. *Rules 621, 629.* Justice court judgments may be enforced through a writ of execution. *Rules 621, 629.*

Exempt property includes home furnishings, tools, books, wearing apparel, two firearms, current wages and other listed personal property up to a value of $50,000 for an individual and $100,000 for a family ***(See page 158)******. Property Code §§ 42.001, 42.002.***

2. General Procedure and Requirements

KEY POINT

When May a Writ of Execution be Issued?

A writ of execution may not normally be issued until **at least 30 days** has expired since the judgment was signed. *Rule 627.*

However, a writ of execution **may** be issued before the 30th day if the plaintiff files an affidavit stating that the defendant is about to remove his personal property subject to execution out of the county or is about to transfer or hide his personal property for the purpose of defrauding his creditors. *Rule 628.*

Writ of Execution

A writ of execution may not normally be issued until at least 30 days after the judgment was signed.

The writ is returnable in 30, 60, or 90 days, as requested by the plaintiff or their attorney.

No Writ of Execution Once Appeal is Perfected

A writ of execution **may not** be issued once an appeal has been perfected. When an appeal from a justice court judgment is perfected, the judgment becomes null and void and no longer enforceable. Therefore, a writ of execution cannot be issued if the case is properly appealed to the county court. ***Knight v. Texas Dept. of Public Safety***; ***Campbell v. Knox.***

In fact, once the appeal is perfected, even if the appeal is later dismissed voluntarily by the parties, or by the county court for a reason other than that it did not obtain jurisdiction, a writ of execution may not issue on the judgment of the justice court. ***Knight v. Texas Dept. of Public Safety***. The justice court judgment is null and void once the appeal is perfected.

Writ of Execution May Issue if Appeal is Not Properly Perfected

A justice court judgment is not set aside, and a writ of execution may be issued, if:

- the case is one which cannot be appealed; **or**
- the county court dismisses the appeal because it has not obtained jurisdiction of the case.

Harter v. Curry.

For example, suppose a party properly files an appeal bond with the justice court but fails to pay the filing fee in the county court. As discussed above, this will result in the county court dismissing the case on the ground that **the appeal was not perfected**. ***See pages 107-108.*** In that case, the judgment of the justice court may be enforced, and a writ of execution may be issued. ***Cavazos v. Hancock***; ***Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc.***; ***In re A.J.'s Wrecker Service of Dallas.***

What Has to be Included in the Writ?

The writ must be signed by the judge officially, directed to any sheriff or constable within the state, and require the officer to execute it and collect the costs adjudged against the defendant along with the costs of execution. *Rules 507.4; 629.* It must describe the judgment, the court in which and the time when it was rendered, and the name of the parties in whose favor and against whom judgment was rendered. *Rule 629.* A copy of the bill of costs taxed against the defendant must be attached to the writ. *Rule 629.*

KEY POINT

How Long is the Writ Valid?

Upon requesting a writ of execution, the plaintiff or his attorney must specify whether it is returnable in **30, 60, or 90 days**. *Rule 621.* When issued the writ will then direct the sheriff or constable to return it within that 30, 60, or 90 day period chosen by the plaintiff or his attorney. *Rule 629.*

If, after the levy, sufficient time does not exist to sell the seized property prior to expiration of the writ, the sheriff or constable must return the writ to the court and the plaintiff must secure a writ of *venditioni exponas*, which authorizes the sheriff or constable to sell the seized property after the expiration of the writ of execution. ***Borden v. McRae***.

What Must the Court do When Issuing the Writ?

The judge must enter on his docket the time when the writ of execution was issued, to whom it was directed and delivered, and the amount of debt, damages and costs. *Rule 507.3.* When the writ is returned, the judge must note the return in the docket and show the manner in which it was executed. *Rule 507.3.*

What Must the Officer do Upon Receiving the Writ?

The officer must endorse the writ with the hour and day he receives it and proceed "without delay" to levy upon (that is, to seize) the non-exempt property of the defendant found in his county. *Rules 636, 637.* The officer must first call upon the defendant, if he can be found, or his agent to point out the property to be levied upon. If in the opinion of the officer is that the property is not sufficient to satisfy the writ, the officer may require the defendant to designate additional property. *Rule 637.* If the defendant refuses to point out any property, the officer should levy on any property he finds that is subject to execution. *Rule 637.*

Venditioni What?

If property is seized under a writ of execution but the constable does not have enough time to sell it before the writ expires, the plaintiff must get a writ of ***venditioni exponas*** authorizing a sale after expiration of the writ of execution.

A levy on personal property is made when the officer takes possession of the property. *Rule 639.* The property is to be offered for sale on the premises where it is taken, at the courthouse door of the county, or at a place where it is convenient to show it to

purchasers. *Rule 649.*

Is Real Property Subject to a Writ of Execution?

Yes. To levy on real estate, it is not necessary for the officer to go on the land but simply to endorse the levy on the writ. That is, state on the writ that the officer is selling real property of the defendant. *Rule 639.* Real property is sold at public auction at the courthouse door of the county, unless the court orders the sale at the place where the property is situated, on the first Tuesday of the month between 10:00 a.m. and 4:00 p.m. *Rule 646a.*

Return of the Writ

The officer must sign a return of the writ of execution stating concisely what he has done to fulfill the requirements of the writ and the law. *Rule 654.* After the time in which the writ must be returned has expired (30, 60, or 90 days), it has no force and effect and the officer has no right either to seize property under it or to sell property previously seized (unless, as noted above, a writ of *venditioni exponas* is issued). ***Chance v. Peace.***

3. Creation of an Execution Docket

The court must maintain an execution docket that is searchable by the name of each involved party or person. Specific information kept must be:

- names of the parties,
- amount of the judgment,
- amount due on the judgment,
- interest rate (if it exceeds six percent),
- costs,
- issuance date of the writ,
- to whom the writ was delivered, **and**
- officer's return including date and manner in which it was executed.

Rules 507.3, 656.

4. Stay of Execution

What is This Procedure Used for?

A defendant might have a judgment rendered against him that he is currently unable to pay but believes he will be able to pay within three months. If he and a surety acknowledge the judgment and that they are bound to the plaintiff for the full amount of the judgment, then they may ask the court for a stay of execution for three months.

What Does the Judgment Debtor Have to File?

In order for a stay to be granted the judgment debtor must file an affidavit stating that he does not have the money to pay the judgment, and that enforcement of the judgment by execution prior to three months would be a hardship on him and cause a loss of his property which would not be caused if execution of the judgment is stayed for three months. *Rule 635.*

Stay of Execution

This procedure is available if a defendant is unable to pay a judgment today but will be able to within three months.

The judgment debtor, along with at least one surety approved by the judge, must appear before the judge and acknowledge that they are bound to the judgment creditor for the full amount of the judgment with interest and costs. *Rule 635.*

What Does the Court Sign?

Within **10 days** after signing a judgment in justice court, the judge may grant a stay of execution for **three months** from the date of the judgment. *Rule 635.* The judgment creditor is then not able to obtain a writ of execution or otherwise enforce the judgment (for example, through a writ of garnishment or a turnover order) until the three months have passed.

G. Writ of Garnishment

1. What is a Writ of Garnishment?

A writ of garnishment is a process for seizing assets, both money and property, held by a

third party (the garnishee) but owed or belonging to the debtor. For example, a defendant against whom a judgment has been issued (the judgment debtor) may have a bank account. The bank holds the money in the account, but the money belongs to the defendant. The bank is therefore indebted to the defendant. A writ of garnishment is the legal process by which the plaintiff (garnishor) can require the bank (garnishee) to turn over the money in the account to satisfy the judgment.

KEY POINT

Getting the Terminology Straight!

A lot of the confusion in a garnishment case comes from not being clear about which party is which! To clarify the parties it is helpful to keep the following in mind:

- The "plaintiff" in a garnishment case is a judgment creditor who is trying to collect a judgment they hold and is called the "garnishor." They might have been the plaintiff in the original case in which a judgment was entered or they might have acquired the judgment later by having it assigned to them (many debt collectors do this). Therefore, plaintiff = garnishor = judgment creditor.

- The "garnishee" in a garnishment case is the person that holds the assets of the judgment debtor (for example, a bank). The garnishment case is filed against the garnishee but the plaintiff is trying to collect money that the garnishee is simply holding for the person against whom a judgment was rendered in a previous case.

- The "defendant" is the judgment debtor in the previous case who now has a judgment against them that the plaintiff is trying to collect by seizing assets held by the garnishee. Therefore, defendant = judgment debtor.

What Court May Issue the Writ

A writ of garnishment must be requested in the same court that issued the original judgment. ***King & King, et al, v. Porter***.

This includes a justice court. A clerk of a justice court may issue a writ of garnishment returnable to the court. *Civil Practice and Remedies Code § 63.002.*

COMMON PITFALL

What Property May be Seized?

A writ of garnishment may be levied only against **personal property**, not real property. ***Fitzgerald v. Brown, Smith & Marsh Bros.***

How is the garnishor supposed to know what property of the defendant the garnishee has? The garnishor may use the post-judgment discovery process to try to get this information. ***See page 116 for a discussion of post-judgment discovery.***

a. Common Exempt Property in Garnishment

The general rules and caselaw related to exempt and non-exempt property are used to determine what property is exempt from garnishment. There are some types of exempt property that are most common for courts to see in garnishment cases. These types of property are discussed below.

Current Wages

Current wages for personal service are not subject to garnishment except for the enforcement of court-ordered child support payments. *Civil Practice and Remedies Code § 63.004*; *Tex. Const. Art. XVI, § 28.* This means that an order cannot be issued to an employer to send some of a person's wages to the judgment creditor instead of to the judgment debtor. However, once wages are deposited into a bank account, they are not ***current*** and may be seized by garnishment. ***Chandler v. El Paso Nat'l Bank.***

Worker's Compensation

Worker's compensation benefits are also exempt from garnishment. *Texas Labor Code § 408.201.* These benefits are not treated like current wages. They remain exempt even if deposited in an account, as long as they are not commingled with other funds. ***Gaddy v. First Nat. Bank of Beaumont***; ***Highland Park State Bank v. Salazar***.

Government Assistance Funds

Welfare, other state and federal government assistant funds (including social security benefits), and veteran's benefits are also exempt from garnishment. *Human Resources Code §§ 31.040, 32.036, 42 U.S.C.A. § 407, 38 U.S.C.A. § 5301.* These funds have absolute exemption even if they are commingled with other money. ***Nationsbank of North Carolina, N.A. v. Shumate.***

COMMON PITFALL

The court will likely not know whether or not funds are the type of benefits exempt from garnishment unless the garnishee or defendant answer and raise the issue.

The rules for exempt property in the Property Code apply in garnishment cases as well. A chart outlining those rules can be found at the link on ***page 158***.

2. Initiating the Garnishment Case

When May the Writ be Issued?

A writ of garnishment may be issued either before a judgment has been entered or after judgment. In justice courts, writs of garnishment are almost always requested after a judgment has been entered. *Civil Practice and Remedies Code § 63.001*; *Rules 657, 658.*

Requirements for Issuance of a Post-Judgment Writ of Garnishment

In order for a court to issue a writ of garnishment post-judgment, the plaintiff must have a final judgment and file an affidavit with the court stating that the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment. *Civil Practice and Remedies Code § 63.001.*

KEY POINT

A Garnishment is Filed as a Separate Proceeding

A garnishment suit is filed and docketed as a **separate proceeding** against the garnishee. *Rule 659.*

If the Garnishment is Before the Judgment

Writs of garnishment are almost never requested in justice courts while a case is pending.

If the plaintiff is requesting a pre-judgment writ of garnishment, the suit must be for a debt and the amount of the debt must be "liquidated" ***(see page 122)***. ***In re ATW Investments, Inc.; Fogel v. White***.

Additionally, one of the following requirements must be met:

- A writ of attachment has been issued, see ***pages 121-124***; **or**
- The suit is for a debt and the plaintiff files an affidavit stating that:
  - The debt is just, due, and unpaid;
  - Within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; **and**
  - The garnishment is not sought to injure the defendant or the garnishee.

Also, there must be a hearing which may be ex parte, and the plaintiff must post a bond. *Rules 658, 658a.*

Once the requirements for issuance of the writ are met, the clerk or judge must docket the case in the name of the garnishor as plaintiff and the garnishee as defendant, and issue a writ directing the garnishee to appear and state under oath what, if anything, it is indebted to the defendant for (in the underlying action) and what property of the defendant, if any, it has in its possession. *Rule 659.* The garnishee's answer must be filed by 10:00 a.m. on the Monday following the expiration of ten days after service of the writ on the garnishee. *Rule 661.* ***See pages 30-32 for details on how to calculate deadlines.***

Filing Fees

A court may charge the $5 writ fee for preparing and issuing a writ. This fee only covers the actual issuance of the writ by the court. The officer executing the writ will charge a service fee for executing the writ. *Local Government Code § 118.121.* For more information on the writ fee and service fees, see Chapter 3 of the *Fines, Fees, & Costs Deskbook*.

In addition to the $5 writ fee, most counties charge their standard civil filing fee for the filing of a writ of garnishment, since the rule says that it is docketed as a separate action. *Rule 659.* TJCTC agrees with this procedure, although it is arguable that only the writ fee should be charged. Consult with your county attorney, auditor, and treasurer for your county's policy and remain consistent. For more information about civil filing fees, see ***page 20*** of this volume and Chapter 3 of the *Fines, Fees, & Costs Deskbook.*

Form of the Writ

The form of the writ is expressly provided in Rule 661, In addition to requiring the garnishee to file an answer, the writ orders the garnishee not to pay to the defendant any amounts or effects held by the garnishee pending further order of the court. In other words, the writ of garnishment freezes any assets of the defendant held by the garnishee subject to further court order.

3. Service on the Garnishee and Notice to the Defendant

Service of the Writ on the Garnishee

After the court has prepared the writ, the clerk will provide the writ to a constable or sheriff, or to the plaintiff for them to deliver to the constable or sheriff. *Rule 662.* The

officer receiving the writ will execute it by delivering it to the garnishee and making a return to the court. *Rule 663.*

KEY POINT

Service of a writ of garnishment **may** happen on a Sunday.

If the garnishee is a financial institution, then the writ of garnishment must be served according to Finance Code § 59.008. See *Civil Practice and Remedies Code § 63.008*. This simply allows the writ of garnishment to be served on the financial institution's registered agent for service of process if they have a registered agent.

Notice to the Defendant After the Writ is Served on the Garnishee

As soon as practicable after the writ is served on the garnishee, a copy of the writ must be served on the judgment debtor (the defendant in the original case) informing them that the writ has been served and that they have a right to regain possession of the property by filing a replevy bond. *Rule 663a.* This notice may be served in the same way a citation is served or using any method allowed under Rule 21a (similar to the methods allowed under Rule 501.4). While the rule does not require the court to send notice to the defendant, the court should verify that proper notice was given. Rule 663a provides specific language that must be included in the notice.

KEY POINT

The writ itself must be served on the garnishee by a constable or sheriff, but the notice provided to the defendant may be served by a constable, sheriff, process server, or any other person authorized by the court. ***Moody Nat'l Bank v. Reibschlager*.**

BEST PRACTICE

In most cases, the plaintiff will arrange service of the notice to the defendant, because they want it to be delivered at the correct time, immediately after the writ is served on the garnishee.

4. What if the Judgment Debtor has Filed for Bankruptcy?

If the garnishment is issued before the bankruptcy petition is filed, any funds in the account before the bankruptcy filing may be garnished, but none of the funds deposited after the bankruptcy filing may be garnished, as there would be an automatic stay on the garnishment. ***In Re Olivas*.**

If the garnishment was not issued before the bankruptcy petition was filed, there would be an automatic stay on the garnishment proceeding. If an order from the bankruptcy order is issued lifting the stay, a copy must be provided to the justice court before the garnishment case can proceed. The judge must review the bankruptcy order and make sure not to enter any orders that conflict with it. *11 U.S.C. § 362.*

5. How the Court Proceeds After Service of the Writ of Garnishment

What happens next in a writ of garnishment proceeding depends on how the garnishee responds to the writ:

a. Garnishee Fails to Answer

If the garnishee does not file a timely answer, the court should enter a default judgment against the garnishee. Under the rules, the court enters a judgment for the full amount of the judgment, together with all interest and costs that have accrued in the main case and in the garnishment proceedings (including reasonable attorney's fees incurred by the garnishor/plaintiff). The default judgment is solely against the garnishee's assets and not the defendant's assets. *Rule 667.*

Default Judgment When the Garnishee is a Financial Institution

COMMON PITFALL

If the garnishee is a financial institution, like a bank, then a default judgment may initially be entered solely as to the existence of liability and not as to the amount of the damages.

After a default judgment as to the existence of liability has been entered, the garnishor has the burden to establish what the amount of the judgment should be. It is described as the "amount of actual damages proximately caused to the garnishor by the financial institution's default." *Finance Code § 276.002.* After

What if the Garnishee Doesn't Answer but the Defendant Does?

If this happens, the court may ask the defendant if they wish to file a motion to dissolve or modify the writ of garnishment and may direct them to Rule 664a. But if the defendant does not file a motion to dissolve or modify, then the court should do nothing in response to the defendant's answer and should enter a default judgment against the garnishee.]

considering the evidence submitted by the garnishor, the court may award:

- The actual damages caused to the garnishor by the financial institution's failure to answer; **and**
- For good cause shown, reasonable attorney's fees incurred by the garnishor in establishing their damages.

Invesco Investment Services, Inc. v. Fidelity Deposit and Discount Bank

b. Garnishee Answers and Holds Assets Belonging to the Defendant

If the garnishee admits that it is indebted to the defendant, or if it otherwise appears and is found by the court that the garnishee is indebted to the defendant, then the court must render judgment for the plaintiff against the garnishee.

The judgment should be for the amount the court finds the garnishee owes the defendant. However, if the amount of the defendant's property that the garnishee holds or the garnishee's indebtedness to the defendant exceeds the amount due to the plaintiff on the original judgment against the defendant, the judgment against the garnishee shall be in the current amount due on the original judgment. This amount should include costs and interests that have accrued since the judgment was rendered and exclude any previous payments or offsets. *Rule 668*.

For example, Bob is the defendant, and ABC Bank is the garnishee. If the judgment rendered against Bob is $5000, and ABC Bank only holds $200 of Bob's money, the amount of the judgment against the ABC Bank would be $200 (*the amount of the defendant's property that the garnishee holds*). If ABC Bank has $10,000 of Bob's money, then the judgment against ABC Bank would be for $5000 (*the full amount of the judgment rendered against the defendant*).

c. Garnishee Denies that They Have Any of the Defendant's Property

If the garnishee files an answer denying that it has any of the defendant's property in its possession, that it does not know of anyone else who holds the defendant's property (or if it does, it has identified any such person), and the answer is not controverted by the plaintiff, then the court must enter a judgment discharging the garnishee. *Rule 666.*

d. Garnishee's Answer is Controverted or Disputed

Either the plaintiff or the defendant may controvert (file an answer disputing) the garnishee's answer. *Rule 673.* In that case, if the garnishee is a resident of the county in which the underlying case is pending, the court will try the issues that are controverted. *Rule 674.* But, if the garnishee is a resident of another county, then the issues that are controverted must be tried in a court in that county. *Rule 675; Civil Practice and Remedies Code § 63.005(a);* ***Atteberry, Inc. v. Standard Brass & Mfg.***

Once the garnishee's answer is controverted, the court must transfer the matter to the county in which the garnishee was located. ***S.L Crawford Construction, Inc. v. Lassiter.***

e. Court Costs and Attorney's Fees

If the garnishee is discharged based on its answer, the costs (including reasonable attorney's fees for the garnishee) in the garnishment case are taxed against the plaintiff. For example, if the filing and service fees were $161, and the garnishee incurred $500 in attorney's fees, and the garnishee is discharged because they held no assets of the defendant, then the costs are taxed against the **plaintiff/garnishor** in the amount of $661. The plaintiff will have likely already paid the $161 up front, of course, and so would now just owe the $500 in attorney's fees.

If the answer of the garnishee is not controverted and judgment is against the garnishee, then costs (including reasonable attorney's fees) are taxed against the **defendant** (the judgment debtor). Those costs will be taken from the amount that the garnishee owes the defendant, and then the rest will be applied to the plaintiff's judgment. For example, if the judgment amount is $2,000, the garnishee incurred $500 in attorney's fees, the filing and service fees for the writ of garnishment were $161, and the garnishee held $3,000

What if the Garnishee Doesn't Answer, but the Defendant Does?

The court may ask if the defendant wishes to file a motion to dissolve or modify the writ of garnishment and may direct the defendant to Rule 664a. However, if the defendant chooses not to file a motion to dissolve or modify, the court should do nothing about the defendant's answer and enter default judgment against the garnishee. More information about the defendant's rights in garnishment proceedings can be found on ***pages 140-141***.

belonging to the defendant, then the costs taxed to the defendant will be $661, and that amount will be deducted from the $3,000 held by the garnishee before awarding the $2,000 to the plaintiff to satisfy the outstanding judgment. This would leave $339 belonging to the defendant in the hands of the garnishee.

If the garnishee's answer is contested, then costs are awarded based upon the outcome of the trial. *Rule 677.* However, neither the plaintiff/garnishor nor the defendant (the judgment debtor) may recover attorney's fees in a garnishment action where the answer is contested even if they are successful. ***Henry v. Insurance Co. of North America.*** And the garnishee **may not** recover attorney's fees in a garnishment action if their answer is contested and they lose **but** they are entitled to recover attorney's fees if their answer is contested and they win. ***Rowley v. Lake Area Nat. Bank.***

But as noted above, if the garnishee fails to answer, then the plaintiff may recover reasonable attorney's fees as part of their costs in a judgment solely against the assets of the garnishee and not the defendant. **See page 137.**

f. Defendant's Rights

Right to Replevy

The defendant has a right to replevy (that is, to recover) any property subject to garnishment. This means they can get their property back from the garnishee while the garnishment case is still pending. For example, in the case of a bank account, they could get their account "unfrozen", so they have access to their funds again. The defendant may do this at any time before a judgment is entered in the garnishment proceeding, whether or not the garnishee has answered.

Procedure for Replevy

The defendant has to post a bond (or make a cash deposit) payable to the plaintiff in the amount fixed by the court's order, or at the defendant's option, for the value of the property or indebtedness sought to be replevied, plus one year's interest, conditioned that the garnishee will satisfy any judgment rendered against him in the garnishment case. *Rule 664.* The defendant may not file a Statement of Inability instead of posting a bond or cash deposit.

Order to Garnishee

Once the replevy bond is posted, the court must send an order to the garnishee allowing them to release the property that was garnished. The order should make it clear that the case is still pending and that the garnishee still needs to answer if they have not done so already.

What Happens to the Bond?

At the end of the garnishment case, if a judgment is entered against the garnishee and they do not satisfy it (for example, because the defendant has not left enough money in their bank account), then the defendant's bond will be forfeited to satisfy the judgment.

Motion to Substitute Property

The defendant may also file a motion to substitute different property for the property that was garnished. The substituted property must be worth enough to satisfy the order of garnishment, and the court is required to make findings as to the value of the property to be substituted.

If property is substituted, the property released from garnishment must be delivered to the defendant and any lien created by the original order of garnishment no longer applies to that property. *Rule 664.*

Motion to Dissolve or Modify the Writ

The defendant may also move to dissolve or modify the writ of garnishment. Any motion to dissolve or modify must be sworn and must explain why the writ should be dissolved. The motion must either admit or deny each reason for issuing the order of garnishment listed in the order. If the defendant cannot admit or deny, they must explain why they are unable to do so in the motion.

The filing of a motion to dissolve or modify will stay any further proceedings under the writ, except where there are orders concerning the care, preservation, or sale of perishable property, until the hearing on the motion to dissolve or modify can be heard.

Unless the parties agree to an extension of time, the motion must be heard promptly after reasonable notice to the plaintiff (which may be less than three days), and the issue must be determined no later than ten days from when the motion was filed.

At a hearing, the plaintiff has the burden to prove the grounds relied upon for the issuance of the writ of garnishment, if those grounds are denied by the defendant in their motion. The defendant will have the burden to prove that the reasonable value of property garnished is more than necessary to secure what they owe to the plaintiff plus interest for one year and probable costs.

The judge may dissolve the writ or modify the writ after hearing evidence by the parties. The parties may present evidence in affidavits, but if those affidavits are challenged by the other party, they must call witnesses and offer evidence through witness testimony. *Rule 664a.*

H. Turnover Orders and Receivership


KEY POINT

Many people think turnover orders and orders appointing a receiver are required to be ordered at the same time. However, an "Order Appointing a Receiver" and a "Turnover Order" are two separate types of aid that a judgment creditor can receive from a court that are authorized by the same statute. *Civil Practice and Remedies Code § 31.002.*

Because the same statute allows for both types of relief, the requirements for the application of both are very similar. *Civil Practice and Remedies Code § 31.002.*

1. Turnover Orders

A turnover order is an order from a justice court directed to a judgment debtor (that is, a party against whom a judgment has been entered) ordering them to turn over non-exempt property to a sheriff or constable for satisfaction of a judgment that has been rendered against them.

Authority to Issue a Turnover Order

A judgment creditor is entitled to receive aid from a court of appropriate jurisdiction, including a justice court, in order to reach property to obtain satisfaction on a judgment if the judgment debtor owns property that is not exempt from attachment, execution or seizure for the satisfaction of liabilities **(See page 158).** *Civil Practice and Remedies Code § 31.002*; ***Tanner v. McCarthy*****.**

Must the Judgment Creditor Show that a Writ of Execution Won't Work?

Previously, a court could not issue a turnover order unless the property of the judgment debtor could "not be readily attached or levied on by ordinary legal process." But this requirement was removed by the legislature through enactment of H.B. 1066, effective June 15, 2017. Therefore, a judgment creditor no longer must show that they attempted to enforce the judgment through a writ of execution or other means before asking the court to issue a turnover order.

2019 Amendment

Through the enactment of S.B. 2364, effective September 1, 2019, the Legislature made it clear that a justice court can order turnover orders. While this has always been TJCTC's position, there was some question, because the issuance of a turnover order is injunctive relief, and a justice court may only issue injunctive relief where expressly allowed to do so by statute.

a. Where to File an Application for a Turnover Order

The application for a turnover order must be filed in a court "of appropriate jurisdiction." This means either:

- The court that issued the judgment; **or**
- A court in which a foreign judgment has been domesticated.

Tanner v. McCarthy.

Therefore, a justice court may not issue a turnover order for a judgment issued by another court unless that judgment is domesticated by filing it in the justice court. The procedure for domestication of foreign judgments is discussed on ***pages 153-158.***

b. What Must the Judgment Creditor Prove?

Before a court may grant a turnover order, a judgment creditor must prove that:

- the judgment debtor owns property, including present or future rights to property; **and**
- the property is not exempt from attachment, execution, or seizure ***(See page 158).***

Black v. Shor; Tanner v. McCarthy.

Because Section 31.002 authorizes a turnover only upon proof of the necessary facts, "the trial court must have some evidence before it that establishes that the necessary conditions for the application of 31.002 exist." ***Henderson v. Chrisman.***

In most cases, this evidence comes in the form of an affidavit by the judgment creditor or their attorney. However, the court could also hear live testimony at a hearing.

How Much Evidence is "Some Evidence"?
"Some evidence" isn't defined in any statute or case, but there are examples of what has been held to meet that standard. The Dallas Court of Appeals has held that testimony from a judgment debtor that she had the resources to pay the judgment but chose to use that money for something else showed that she had property and indicated a lack of cooperation or unwillingness to support that her property could not be readily attached, meeting the conditions of Section 31.002. ***Henderson v. Chrisman.***

Must Notice be Given to the Judgment Debtor Prior to Issuance of a Turnover Order?
No. The turnover statute does not require notice to be given to the judgment debtor prior to issuance of a turnover order. It is up to the court to decide whether or not to hold a hearing. The court may grant the order ex parte. ***Henderson v. Chrisman.***

c. Fees and Costs

There is no filing fee for a turnover order, but the constable or sheriff may charge a service fee.


CLICK HERE

Constable and sheriff fees may be found online.

Costs may be included in a turnover order since the judgment creditor is entitled to recover reasonable costs, including attorney's fees, and any fee collected for the constable or sheriff.

d. What May the Court Order in a Turnover Order?

The court may order the judgment debtor to turn over the designated non-exempt property that is in the debtor's possession, or subject to its control **to a designated sheriff**

or constable for execution. *Civil Practice and Remedies Code § 31.002(b)*; ***Williams Farms Produce Sales, Inc. v. R & G Produce Co.***


KEY POINT

The court **may not** order the judgment debtor to turn the property over directly to the judgment creditor. The order does not have to identify specific property to be turned over, but the property must be non-exempt. *Civil Practice and Remedies Code § 31.002(h);* ***Black v. Shor.***

2. Receivership

A receiver is a person appointed by the court who has the authority expressed in the court's order appointing that receiver. Usually, the receiver will have the authority to take possession of a judgment debtor's nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. *Civil Practice and Remedies Code § 31.002(b)(3).*

One way to think about a receiver is that the receiver basically takes the place of the constable or sheriff in a writ of execution. However, the receiver only has the powers granted to them in the order appointing them.


KEY POINT

Is the Court Required to Appoint a Receiver?
No! Appointment of a receiver is within the court's discretion. The court is **not required** to appoint a receiver; the court may order the judgment debtor to turn the property over to a **sheriff or constable** instead.

a. Where to File an Application for an Order Appointing a Receiver

The application for an order appointing a receiver must be filed in a court "of appropriate jurisdiction." This means either:

- The court that issued the judgment; **or**
- A court in which a foreign judgment has been domesticated.

Tanner v. McCarthy.

Therefore, a justice court may not issue an order appointing a receiver for a judgment

issued by another court unless that judgment is domesticated by filing it in the justice court. The procedure for domestication of foreign judgments is discussed on ***pages 153-158.***

b. What Must the Judgment Creditor Prove?

Before a court may grant an order appointing a receiver, a judgment creditor must prove that:

- the judgment debtor owns property, including present or future rights to property; **and**
- the property is not exempt from attachment, execution, or seizure ***(See page 158).***

Black v. Shor; Tanner v. McCarthy.

Because Section 31.002 authorizes a receivership only upon proof of the necessary facts, "the trial court must have some evidence before it that establishes that the necessary conditions for the application of 31.002 exist." ***Henderson v. Chrisman.***

In most cases, this evidence comes in the form of an affidavit by the judgment creditor or their attorney. However, the court could also hear live testimony at a hearing.

How Much Evidence is "Some Evidence"?

"Some evidence" isn't defined in any statute or case, but there are examples of what has been held to meet that standard The Dallas Court of Appeals has held that testimony from a judgment debtor that she had the resources to pay the judgment but chose to use that money for something else showed that she had property and indicated a lack of cooperation or unwillingness to support that her property could not be readily attached, meeting the conditions of Section 31.002. ***Henderson v. Chrisman.***

Must the Judgment Creditor Show that a Writ of Execution Won't Work?

Previously, a court could not issue a turnover order unless the property of the judgment debtor could "not be readily attached or levied on by ordinary legal process." But this requirement was removed by the legislature through enactment of H.B. 1066, effective June 15, 2017. Therefore, a judgment creditor no longer must show that they attempted to enforce the judgment through a writ of execution or other means before asking the

court to issue a turnover order.

c. Fees and Costs

There is no filing fee for an order appointing a receiver. Costs may be included in an order appointing a receiver since the judgment creditor is entitled to recover reasonable costs, including attorney's fees. However, the receiver's fee is determined on a case-by-case basis because the fee must be fair and reasonable for the work that the receiver does.


KEY POINT

In one recent case, the court held that because the record contained no evidence establishing what percentage or amount constitutes a fair, reasonable, or necessary fee, the trial court abused its discretion by pre-setting the receiver's fee at 25%. ***Congleton v. Shoemaker*.**

A court can comply with the holdings in the Congleton case by including language that the court conditionally approves a percentage fee. Then at the end of all the receiver's work, the receiver must provide proof to the court that the fee is reasonable based on the work performed and the results, and then the court will make the conditional fee final or change it according to match the work performed.

d. What Can the Court Require of the Receiver?

If the court appoints a receiver, the court may require the receiver:

- to be a resident of Texas,
- to take an oath to faithfully execute their duties, **and**
- to post a bond in an amount within the court's discretion.

The court has discretion concerning the duties of the receiver and may limit or expand the duties as the court sees fit. For example, the court may:

- restrict the receiver's authority to take "cash on hand," **and**
- require the receiver to provide an inventory of all property taken.

Moyer v. Moyer.

What Kind of Things do Applicants Ask for that the Court Should Not Order?

Some courts have seen proposed orders that:

- Allow the receiver to use force,
- Order any constable or deputy to assist the receiver,
- Lock the judgment debtor out of their house until they pay,
- Open the judgment debtor's mail, **or**
- Allow the receiver to intercept the judgment debtor's mail at the post office.

How Long Does a Receivership Last?

BEST PRACTICE

There is also no set time-period for a receivership under Section 31.002 to be in place. It is a best practice to set some end point. Many judges set the order appointing a receiver to last 120 days, and others set it for a shorter amount of time and require the receiver to check in with the court if an extension is necessary.

Orders Appointing a Receiver

An order must be **definite**, **clear**, and **precise** so that the person to whom it is directed has sufficient information about what their duties are and does not have to interpret it or draw inferences or conclusions.

BEST PRACTICE

The court **must** read any proposed order provided prior to signing it. The judge must ensure that the order only gives the receiver the powers that the judge intends to.

I. Payment of Unclaimed Judgment and Release of Judgment

1. When the Defendant Can't Find the Plaintiff to Pay the Judgment

Why is This Necessary?

Sometimes a person who has an outstanding judgment against him wants to pay it off (for example, because his property has a lien on it due to an abstract of judgment), but he cannot locate the plaintiff. In such a case the judgment debtor may pay the amount owed on the judgment into the registry of the court that rendered the judgment. *Civil Practice and Remedies Code § 31.008*.

Notice by the Judgment Debtor

Before paying the judgment to the registry of the court, the judgment debtor must attempt to notify the judgment creditor by sending a letter by registered or certified mail to:

- the judgment creditor's last known address;
- the address appearing in the judgment creditor's pleadings or court records, if different from the last known address;
- the address of the judgment creditor's last attorney, if any; **and**
- the address of the judgment creditor's last attorney as shown in the State Bar records, if different from the address shown in the court records.

Civil Practice and Remedies Code § 31.008.

Filing with the Court

If the judgment creditor does not respond by the **15th day** after this notice is sent, then the judgment debtor may file an affidavit with the court stating that he has provided the notice, that the judgment creditor has not responded and that the location of the judgment creditor is not known. *Civil Practice and Remedies Code § 31.008*.

Payment of the Outstanding Judgment

The judgment debtor must pay the full amount of the judgment without offsets or reduction for any claims of the judgment debtor. The judgment debtor must prepare a recordable release of judgment to be signed by the judge. The funds are to be deposited by the clerk into a trust fund account and paid to the judgment creditor or to the successors to the rights of the judgment creditor. The funds are subject to escheat (that is, forfeiture to the state) if they are not claimed. *Civil Practice and Remedies Code § 31.008*.

2. Judgment Creditor Refuses to Accept Payment

What if a judgment creditor refuses to accept payment from a judgment debtor? If a judgment debtor has followed the procedures described above to send notice to the judgment creditor, the court after giving notice to the judgment creditor can hold a hearing to determine whether the judgment creditor refuses to accept payment. If the judge finds that the judgment creditor refuses to accept payment of the judgment, they shall order the judgment debtor to pay the amount of the judgment into the court registry

as they would above. The judgment debtor must then prepare a recordable release of judgment to be signed by the judge. *Civil Practice and Remedies Code § 31.008*.

3. Judgment Creditor has Accepted Payment and Refuses to Issue a Release

If the judgment creditor refuses to issue a release of judgment after the judgment has been paid in full, the judgement debtor can ask the court to set a hearing to determine whether or not a release should be filed. After notice to the judgment creditor and a hearing on the matter, the court may order the judgment debtor to draft a recordable release of judgment to be signed by the court if the judge determines that the judgment debtor has paid the judgment in full. *Civil Practice and Remedies Code § 31.008*.

J. Revival of Dormant Judgment

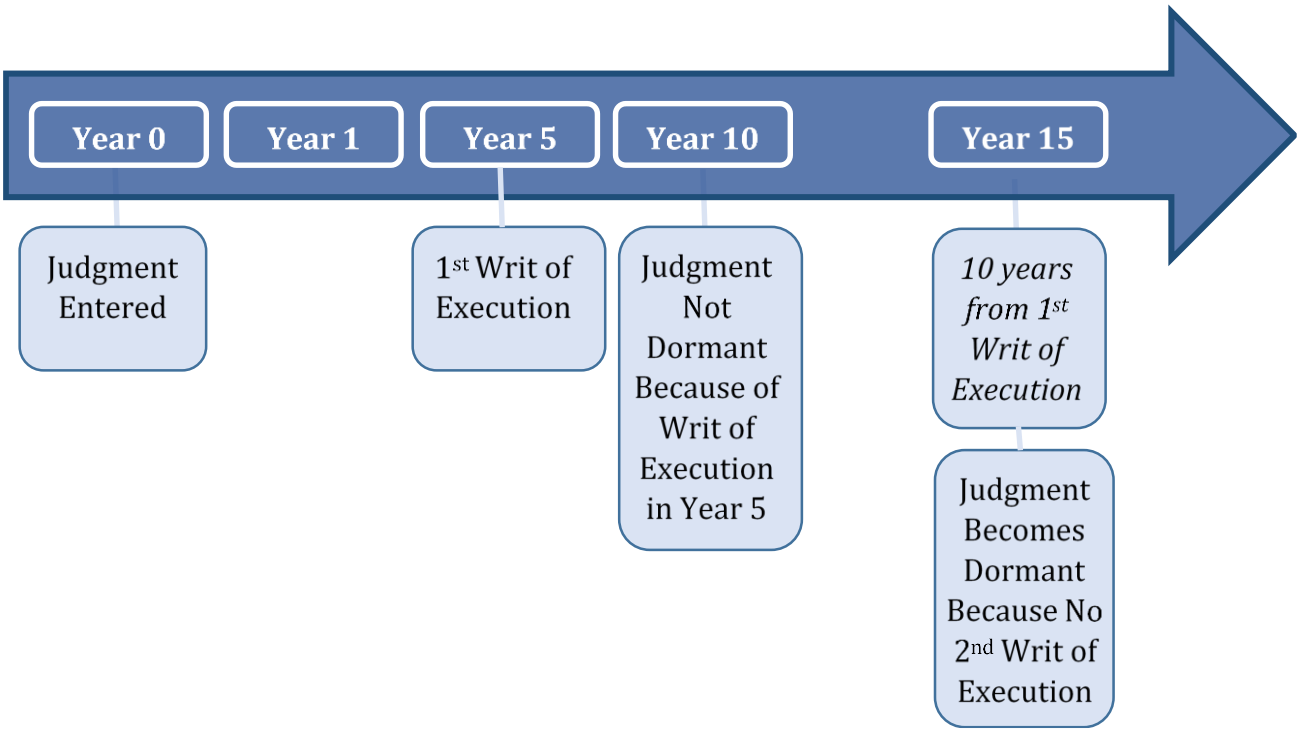
When Does a Judgment Become Dormant?

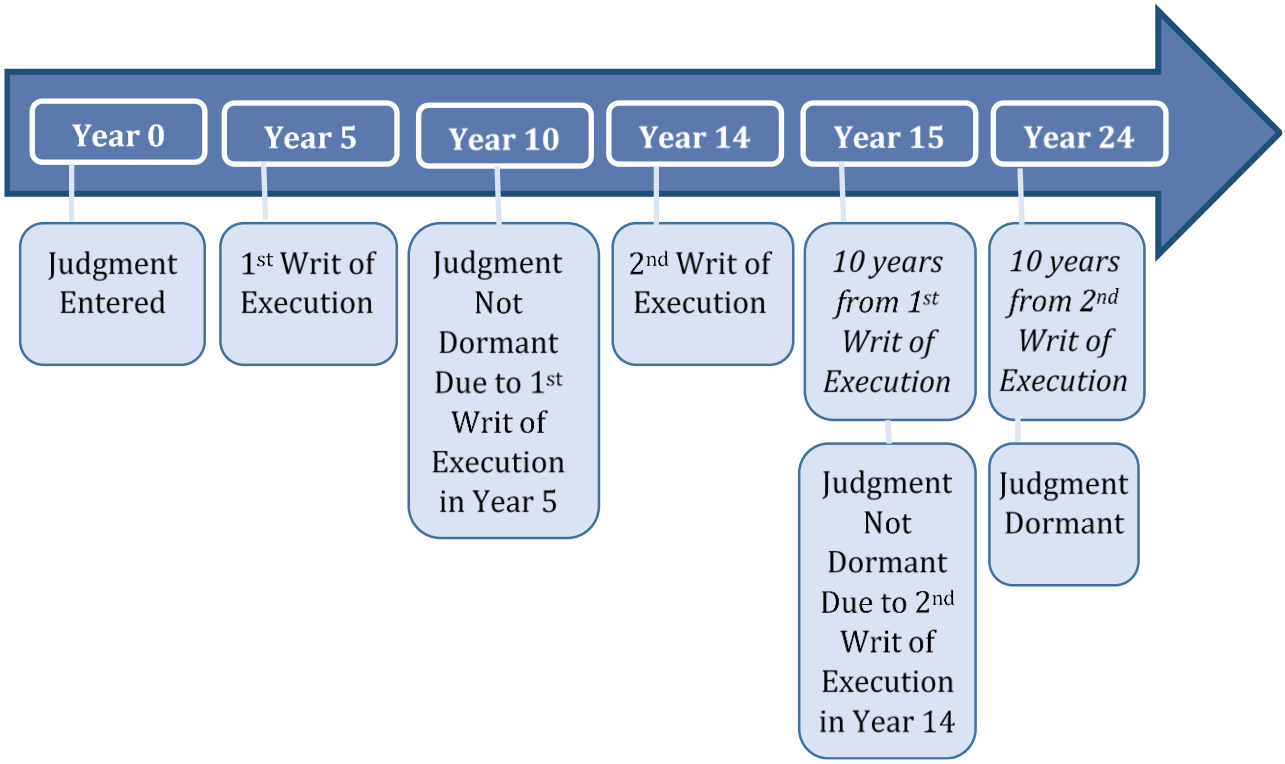
If a writ of execution is not issued **within ten years** after rendition of a judgment, the judgment becomes **dormant** and the judgment **may not** be enforced in any way unless the judgment is revived.

The judgment goes dormant if no subsequent writ of execution is issued within ten years of the most recent writ of execution. A second writ of execution may be issued at any time within ten years after the issuance of the first writ. *Civil Practice and Remedies Code § 34.001.*

A judgment creditor can keep renewing the judgment so long as new writs of execution are issued within ten years of the previous writ to prevent the judgment from going dormant. ***Harper v. Spencer & Associates, P.C.***.

See the timelines below for examples:





Why Does it Matter if a Judgment is Dormant?

A dormant judgment may not be enforced in any way. If a judgment becomes dormant and is not revived as described below, then the plaintiff cannot collect on any unpaid portion of that judgment. *Civil Practice and Remedies Code § 34.001.*

How Can a Dormant Judgment be Revived?

If a judgment becomes dormant, it can be revived by a writ of scire facias or by an action of debt (a new suit) brought **not later than two years** after the date the judgment becomes dormant. *Civil Practice and Remedies Code § 31.006.*

Writ of Scire Facias

When someone files a request for a writ of scire facias along with the writ fee, the writ should be issued (this is not the same thing as an order reviving the judgment - that will come later), a hearing should be set, and the defendant should be served in the same manner as a citation with the writ and the notice of hearing. "Scire Facias" is defined as a writ requiring the person against whom it is issued to appear and show cause why a dormant judgment against that person should not be revived. *Black's Law Dictionary (10th ed. 2014).*

The proceeding does not constitute a new suit but is merely a continuation of the original suit. ***Carey v. Sheets***.

Action of Debt

An **action of debt**, on the other hand, is a new suit brought for the same purpose, to revive the dormant judgment. But in that case, a petition must be filed, a party would pay the normal civil filing fee, and citation must be issued and served on the defendant as with any other new civil case. However, the issues in an action of debt are the same as in a hearing on a writ of scire facias.

When is the Court Required to Grant a Writ of Scire Facias?

At the hearing, if the defendant has been served with the writ, the court may decide whether to issue an order reviving the judgment regardless of whether or not the defendant shows up. The court is limited, however, in what it may consider at the hearing. Generally, the court only needs to look at the dates, and if the request was filed within two years of the judgment going dormant (this may be readily apparent in the court record, or it may require additional evidence), then the court must issue an order reviving

the judgment. ***Cadle Co. v. Rollins.***

There are two potential exceptions to the above rule. First, if the defendant argues that the underlying judgment was jurisdictionally defective and the court agrees, the court should not issue an order reviving the judgment. ***Luby v. Wood.*** Second, if the defendant can show that the judgment has been satisfied through payment, accord and satisfaction, or discharge, then there is nothing left to revive and the court should not issue an order reviving the judgment.

K. Domesticating Foreign Judgments

Sometimes people in Texas want to enforce a judgment that they were awarded from another state's court. The Full Faith and Credit Clause of the United States Constitution along with other state statutes and case law make this possible by requiring courts to give full faith and credit to the public acts, records, and judicial proceedings of every other state. *U.S. Const. art IV, § 1,* ***Bard v. Charles R. Myers Ins. Agency, Inc.***.

By following the procedures in Chapter 35 of the Civil Practice and Remedies Code a judgment creditor may "domesticate" their "foreign" judgment from another state. This means the judgment creditor will file it in a Texas court, so that they can ask that court to help them enforce it by issuing a writ of execution, turnover order, or by using some other post-judgment enforcement tool available in Texas. See ***Chapter 10*** for a full discussion of enforcement of judgments in justice courts.

Judgments From Other Countries

Judgments from countries other than the United States can also be domesticated in Texas under the Uniform Foreign-Country Money Judgments Recognition Act found in Civil Practice and Remedies Code Chapter 36A. It is extremely rare for these judgments to be domesticated in justice courts.

The judgment creditor must file this foreign judgment with a court of competent jurisdiction. The judgment creditor can only file the judgment with a justice court if the judgment is one that the justice court could have granted. This means the judgment should not contain injunctive relief and must be within the jurisdictional limit of the court ***(see page 7-11)***. ***Cantu v. Howard S. Grossman, P.A.***.

See ***Chapter 2*** for a full discussion of justice court jurisdiction.

1. What Does the Judgment Creditor File?

The judgment creditor must file the following with the court:

- An authenticated copy of a final, valid, subsisting foreign judgment,
- An affidavit showing the name and last known post office address of the judgment debtor and judgment creditor, **and**
- Proof of mailing the notice of filing the foreign judgment to the judgment debtor at the address listed in the above affidavit.

Civil Practice and Remedies Code §§ 35.003, 35.004.

An "authenticated copy" is a copy that has been certified by the issuing state. Usually this means that the copy will be printed on special paper with the court's seal attached and the signature of the judge or a clerk, or the copy will be attached to a letter or affidavit from the issuing court signed by the judge or clerk. *See 28 U.S.C. § 1738.* In some states the judgment may be certified by the state supreme court. ***Harbison-Fischer Mfg. Co. v. Mohawk Data Scis. Corp.***.

What does it mean to be a final, valid, and subsisting foreign judgment?
A "final" judgment is a judgment that is not currently under appeal and the time for appeal has expired. ***Bard v. Charles R. Myers Ins. Agency, Inc.***.

A "valid and subsisting" judgment is one that hasn't been voided, reversed, or vacated, and remains enforceable in the foreign state.

The law of the foreign state will determine whether or not a judgment is final, valid, and subsisting. ***Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.***

The party seeking to enforce a foreign judgment has the initial burden to present a judgment that appears on its face to be a final, valid, and subsisting judgment. ***H. Heller & Co. v. Louisiana-Pacific Corp.*** When the judgment debtor files an authenticated copy that on its face appears to be final, valid, and subsisting, they have met their burden, and it must be overcome by clear and convincing evidence. ***Mindis Metals, Inc. v. Oilfield Motor***

& Control, Inc.

Statute of Limitations

There is a ten-year statute of limitations for domesticating a foreign judgment in Texas. This means that if the judgment debtor has lived in Texas for the ten years prior to the filing of the foreign judgment, the judgment creditor cannot file a foreign judgment that was rendered more than ten years before the filing in Texas. *Civil Practice and Remedies Code § 16.066.*

2. Filing Fee

The standard civil fee is charged for the filing of a foreign judgment. *Civil Practice and Remedies Code § 35.007(b).* See Chapter 3 of the *Fines, Fees, & Costs Deskbook* for a full discussion of civil filing fees.

3. How Does the Court Process the Case?

The court must accept the documents and civil filing fee and file them in the civil docket. When the proof of notice to the judgment debtor is provided to the court, the clerk must notate it on the docket and file any supporting documentation in the case. *Civil Practice and Remedies Code § 35.003.*

The party seeking to enforce a foreign judgment has the initial burden to present a judgment that appears on its face to be a final, valid, and subsisting judgment. The court looks at the laws of the state that rendered the judgment to determine this. ***H. Heller & Co. v. Louisiana-Pacific Corp.***.

If it is not clear from the documentation that the judgment creditor files, the judge may want to hold a hearing to gather more information. It is up to the judgment creditor to provide the necessary laws and information to the court.

Once the appropriate documents and the proof of notice to the judgment debtor are on file, the judgment should be treated in the same manner that the court would treat its own judgment. *Civil Practice and Remedies Code § 35.003(b).*

4. Can the Judgment Debtor Do Anything to Challenge the Judgment Being Enforced?

The judgment debtor may file a motion to stay the judgment, motion to vacate the judgment, or some other contest outlining why the court lacks jurisdiction to domesticate the judgment, the judgment has already been satisfied, or that the judgment is otherwise not entitled to full faith and credit. ***H. Heller & Co. v. Louisiana-Pacific Corp.***.

None of these motions that a judgment debtor may file can give them a second chance at having a new trial about the matters that were originally decided in the other state's judgment. *Civil Practice and Remedies Code § 35.003(c),* ***Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.***

The party attacking the validity of the domesticated judgment will have the burden to prove that it should be stayed or vacated by clear and convincing evidence. ***Trinity Capital Corp. v. Briones***.

How Much Time Does the Judgment Debtor Have?
Any motion that the judgment debtor chooses to file to contest the enforcement of the foreign judgment's domestication must be filed within 21 days of the date when all of the required documents and proof are filed with the court under the requirements found in Civil Practice and Remedies Code §§ 35.003 and 35.004 or the court will lose plenary power. ***Malone v. Emmert Indus. Corp.***, ***See page 15 for a discussion of the timeline for when a justice court loses plenary power***.

After the court's plenary power ends, the judgment debtor may file a bill of review. ***BancorpSouth Bank v. Prevot***. ***See pages 113-115 for a discussion of bills of review.***

a. Motion to Stay the Judgment

If the judgment debtor can show the court that there is an appeal pending, the time for appeal on the judgment has not expired under the law of the foreign judgment's state, or there has been a stay of execution on the judgment entered in the foreign state; the judgment debtor will be entitled to a stay on the judgment in Texas until the time for appeal expires, the appeal is concluded, or the stay of execution in the foreign state

occurs. *Civil Practice and Remedies Code § 35.006(a).*

b. Motion to Vacate

Most contests, complaints, or motions that a judgment debtor will have with a domesticated judgment usually end with a request that the court vacate the domesticated judgment. These should be considered as motions to vacate. There are several reasons why a judgment debtor might request a domesticated judgment be vacated.

The Original Court Lacked Jurisdiction

Any judgment that a court entered without jurisdiction is void, so if that is the case, the judgment would not be entitled to be enforced anywhere. ***Wu v. Walnut Equip Leasing Co.***.

This can sometimes be a complicated issue to decide, because the court would have to look at the jurisdiction laws in the foreign state rather than Texas law. ***Karstetter v. Voss.*** The court could ask the parties to provide authority from the foreign state for the judge to review to make this determination.

The Judgment Has Already Been Satisfied

If the judgment debtor can provide proof that the judgment has already been satisfied, the court should vacate the domesticated judgment. Evidence of this may be a release of judgment from the foreign state, some other documentary evidence, or could potentially be through witness testimony.

The Judgment is Otherwise Not Entitled to Full Faith and Credit

There are certain exceptions in the law to the full faith and credit clause of the constitution. The following exceptions are well established:

- When the court that originally rendered the judgment lacked jurisdiction *(See above);*
- When the judgment was procured by fraud; **and**
- When the statute of limitations in Civil Practice and Remedies Code 16.066 has passed.

The judgment must prove an exception to the full faith and credit by clear and convincing evidence. ***Enviropower, LLC v. Bear, Stearns & Co.***.

There are other exceptions that are less established that a court should consider if provided authority on the exception.

L. Exempt Property Chart

Click Here to Open the Exempt Property Chart

Chapter 11: Lien Foreclosures

What is a Lien Foreclosure?

A **lien** is an interest that a creditor has in another person's property, and usually lasts until the debt is satisfied. *Black's Law Dictionary at 429 (3d Pocket Ed. 2006).* If the person defaults on the debt, the person holding the lien has a right to foreclose and sell the property to satisfy the debt.

For example, if John Smith buys a car from a car dealer and signs a loan to pay for the car, John's obligation to pay back the loan will be secured by a lien on the car. If John defaults on the loan, the car dealer may enforce the lien and repossess and sell the car to pay the amount John owes.

Or if John takes the car to a mechanic for repairs, the mechanic has a lien on the car for the value of the repairs performed (a **mechanic's lien**). If John does not pay the mechanic for the work he performed, the mechanic may foreclose on the lien and sell the car to pay for the repairs.

If the property that is subject to the lien is sold in a foreclosure sale for more than the amount of the lien, the property owner gets the remaining money, not the foreclosing party (lienholder).

In some cases, the person holding the lien may have a statutory right to sell the property without filing a suit for a judicial foreclosure of the lien. But in other cases, the person may need to file a suit to foreclose the lien and obtain possession of the property.

Does a Justice Court Have Jurisdiction Over a Lien Foreclosure?

Yes. A justice of the peace has jurisdiction over a suit to enforce a lien on **personal property (but not real property)** provided the amount in controversy is within the court's jurisdiction. *Government Code § 27.031(a)(3).*

The court does not have jurisdiction to foreclose a lien on real property. A lien foreclosure suit on personal property is filed and treated as a small claims case.

How Does the Court Determine the Amount in Controversy?


KEY POINT

In a lien foreclosure case, the amount in controversy is the value of the property subject to the lien rather than the amount of the debt claimed. ***T. & N.O.R. Co. v. Rucker.*** For example, **assuming the case was filed on or after September 1, 2020**, John Smith bought a car for $22,000 two years ago and has now defaulted on his loan and the car is currently worth $18,000. The court has jurisdiction in a suit to foreclose the lien and recover possession of the car. Evidence of the value of the car should be submitted by the party requesting the foreclosure. This could be in the form of a blue book valuation (e.g. from Edmund's), supported by testimony if necessary.

Does the Plaintiff Have to Possess the Property to Foreclose a Lien?

No. A person who holds a lien may bring a foreclosure suit even if they do not have possession of the property. For example, if a mechanic voluntarily delivers a vehicle back to the owner, he loses his statutory right to possession. ***Paul v. Nance Buick Co.*** But even if the mechanic no longer has possession of the vehicle, he **may** ask a court to foreclose on the mechanic's lien. ***Shirley-Self Motor Co. v. Simpson***; *Texas Const. Art. XVI, § 37.*

Sometimes a plaintiff will request a writ of sequestration in order to make sure the personal property subject to the lien is not removed during the pendency of the case. ***See pages 117-120 for more information on sequestration.***

What if the Holder of the Lien Has Already Sold the Property?

A lienholder may have a statutory right to sell property subject to a lien. For example, a mechanic may have the statutory right to sell a car at auction after giving notice to the car's owner. *Property Code § 70.006.* But if the sale does not result in enough funds to pay the amount owed for the repairs, the mechanic would still be entitled to sue for the balance in a small claims case in justice court. In this case, the mechanic would not be asking the court to foreclose the lien but only to recover the difference between the amount owed and the amount he was able to sell the car for.

May a Justice Court Award Title to a Vehicle in a Lien Foreclosure Case?

Yes. A justice court may issue an order related to title of a motor vehicle in a lien foreclosure proceeding. *Transportation Code § 501.0521(a).* (Please note that the only other situation when a justice court may issue an order related to title to a motor vehicle

is under Chapter 47 of the Code of Criminal Procedure, dealing with disposition of stolen property).

Chapter 12: Deed Restriction Cases

What is a Deed Restriction Case?

Deed restrictions are written agreements that restrict, or limit, the use or activities that may take place on real property in a subdivision. These restrictions appear in the real property records of the county in which the property is located. They are private agreements and are binding upon every owner in a subdivision. If a person violates the deed restrictions on their property, a suit may be brought to enforce the restrictions.

A. Jurisdiction

Does a Justice Court Have Jurisdiction to Hear a Deed Restriction Case?

Yes. Section 27.034(a) of the Government Code gives a justice court "jurisdiction of suits relating to enforcement of a deed restriction of a residential subdivision that does not concern a structural change to a dwelling."

B. Procedure and Relief

What is the Procedure for Hearing a Deed Restriction Case?

A deed restriction case is filed in justice court as a small claims case and should be handled as any other small claims case. This means deciding based on the facts whether or not the defendant is complying with the deed restrictions at issue. If either party properly requests a jury, then the case will be tried before a jury; otherwise, it will be tried before the court.

May the Court Grant Injunctive Relief Ordering the Defendant to Comply with the Deed Restrictions?

KEY POINT

No. A justice court **may not** grant injunctive relief in a deed restriction case. Section 27.034(j) of the Government Code states: "Nothing in this section authorizes a justice of the peace to grant a writ of injunction."

What is the Remedy if the Defendant Violates the Deed Restrictions?

If the defendant is not complying with the deed restrictions, then the court may assess civil damages in an amount not to exceed $200 for each day of each violation. *Property Code §*

202.004(c).

Chapter 13: Compelling the Production of Records of a Property Owner's Association

A. What is a Proceeding to Compel Production of Property Association Records?

A property owners' association (including a condominium owners' association as defined by Property Code *§* 82.003(3)) must make the records of the association available to an owner. A member of a property owners' association who is denied access to those records may file a petition with a justice of the peace requesting an order to release the records and for other relief. *Property Code §§ 82.1411; 209.005(d) and (n).*

Similar, but not identical procedures govern the process depending on if the association is a condominium owners' association. Please see Chapter 82 of the Property Code for condominium owners' association information and Chapter 209 for other property owners' association information.

Note that justice courts also have jurisdiction over other suits brought due to a violation of Chapter 209. *Property Code § 209.017.*

Who Must Produce Their Records?
All property owners' associations are covered by the requirement to make their records available except for certain property owners' associations in Harris County and counties adjacent to Harris County, as described below. *Property Code § 209.005(b); Government Code § 552.0036.*

A property owners' association is an incorporated or unincorporated association that:

- is designated as the representative of the owners of property in a residential subdivision;
- has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; **and**
- manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

Property Code § 209.002(7).

Which Property Associations are Excluded?

A property owners' association **other than a condominium owners' association** is excluded from this law (but subject to the Texas Public Information Act) if:

- Membership in the property owners' association is mandatory for owners of private property in Harris County or an adjacent county (Galveston, Brazoria, Fort Bend, Waller, Montgomery, Liberty or Chambers County);
- The property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; **and**
- The amount of the assessments is or has ever been based on the assessed property value for purposes of ad valorem taxation.

A property owners' association is also excluded (but subject to the Texas Public Information Act) if it:

- provides maintenance, preservation and architectural control of residential and commercial property in Harris County or an adjacent county; **and**
- is a corporation that:
  - is governed by a board of trustees;
  - does not require membership in the corporation by the owners of the property; **and**
  - was incorporated before January 1, 2006.

This issue would only come up if a person filed a request for records from a property owners' association in Harris County or an adjacent county (Galveston, Brazoria, Fort Bend, Waller, Montgomery, Liberty or Chambers County) and the association claims that it is not subject to being sued for production of these records under the Property Code because it is subject to the Texas Public Information Act. If that happens, then the court should take evidence on whether or not the association falls within the exemption based on the elements identified above, and if so, then the case would be dismissed.

Who May Request Production?

A request for the records of an association may be made by an owner of property covered by the association (in other words a member of the association) or by a person designated

as the owner's agent, attorney, or certified public accountant in a writing signed by the owner. *Property Code § 209.005(c).* Records of a condominium owners' association may be requested by a unit owner or their authorized representative. *Property Code § 82.1141(d).*

What Records Must be Produced?

The property owners' association must make the books and records of the association, including financial records, open to and reasonably available for examination by an owner or the owner's authorized representative. An owner is also entitled to obtain copies of information contained in the association's books and records. *Property Code §§ 82.1141(b); 209.005(d).*

What Records Are Not Required to be Produced?

An attorney's files and records relating to the property owners' association, other than invoices for legal work by the attorney for the association, **are not** considered records of the association and are **not** subject to inspection by the property owner or production in a legal proceeding. The association or their attorney are not required to produce any documents that qualify as "attorney work product" or are privileged as an attorney-client communication.

But if there is a document in the attorney's files that is part of the "books and records" of the association and that the association does not have in its own records, then that document **is** subject to production from the attorney's files. *Property Code §§ 82.1141(c); 209.005(d).*

What is Attorney-Client Privilege?

Generally, any communication between a lawyer and their client are confidential or secret between the client and the lawyer. This is to protect the party's strategy in preparing for a lawsuit or in consulting a lawyer about their legal rights.

An association is also **not** required to release or allow inspection of any books or records that identify the violation history of an individual owner, an owner's personal financial information, including records of payment and nonpayment, an owner's contact information (other than the owner's address in a non-condominium association), or information related to an employee of the association, including personnel files. If releasing information under this exception, the association must first have the express written approval of the owner whose records are subject to the request or upon court order. *Property Code §§ 82.1141 (j),(k); 209.005(k),(l).*

What is Attorney Work Product?

Attorney work product is any written or oral work prepared by or for an attorney while representing a client, especially in preparation for a lawsuit. This information is usually kept secret and the opposing side can't gain access to it.

Meeting minutes may be released even if they identify the violation history of an individual owner, an owner's personal financial information, including records of payment and nonpayment, an owner's contact information (other than the owner's address), or information related to an employee of the association, including personnel files. *Property Code §§ 82.1141 (j),(k); 209.005(k),(l).*

An association may also release the type of information above in a summarized or aggregate manner, so it won't identify any individual property owner. *Property Code §§ 82.1141(j); 209.005(k).*

1. What is the Procedure for Requesting Production?

Owner or Agent Submits a Written Request for Inspection or for Copies

An owner must submit a written request for access or information by certified mail to the mailing address of the association or its authorized representative as reflected on the most current management certificate filed with the county clerk as required by Section 82.116 or 209.004 of the Property Code, as applicable. The request must be in sufficient detail to describe which books and records are being requested. The request must also choose either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records to the owner. The

association may produce books and records in hard copy, electronic form or other format reasonably available to the association.

Inspection to Occur or Copies to be Produced Within 10 Business Days

If an inspection is requested, then on or before the 10th business day after the association receives the request, the association must send a written notice of the dates during normal business hours that the owner may inspect the requested books and records (to the extent they are in the possession, custody, or control of the association). The inspection must take place at a mutually agreed on time during normal business hours and the owner must identify the books and records for the association to copy and forward to the owner.

Definition of Business Day

A "business day" is defined by the statute to mean "a day other than Saturday, Sunday, or a state or federal holiday." *Property Code §§ 82.1141(p);209.005(q).*

If copies of the books and records are requested, then the association must produce those books and records (to the extent they are in their possession, custody, or control of the association) on or before the 10th business day after the date the association received the request.

Association May Extend Time for up to 15 Additional Business Days

If the association is unable to produce the books and records on or before the 10th business day after the date the association receives the request, the association must give written notice to the requestor telling them that the association cannot produce the information on or before the 10th business day and stating a date by which the information will be sent or made available for inspection that is not later than the 15th business day after the date the association gives that notice. In other words, the association can extend the time for inspection or forwarding the documents up to an additional 15 business days.

B. Proceedings in Justice Court

When and in Which Court May a Case be Filed?

If a member of a property owners' association is denied access to or copies of association books or records to which they are entitled under Section 82.1141 or 209.005 of the Property Code (as discussed above), then they may file a petition with the justice of the peace in a precinct in which all or part of the property that is governed by the association is located.

Notice Before Filing Suit

Before filing such a suit, the member must send a written notice to the association of their intent to bring the action. This notice must be sent by certified mail, return receipt requested, or delivered by the US Postal Service with signature confirmation service to the mailing address of the association or the authorized representative as reflected in the most current management certificate filed with the county clerk under Section 82.116 or 209.004 of the Property Code, as applicable. The notice must be sent on or before the **10th** business day before the member files the action. The notice must describe with sufficient detail the books and records being requested.

Filing Fee

The standard civil fee is charged for the filing of a suit to compel the production of property owners' association records. See Chapter 3 of the *Fines, Fees, & Costs Deskbook* for a full discussion of civil filing fees.

What is the Issue for the Court to Decide?

The only issue for the court to decide is whether the member of the association is entitled to access to the records, copies of the records, or both.

If the Court Finds in Favor of the Member

Upon finding that the owner is entitled to the records, the judge may grant one or more of the following remedies:

- A judgment ordering the association to release or allow access to the books or records;

- A judgment against the association for court costs and attorney's fees; **and**

- A judgment authorizing the owner or the owner's assignee to deduct the amounts awarded as court costs and attorney's fees from any future regular or special assessments payable to the association (only in non-condominium associations).

Property Code §§ 82.1141(m); 209.005(n)

If the Court Finds in Favor of the Association
If the court finds in favor of the association, the association is entitled to a judgment for court costs and attorney's fees. *Property Code §§ 82.1141(n); 209.005(o).*

C. Appeal

There is no provision for appeal in the statute. However, if a party wishes to appeal, we suggest the court allow a party to appeal by following the appeal procedures under Rule 506.1 of the Texas Rules of Civil Procedure (governing appeals in small claim and debt claim cases).

Chapter 14: Resources

A. Forms in a Civil Case

CLICK HERE

Forms relating to civil cases may be found on the TJCTC website at the following link: ***http://www.tjctc.org/tjctc-resources/forms.html***

B. Texas Rules of Civil Procedure and Texas Rules of Evidence

CLICK HERE

The Texas Rules of Civil Procedure and Texas Rules of Evidence can be found on the Texas Judicial Branch website at: ***http://txcourts.gov/rules-forms/rules-standards/***

C. O'Connor's Reference Books

CLICK HERE

The following books can be found for purchase online ***here.***

- O'Connor's Texas Rules (Civil Trials 2020)
- O'Connor's Texas CPRC Plus (2019-2020)
- O'Connor's Texas Causes of Action (2019-2020)
- Texas Rules of Evidence Handbook

Appendix of Cases

C.I.T. Corp. v. Haynie, 135 S.W.2d 618, 622 (Tex. Civ. App.—Eastland 1940, no writ).
Claxton v. (Upper) Lake Fork Water Control & Imprv. Dist. No. 1, 220 S.W.3d 537, 543 (Tex. App.—Texarkana 2006, n.p.h.).
Comet Aluminum Co. v. Dibrell, 450 S.W.2d 56, 58-59 (Tex. 1970).
Congleton v. Shoemaker, 2012 WL 1249406, at *5 (Tex. App.—Beaumont Apr. 12, 2012, pet. denied).
Continental Coffee Prods. v. Cazarez, 937 S.W.2d 444, 449 (Tex. 1996).
Cook v. Waco Auto Loan Co., 299 S.W. 514, 515 (Tex. Civ. App.—Waco 1927, writ dism'd w.o.j.).
Crawford v. Sandidge, 75 Tex. 383, 384 (Tex. 1889).
Edmonson v. Leesville Concrete, 500 U.S. 614 (1991).
Elkins v. Immanivong, 406 S.W.3d 777, 779 and n.1 (Tex. App.—Dallas 2013, no pet.).
Enviropower, LLC v. Bear, Stearns & Co., 265 S.W.3d 16, 20 (Tex. App.—Houston [14th Dist.] 2008, no pet.).
Failing v. Equity Management Corp., 674 S.W.2d 906, 908-09 (Tex. App.—Houston [1st Dist.] 1984, no writ).
Findlay v. Cave, 611 S.W. 2d 57 (Tex. 1981).
Fitzgerald v. Brown, Smith & Marsh Bros., 283 S.W. 576, 578 (Tex. Civ. App.—Texarkana 1926, writ dism'd).
Flynt v. Garcia, 587 S.W.2d 109, 110 (Tex. 1979).
Fogel v. White, 745 S.W.2d 444, 446 (Tex. App.—Houston [14th Dist.] 1988, orig. proceeding).
French v. Moore, 169 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2004, n.w.h.).
Gaddy v. First Nat. Bank of Beaumont, 115 Tex. 393, 283 S.W. 472 (1926).
H. Heller & Co. v. Louisiana-Pacific Corp., 209 S.W.3d 844, 849 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (citing *Mindis Metals*, 132 S.W.3d at 484).
Harbison-Fischer Mfg. Co. v. Mohawk Data Scis. Corp., 823 S.W.2d 679, 684-85 (Tex. App.—Fort Worth 1991), writ granted, set aside, 840 S.W.2d 383 (Tex. 1992).
Harding v. Jesse Denning, Inc., 176 S.W.2d 862, 864 (Tex. Civ. App.—San Antonio 1929, writ ref'd n.r.e.).
Harper v. Spencer & Associates, P.C., 446, S.W.3d 53, 55 (Tex. Civ. App—Houston [1st Dist.] 2014, pet. denied).
Harter v. Curry, 105 S.W. 988, 988-89 (Tex. 1907).
Haygood v. DeEscabedo, 356 S.W.3d 390, 394-95 (Tex. 2011).

Henderson v. Chrisman, 2016 WL 1702221, at *3 (Tex. App.—Dallas Apr. 27, 2016, no pet.).
Henry v. Insurance Co. of North America, 879 S.W.2d 366 (Tex. App.—Houston [14th Dist.] 1994, no writ).
Highland Park State Bank v. Salazar, 555 S.W.2d 484 (Tex. Civ. App. 1977, ref. n.r.e).
In re A.J.'s Wrecker Service of Dallas, 2002 WL 497021 at *1 (Tex. App.—Dallas Apr. 3, 2002, no writ).
In re ATW Investments, Inc., 2017 WL 1066803 at *2 (Tex. App.—San Antonio 2017, no pet.).
In re E.D., 102 S.W.3d 859, 861 (Tex. App.—Corpus Christi 2003, no pet.).
In re Garza, 990 S.W.2d 372, 374 (Tex. App.—Corpus Christi 1999, no pet.).
In re Heaven Sent Floor Care. [2016 WL 7320387 (Tex. App. – Dallas 2016)]
In Re Olivas, 129 B.R. (W.D. Tex. 1991).
Invesco Investment Services, Inc. v. Fidelity Deposit and Discount Bank [355 S.W.3d 257 (Tex. App.—Houston [1st Dist.] 2011]
Jago v. Indemnity Ins. Co. of N.Am., 120 Tex. 204, 208, 36 S.W.2d 980, 982 (1931)
Johnson & Higgins, Inc. of Texas, Inc. v. Kenneco Energy, Inc., 962 S.W.2d 507, 530 (Tex. 1998).
Karstetter v. Voss, 184 S.W.3d 396, 401 (Tex. App.—Dallas 2006, no pet.).
Kieschnick v. Martin, 208 S.W. 948, 951 (Tex. Civ. App.—Austin 1919, no pet.).
King & King, et al, v. Porter, et al, 256 S.W.2d. 657 (Tex. 1923).
King Ranch, Inc. v. Chapman, 118 S.W.3d 742, 752 (Tex. 2003).
Knight v. Texas Dept. of Public Safety, 361 S.W.2d 620, 623 (Tex. Civ. App.—Amarillo 1962, no writ).
Lee v. Key West Towers, Inc., 783 S.W.2d 586, 588 (Tex. 1989).
Lopez v. Lopez, 757 S.W.2d 721, 723 (Tex. 1998).
Luby v. Wood, No. 03-12-00179-CV, 2014 WL 1365736 (Tex. App.—Austin Apr. 2, 2014, no pet.) (mem. op.).
Lucey v. Southeast Tex. Emergency Physicians Assocs., 802 S.W.2d 300, 303-04 (Tex. App.—El Paso 1990, writ denied).
Malone v. Emmert Indus. Corp., 858 S.W.2d 547 (Tex. App.—Houston [14th Dist.] 1993, writ denied).
Mendoza v. Singer Sewing Mach. Co., 84 S.W.2d 715, 716 (Tex. 1935).
Mindis Metals, Inc. v. Oilfield Motor & Control, Inc., 132 S.W.3d 477 (Tex. App.—Houston

[14th Dist.] 2004, pet. denied).
Monday v. Cox, 881 S.W.2d 381 (Tex. App.—San Antonio 1994).
Moyer v. Moyer, 183 S.W.3d 48, 53-54 (Tex. App.—Austin 2005, no pet.).
Moody Nat'l Bank v. Reibschlater, 946 S.W.2d. 521 (Tex. App.—Houston [14th Dist.] 1997, writ denied).
Mullins v. Coussons, 745 S.W.2d 50 (Tex. App.—Houston [14th Dist.] 1987, no writ).
Nationsbank of North Carolina, N.A. v. Shumate, 45 F. 3d 427 (4th Cir. 1994), cert denied.
Operation Rescue-Natl. v Planned Parenthood of Houston and S.E. Texas, Inc., 937 S.W. 2d 60 (Tex. App.—Houston [14th Dist.] 1996), writ granted (Sept. 4, 1997), aff'd as modified, 975 S.W.2d 546 (Tex. 1998).
Paul v. Nance Buick Co., 487 S.W.2d 426 (Tex. App.—El Paso 1972).
Patton v. Slade, 38 S.W. 832, 833 (Tex. Civ. App. 1897, no writ).
Peek v. Equipment Serv., 779 S.W.2d 802, 804 (Tex. 1989).
Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84 (1988).
Perry v. Nueces County, 549 S.W.2d 239 (Tex. Civ. App.—Corpus Christi 1977, writ ref'd n.r.e.).
PNS Stores, Inc. v. Rivera, 379 S.W.3d 267, 275 (Tex. 2012).
Poe v. Ferguson, 168 S.W. 459, 460 (Tex. Civ. App.—Galveston 1914, no pet.).
Poole v. Goode, 442 S.W.2d 810, 812 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.).
Rexford v. Holliday, 807 S.W.2d 356, 358 (Tex. App.—Houston [1st Dist.] 1991, no writ).
Rowley v. Lake Area Nat. Bank. [976 S.W.2d 715, 724 (Tex. App.—Houston [1st Dist.] 1998)]
S.L. Crawford Const., Inc. v. Lassiter, 17 S.W.3d 379, 380 (Tex. App.—Houston [1st Dist.] 2000, no pet.).
Sharman v. Schuble, 846 S.W.2d 574, 576 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).
Shirley-Self Motor Co. v. Simpson, 195 S.W.2d 951 (Tex. App.—Fort Worth 1946, no writ).
State v. 1985 Chevrolet Pickup Truck, 778 S.W.2d 463, 464 (Tex. 1989).
Stewart v. Forrest, 124 S.W.2d 887 (Tex. Civ. App.—San Antonio 1939, no writ).
T. & N.O.R. Co. v. Rucker, 885 S.W. 815 (Tex. Civ. App. 1905).
Tanner v. McCarthy, 274 S.W.3d 311, 320 (Tex. App. Houston [1st Dist.] 2008, no pet.).
Taylor v. Rowland, 26 Tex. 293 (1862).
Trinity Capital Corp. v. Briones, 847 S.W.2d 324, 326 (Tex. App.—El Paso 1993, no writ).
Triton Oil & Gas Corp., v. E.W. Moran Drilling Co., 509 S.W.2d 660, 670-71 (Tex. App.—

Corpus Christi 1992), writ denied per curiam, 851 S.W.2d 191 (Tex. 1993).

Valdez v. Hollenbeck, 465 S.W.3d 217, 221 (Tex. 2015).

Weiner v. Wasson, 900 S.W.2d 316 (Tex. 1995).

Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc., 780 S.W.2d 952, 954 (Tex. App.—Fort Worth 1989, no writ).

Wheeler v. Green, 157 S.W. 3d 439 (Tex. 2005).

Williams Farms Produce Sales, Inc. v. R & G Produce Co., 443 S.W.3d 250, 255 (Tex. App.—Corpus Christi 2014, no pet.).

Williams v. Schneiber, 148 S.W.3d 581 (Tex. App.—Fort Worth 2004, no pet).

Williams v. Trinity Gravel Co., 297 S.W. 878, 879 (Tex. Civ. App.—Eastland 1927, no writ).

Wright v. Jones, 52 S.W.2d 247, 251 (Tex. Comm'n App. 1932, holding approved).

Wu v. Walnut Equip. Leasing Co., 909 S.W.2d 273, 281 (Tex. App.—Houston [14th Dist.] 1995).