

CIVIL SCENARIOS

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Resources

- TJCTC Website
 - <https://www.tjctc.org/>
 - Civil Deskbook, Webinar Recordings, Self-Paced Modules
Legal Question Board, Publications, Forms
- Texas Rules of Civil Procedure, Part V & VI
 - <https://www.txcourts.gov/rules-forms/rules-standards/>

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Use the Deskbook!

(Look on your phone/tablet/computer)

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#1: Where Do You Find It?

- You have a question about if a judgment is too old to get a writ of execution on it.
- What chapter and section do you look in to find the info you need?

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#1: Question A

A judgment was issued for the plaintiff in September 2012. An abstract was issued in October 2012 and again in October 2020. Now the plaintiff is requesting a writ of execution. May the court issue one?

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#1: Question B

What is the name of the writ that is filed to request that a dormant judgment be revived?

Can a court proceed with the hearing on the request to revive a dormant judgment if the defendant is not present at the hearing?

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#2: Where Do You Find It?

- A counterclaim was filed in a case in your court and you have some questions about it.
- What chapter and section do you look in to find the info you need?

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#2: Question A

Do you need to issue a citation just like you did when the original petition in the case was filed?

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#2: Question B

If the plaintiff/counter-defendant does not file an answer to the counter-claim by the answer deadline, could the court issue a default judgment on that claim if all other requirements for a default judgment are met?

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Find the Mistakes!

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Scenario #1

Darby is a court clerk. Randy, Inc. has filed a debt claim case. Proof of the amount of damages have been filed as required by Rule 508.3. Proof of service, certificate of last known address, and military service affidavit (defendant is not in the military) have all been filed, the defendant has not answered, and the answer deadline has passed. The attorney has contacted the court and asked when a default judgment will be entered. Darby says that can't be done until after a hearing has been held. So Randy requests a hearing and it is set. Darby makes a note to send notice of the hearing to the defendant if they file an answer.

At the hearing, the judge doesn't think that Randy, Inc. has shown sufficient proof of damages, but enters a default judgment against the defendant because they did not answer or appear. After the judge has signed the judgment, Randy offers to mail it to the defendant since he's going to the post office anyways. Darby prepares the notice and gives it to Randy.

Six months later, the defendant comes in and says she just found out that Randy, Inc. had a whole case against her and that shady lawyer hid it from her. She claims she was never served, never lived at that address, and never got notice of a judgment. She files a motion to set aside default judgment. The judge grants the motion and sets the case for trial.

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Scenario #2

Bronson is a court clerk. Thea has filed a request for a writ of garnishment, and Bronson files it in the case file of the judgment that Thea is trying to enforce. Bronson lets Thea know that any wages that have been direct deposited into the defendant's bank account are exempt and so she won't be able to garnish those.

The court issues the writ of garnishment and Bronson sends two copies to the constable—one to be served on the defendant and one to be served on the garnishee. The constable serves the defendant first and then serves the garnishee.

The garnishee does not answer, but the defendant files an answer with the court stating that the garnishee is not in possession of any of their property. The judge enters an order discharging the garnishee and taxing the costs of the writ of garnishment against the defendant.

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Answer the Legal Board
Questions!

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Question #1

A small claims suit has been filed with me regarding a recently divorced couple, stating the defendant was directed to return personal property in a divorce decree, and has not done so. In a previous question, you gave the following answer for a case where someone filed a small claims case because they weren't getting the spousal support ordered in a divorce decree: "The case should be dismissed for lack of jurisdiction. This is not a small claims case, it is a situation where a party has failed to comply with a court order issued by a district court".

Would this answer apply to my situation as well?

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Question #2

We have a small claims case that is going to go dormant on 05-7-23. The Plaintiff has come in and filed an Abstract of Judgement and a Writ of Execution. My question is if the Writ of Execution comes back unable to locate the Defendant either before or after 05-7-23, is the case still revived or does it become dormant since the Writ was not executed? Please help clarify for me. Thank you

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Question #3

Can a plaintiff subpoena someone out of county on a small claims case and how is that accomplished?

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Question #4

WRIT OF EXECUTION - COLLECTION AGAINST COMPANIES We were advised by the Constable's office that a Writ of Execution cannot be collected against a Partnership, Limited Partnership, and/or a Limited Liability Company. Please advise if this statement is true. Appreciate your prompt response.

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Question #5

Our court received a small claims suit petition for encroachment (tree branches). The plaintiff's attorney filed a petition stating in 2nd paragraph subtitled: "DISCOVERY CONTROL PLAN" and then reads, "Plaintiff contends that the discovery in this matter should be conducted under the guidelines of Level I and she will seek discovery control plan pursuant to 190.4 TRCP." I've researched and researched this 190.4 TRCP and find nothing in the 500 Series of the TRCP. My question is: What role does the JP Court play in this Discovery Control Plan if there was not a Motion for Discovery submitted to the court? Is it something that will come up during the Trial?

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Question #6

We have a Debt claim where the defendant did not show so a default judgment was rendered in January 2022. The plaintiff filed for abstract and it was recorded in the County Clerks office days later. Now, in December of 2022 the plaintiff is requesting a dismissal for the default judgment due to the defendant's filing bankruptcy and the debt being discharged in November of 2022. Can we dismiss a default judgment and do we issue a release of judgment? Thank you.

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Question #7

We have a small claims case where the Defendant is saying the case needs to be transferred to the District Courts because the petition involves a "federal question". Can a JP case be transferred to a higher court by the Judge in the motion to transfer hearing?

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Question #8

On the day a case was set for trial, the attorney filed a Motion for discovery and a Request for a Jury Trial. The judge ruled on the motion for discovery, re-set the trial for two months later, and has not yet ruled on the request for a jury trial. Should the request be denied because it was not filed within 14 days of the original trial date?

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Question #9

Once the Justice court receives a Satisfaction of Judgment in a civil case, should the release of lien be filed with the justice court or county court?

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Question #10

A plaintiff mailed in a small claims case to our office regarding a breach of contract where the plaintiff is seeking proceeds from the sale of real property from the defendant. The original date of this claim is July 23rd, 2016. The statute of limitation is 4 years, can this case be dismissed in court because it no longer falls under the statute of limitation?

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