CIVIL

TEXAS JUSTICE COURT TRAINING CENTER

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FOREWORD

This deskbook on *Civil Procedure (1st ed. February 2018)* 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.

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

Thea Whalen
Executive Director

USER NOTES

This deskbook on *Civil Procedure* in justice courts *(1st ed. February 2018)* 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.

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.

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
February 2018

CHAPTER 1: WHAT IS A CIVIL CASE?

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 an individual or a business entity.

"Where can I find these rules?"

Please note that whenever we refer to *Rule* __ in this deskbook, we are referring to the Texas Rules of Civil Procedure. You may find them at this link:

http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-january-1-2018.pdf


KEY POINT

Civil cases in justice court include:

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

Rule 500.3. This deskbook explains small claims and debt claim cases; repair and remedy cases and eviction cases are explained in the *Evictions Deskbook*.

A **small claims case** is a suit to recover money damages, civil penalties, personal property or other relief allowed by law. *Rule 500.3(a).* The claim can be for no more than $10,000, excluding statutory

interest and court costs but including contractual interest and attorney's fees, if any. *Rule 500.3(a).*

For more information on how to determine if a claim is within the court's jurisdiction, please see pages 3 - 7.

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).* The claim can be for no more than $10,000, excluding statutory interest and court costs but including contractual interest and attorney's fees, if any. *Rule 500.3(b).*

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 (1) it is a suit to recover a debt **and** (2) 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.

Rules 500 – 510 apply to civil cases in justice court. All the other Rules of Civil Procedure and the Rules of Evidence do not normally apply in a civil case in justice court. 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).*

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.

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).*

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 Law *Deskbook*.

Rules 500 – 510 are the rules for civil cases in justice court

The other rules of civil procedure and the rules of evidence **do not apply** unless the judge determines that a particular rule should apply so the proceedings are fair to all parties or unless required by law.

CHAPTER 2: JURISDICTION

A. What is Jurisdiction?

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 to decide the case before it.

- ***Personal jurisdiction*** means the authority of the court over the ***person*** who has been sued.

Subject Matter v. Personal Jurisdiction

Subject matter jurisdiction = court's authority to decide the case before it. **May not be waived.**

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

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 is for more than $10,000 at the time it is filed.

KEY POINT

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 $10,000, 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 motion (or special appearance) with the court asking the court to dismiss her from the case. If she

does not file such a motion (with or before she files her answer), then her objection to the court exercising personal jurisdiction over her is waived.

B. What Cases Do I 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 is not more than $10,000**, exclusive of interest." *Government Code § 27.031(a)(1).*

As mentioned above, civil cases in justice court include:

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

Rule 500.3.

Civil cases in justice court also include suits for the "foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction." *Govt. 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 103-104.***

C. How Do I Determine if a Case is Within the $10,000 Jurisdictional Limit?

KEY POINT

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

"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 at pages 29-33.

interest and court costs are excluded but contractual interest and attorney's fees, if any, are included. *Govt. Code § 27.031(a)(1); Rule 500.3;* ***Elkins v. Immanivong; A-1 Parts Stop, Inc. v. Sims.***

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

Contractual interest, on the other hand, is much more common. 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.

For example, suppose Donny Deadbeat borrows $9,000 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 $9,000 plus $450 in interest. The court would count the $9,000 and the $450 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 $9,950.00. ***Elkins v. Immanivong; A-1 Parts Stop, Inc. v. Sims.***

On the other hand, if Donny had borrowed $10,000 from Caleb and owed one year of contractual interest at 5% interest per year ($500), and Caleb had incurred reasonable attorney's fees of $500 at the time the suit was filed, then Caleb's damages would be $10,000 + $500 + $500 = $11,000. The court would not have jurisdiction to hear this case.

What is the Amount of the Claim?

If Donny borrowed $12,000 from Caleb but paid back $3,000 before defaulting on the balance, then the amount of Caleb's claim is $9,000, and he can file his case in justice court. He is not manufacturing jurisdiction because the amount of his claim is $9,000 even though the note was for $12,000.

KEY POINT

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 $10,000 (excluding statutory interest and court costs). ***Bland Indep. Sch. Dist. v. Blue; Elkins v. Immanivong.*** 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 or can readily establish that the amount in controversy does not fall within the court's jurisdiction. ***Bland Indep. Sch. Dist. v. Blue; Elkins v. Immanivong.***

COMMON PITFALL

Now suppose that at the time Caleb files suit his damages are $9,950.00 but contractual interest and attorney's fees continue to accrue while the case is pending so that the damages are more than $10,000 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 $10,000 when the suit was filed, but due to ongoing contractual interest or attorney's fees the damages go over $10,000 while the case is pending, the court continues to have jurisdiction and may enter a judgment for more than $10,000.

What if Donny borrowed (and signed a promissory note for) $12,000 from Caleb? Suppose Caleb files suit for $12,000 but upon realizing that the justice court's jurisdiction is limited to $10,000, he amends his petition to claim just $10,000 so his case falls within the jurisdictional limit of the justice court. May he do this? No!

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.***

COMMON PITFALL

But if a party alleges an amount of damages that is outside of the court's jurisdiction and the damages as alleged are **liquidated and nonseverable**, 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.

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.***

Liquidated v. Unliquidated Damages

Liquidated: based on a clearly defined contract.

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 based on a clearly defined contract. 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 his health insurance covered some of those costs, 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 and they cannot be readily ascertained by reference to a clearly defined contract.

D. What Relief Can I 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)***;
- Foreclose mortgages and enforce liens on **personal property** ***(see pages 103-104);***
- Issue writs of attachment, garnishment and sequestration ***(see pages 87-90, 94-99)***;
- Enforce deed restrictions that do not involve a structural change to a dwelling ***(see page 105);*** 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 Law 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.***

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, your neighbor is about to cut down a tree on your property; you ask 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. What Kind of Cases Am I 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 3.***

CHAPTER 3: ADMINISTRATIVE RULES

A. What Records Do I Have to Maintain?

1. Records in the Civil Docket

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

(1) The title of all suits filed with the court;

(2) 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;

(3) The date when the parties (or one of them) appeared before the court;

(4) A description of the petition and any documents filed with the petition;

(5) Every adjournment, stating at whose request it was made and to what time;

(6) The date of the trial, stating whether it was before a jury or before a judge;

(7) The verdict of the jury, if any;

(8) The judgment signed by the judge and the date the judgment was signed;

(9) All applications for setting aside judgments or granting new trials and the orders (including dates) of the judge on those applications;

(10) 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

(11) 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:

(1) Copies of all documents filed;

(2) Other dockets, books and records as may be required by law or the rules of civil procedure; and

(3) 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 Officeholding Deskbook for additional information concerning recordkeeping.

B. When Does My 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 70-73 for a discussion of these time periods.***

C. How Do I Issue Writs?

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 83, 85-90, 94-99 for a discussion of writs issued by justice courts.***

D. May I 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.

CHAPTER 4: CIVIL CASES FROM FILING UP TO TRIAL

A. How is a Civil Suit Filed in Justice Court?

1. A Civil Case Starts with a 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).

If a petition does not contain everything that is required, the court may allow the plaintiff to amend the petition.

A sample petition form may be found on the TJCTC website. *See page 48 for more information.*

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*

2. A Petition in a Debt Claim Case Must Contain Additional Information

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 him (for example, that 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 date certain.

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 holders of the debt 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.

3. Civil Case Information Sheet

When a person files a petition they must also file a civil case information sheet in the form issued by the Texas Supreme Court. The information sheet must be signed by the plaintiff or their attorney. *Rule 502.2(b).*

The court may **not** reject a pleading because the pleading is not accompanied by a civil case information sheet. *Rule 502.2(b).*

COMMON PITFALL

If a plaintiff files a civil case information sheet but incorrectly identifies the type of case filed, the court should treat the case for what it really is rather than how the plaintiff labelled it. For example, if a plaintiff files a small claims case but incorrectly states in the civil case information sheet that it is a debt claim case, the court should treat it as a small claims case. ***See above at page 2.***

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 is required for each case although a service fee must be assessed for **each** defendant.

a. Filing Fee

In most counties the filing fee is $46. This fee is made up of:

- the general filing fee ($25) *(Local Government Code § 118.121);*
- the fee for indigent civil legal services ($6) *(Local Government Code §133.153);*
- the e-filing fee ($10) *(Government Code § 51.851(c));* and
- the new judicial education on court security fee ($5) *(Government Code §51.971).*

b. Service Fee

Fees for service of civil process are set by the commissioner's court under Section 118.131, Local Government Code, and are listed in the Sheriffs' and Constables' fees listing published by the Comptroller's Office, which may be found at this link: http://texasahead.org/lga/sheriffs/2016-SCFeeManual.pdf

2. Filing a Statement of Inability to Afford Payment of Court Costs instead of Paying the Filing and Service Fees

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).*

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. *See page 48 for more information.*

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).*

b. When a Statement of Inability May Not be Contested

COMMON PITFALL

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 the Statement May Not be Contested

A Statement of Inability may not be contested when it is accompanied by a legal-aid provider certificate. The person has already been screened for eligibility by the legal-aid provider and an attorney is representing the person without compensation (pro bono).

c. When a Statement May be Contested

KEY POINT

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, is the person actually receiving the government entitlement. *Rule 502.3(d).*

Hearing:
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).*

KEY POINT

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).*

C. Issuance and Service of the Citation

When a petition is filed, the clerk of the court must promptly issue a citation and deliver the citation to each defendant as directed by the plaintiff. *Rule 501.1(a).*

1. Contents of the Citation

The citation must:

1. Be styled "The State of Texas;"

2. Be signed by the clerk under seal of the court or by the judge;

3. Contain the name, location, and address of the court;

4. State the date the petition was filed;

5. State the date the citation was issued;

6. Show the file number and names of the parties;

7. Be directed to the defendant;

8. 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;

9. 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

10. 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 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).

A sample citation form may be found on the TJCTC website. ***See page 48 for more information.***

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

a. 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).

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).*

b. Primary Method of Service of the Citation

KEY POINT

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).

c. 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 other place where the defendant can probably be found. *Rule 501.2(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 87-90 and 94-99, and the Evictions Deskbook at pages 112-119.

d. 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

Primary Method of Service of the Citation

Deliver a copy **in person** to the defendant; or

Mail a copy by **registered or certified mail**, restricted delivery, return receipt requested. *Rule 501.2*

Alternative Method of Service of the Citation

Mail a copy by **first class mail** to the defendant and also:

(1) **leave** at defendant's residence or place where he can be found **with someone over 16**; or

(2) serve by any other method the court finds is reasonably likely to provide notice to the defendant. *Rule 501.2*

- 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).

e. 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.

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, or if no newspaper is published in the county, then in any adjoining county where a newspaper is published. *Rule 116.* 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.*

4. Return of Service

a. Requirements for the Return of Service

The officer or person to whom the citation is delivered 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).

b. What Does the Return of Service Have to State?

The return of service has to 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).*

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).*

d. Signature and Verification on the Return of Service

The return has to 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). ***For more information, please see page 48.***

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).*

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).*

KEY POINT

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

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!

D. How Do I Compute Time?

KEY POINT

Rules for Computing Deadlines:

To compute time, you should:

1. exclude the day of the event that triggers the period;

2. count every day, including Saturdays, Sundays, and legal holidays; and

3. include the last day of the period, but

    a. 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

    b. if the last day for filing 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).

COMMON PITFALL

"Mailbox Rule"

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 and see the discussion on page 20 of the Evictions Deskbook.***

Extension of Time

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).*

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):

July 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 **(Day 0) Citation Served**	4 (Day 1) **Independence Day Holiday**	5 (Day 2)	6 (Day 3)	7 (Day 4)	8 (Day 5)
9 (Day 6)	10 (Day 7)	11 (Day 8)	12 (Day 9)	13 (Day 10)	14 (Day 11)	15 (Day 12)
16 (Day 13)	17 **(Day 14) Answer Must be Filed if Court Closes at 5:00 p.m.**	18 **(Day 15) Answer Must be Filed if Court Closes before 5:00 p.m.**	19	20	21	22

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.

Now suppose the defendant was served with the citation 14 days before a holiday. The answer date would be calculated as follows:

May 2018

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		

Please see link to Justice Court Rules – Time Periods in Resources for an Index of all significant filing deadlines in civil cases.

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 or debt claim 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 or debt claim 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.

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.

Assisted Representation

The court may allow a family member or person who is not being compensated to assist a party in presenting their case in justice court.

F. Pretrial Discovery

1. What is Pretrial Discovery?

Pretrial discovery is the process by which the parties to a civil case are allowed to 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 at law 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 even be more than the amount in dispute.

But 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 at page 83.

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

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. If the party fails to respond to the request, then that constitutes an admission that the fact is true. *Rule 198.* So in the example above, if the party on whom the request was served never responds to the request, then the request is "deemed admitted" and at trial they will not be able to deny that they signed the contract.

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 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. 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. *Rule 199.2.*

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:

1. The party (this may be either the plaintiff or the defendant) must file a written motion for discovery with the judge.

2. 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 discovery to the defendant.

3. 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.

4. 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

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 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.

5. If the discovery requests are allowed, we suggest 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 we believe it may save a lot of time and effort when the parties don't know what to do or how to do it.

6. 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?

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:

(1) In person. A copy may be delivered to the party, or the party's duly authorized agent or attorney, in person.

(2) Mail or courier. A copy may be sent by courier-receipted delivery (such as Fed Ex) 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.

(3) Fax. A copy may be faxed to the recipient's current fax number.

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).*

(4) 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.

(5) Other. A copy may be delivered in any other manner directed 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).*

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 by 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 manner in which 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 3 days from the date of mailing, and upon so finding, 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).*

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 issue a notice of the hearing and serve both parties 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 3-4.* When venue is at issue, the court has jurisdiction to decide such a case but the defendant is claiming that the case needs to be heard by another court because it was filed in the wrong place.

For example, if the plaintiff files a suit for breach of contract for $20,000, the court does not have subject matter jurisdiction to hear that case. The court must dismiss the case on its own motion. *See pages 3-4.*

Three Types of Venue Motions:

(1) Defendant moves to transfer because case is filed in wrong county or precinct.
(2) Fair Trial Venue Motion.
(3) Consent of all parties.

Now 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 but the contract was signed and performed in Orange County and the defendant lives in Orange County. The court has **jurisdiction** to hear that case but 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. The court would not dismiss the case but, if the defendant files a motion to transfer venue, the court could transfer the case to a justice court in Orange County. The same kind of court (a justice court) will hear the case but in a different location.

Unlike subject matter jurisdiction (which can never be waived), an objection to venue **is waived** if not properly raised by a party. So 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 plaintiff 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. *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).*

a. When Does the Motion Have to be Filed?

KEY POINT

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).*

b. 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).*

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

COMMON PITFALL

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).*

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. *Rule 502.4(d)(1)(A).*

e. 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).*

f. 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).*

KEY POINT

g. The Judge's Decision on the Motion

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).*

h. 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).*

i. 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).*

j. 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).*

k. Procedure by the Receiving Court

COMMON PITFALL

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

a. What is a Fair Trial Venue Change?


KEY POINT

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.

b. 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).

c. 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).*

d. 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).*

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).*

f. 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).*

g. 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

What is an Answer?

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

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.

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 pages 22-23 for a calendar showing how to calculate these due dates.***

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 27-29 explaining how the defendant must serve the answer.***

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).*

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).


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 fraud) 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).*

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

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).*

For example, if a contractor sues a homeowner claiming that he is owed $3,000 for installation of a new roof, and the homeowner claims the roof is defective and that he has suffered damages of $4,000 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.

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 11-13.*** 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 14-15.***

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 27-29 for an explanation of how the defendant must serve the counterclaim.***

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.

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

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 11-13.*** 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 14-15.***

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.

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 17-21.*** 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 27-29 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 11-13.*** 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 14-15.***

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 17-21.***

K. When May a Party Amend Their Pleadings?

Party May 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 ***(see pages 27-29)*** not less than seven days before trial. *Rule 502.7(a).*


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 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.

L. How Does a Party Challenge An Insufficient Pleading?

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.

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 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.

M. Default Judgment

1. Default Judgment Procedure in a Small Claims Case

a. 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.*

b. When Should the Court Enter a Default Judgment?

The court should enter a default judgment in a small claims case if the following conditions are met:

- The petition contains all the required information *(see pages 11-13);*
- The defendant fails to file an answer by the date required by Rule 502.4 (normally 14 days after being served with the citation *(see pages 21, 33-34)*;
- The court ensures that service was proper (and the court may hold a hearing for that purpose);
- Proof of service has been filed in accordance with Rule 501.3(h) *(see pages 19-21)*; and

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.

- 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 43-45).*

Rule 503.1(a).

c. What Procedure Must the Court Follow in Granting a Default Judgment?

COMMON PITFALL

The procedure the court must follow in granting a default judgment 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).

(1) If the Claim is Based on a Written Document:

If the following conditions apply, then the judge must render judgment for the plaintiff in the requested amount **without any necessity for a hearing**:

- 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;
- 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).

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).*

(2) If the Claim is Not Based on a Written Document:

COMMON PITFALL

If the plaintiff's claim is not based on a written document signed by the defendant, then the following conditions apply:

- The plaintiff must request a hearing, either orally or in writing;

Default Judgment Procedure Varies

The procedure for granting a default judgment is a little different in a debt claim case (*see pages 41-43)* and in an eviction case (*see Evictions Deskbook).*

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.

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).*

- 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).

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).*

d. 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).*

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.

e. 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 bench trial and render judgment according to the evidence submitted. *Rule 503.1(c).*

f. 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).*

g. Notice to the Defendant

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).*

2. Default Judgment Procedure in a Debt Claim Case

Specific rules apply for entering a default judgment in a debt claim case.

a. 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).*

b. 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).*

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. *Rule 508.3(b)(2).*

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).

When May the Court Consider Documentary Evidence?
The court may consider documentary evidence if it is attached to a sworn statement (such as an affidavit) 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! 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).*

What is the Outcome of the Hearing?

KEY POINT

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).*

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.

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?

KEY POINT

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.

3. 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. § 3911(5).*

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 defendant 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

Typically, plaintiffs will attach a printout from the Department of Defense website (https://www.dmdc.osd.mil/scra/owa/home), 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 defendant 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 Rules 507.1 and allows the court to do this.

N. Summary Disposition

What is a Summary Disposition?

KEY POINT

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 of the claims in the case. If the court denies the motion, then the case proceeds to trial.

For example, 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 31. 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 31. 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.

But 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 has to 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.

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.

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 has to 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).*

When Should the Court Grant a Motion for Summary Disposition?

KEY POINT

The motion must be granted if it shows that:

- There are no genuinely disputed facts that would prevent a judgment in favor of the party; or
- 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 is the Procedure on the Motion for Summary Disposition?

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

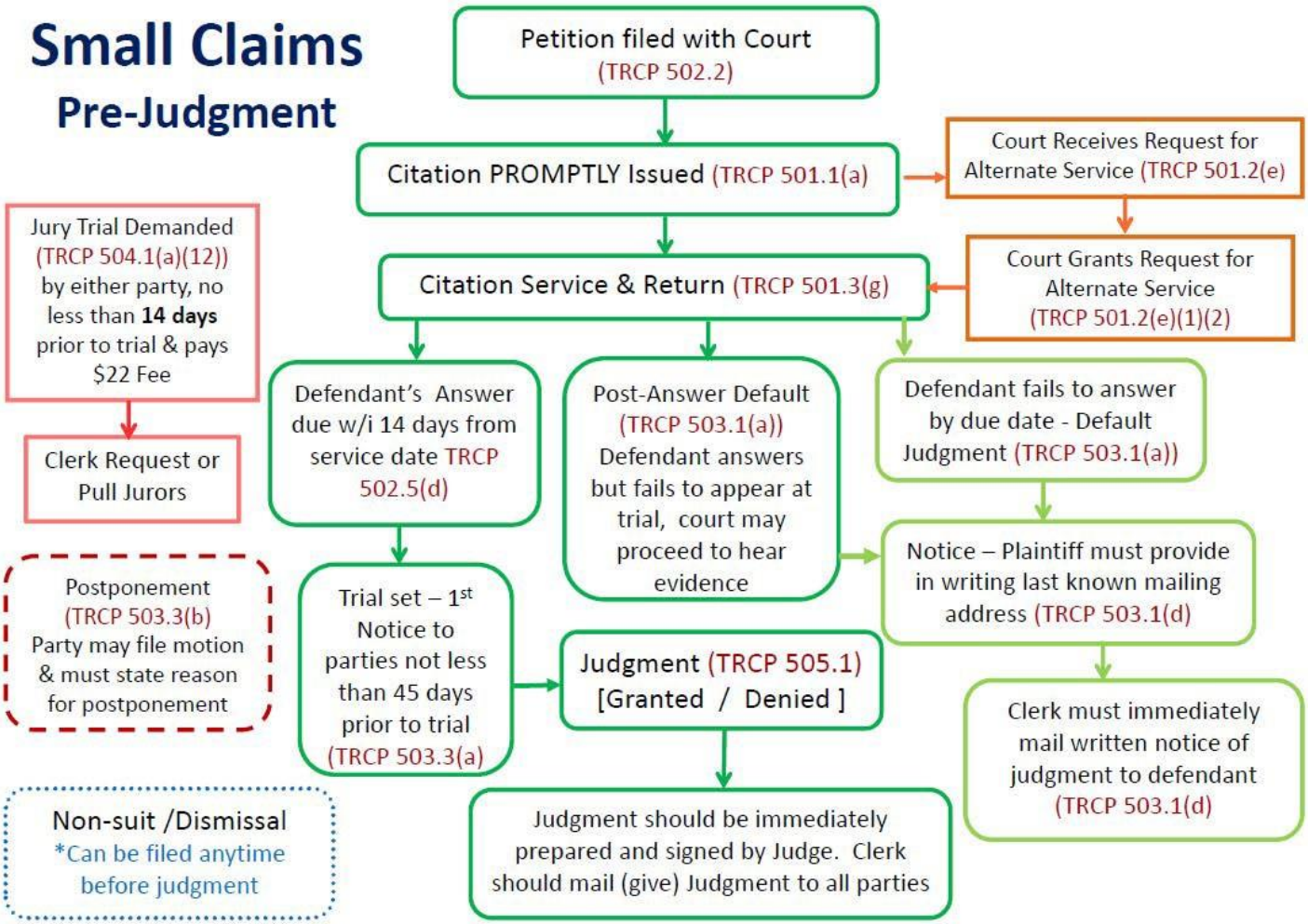
without a hearing. Otherwise, the court should set a hearing on the motion. The judge may consider evidence offered by the parties at the hearing. *Rule 503.2(c).*

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).*

O. Flowcharts

Here is a flowchart for prejudgment issues in a small claims case:



P. Forms in a Civil Case

Numerous forms relating to civil cases may be found on the TJCTC website at the following link: http://www.tjctc.org/tjctc-resources/forms.html

CHAPTER 5: TRIAL SETTING AND PRETRIAL CONFERENCE

A. How Do I Set the Case 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, on a date and at a time more than 45 days later that is convenient for the court. *Rule 503.3(a).*

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 be sent no less than 45 days before the date set for trial 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 I Postpone (or "Continue") the Trial?

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 total unless both parties agree in writing. *Rule 510.7(c).* ***See Evictions Deskbook at page 28.***

C. What is the Purpose of a Pretrial Conference and When Should I 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 reason to do so is 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 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.

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 I Issue a Subpoena?

What is a Subpoena?
A subpoena is the means by which a party or the judge may require a person or an entity to attend and give testimony at a hearing or trial. *Rule 500.8(a).*

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.

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.

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).*

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).

A subpoena form for use in justice court may be found at the following link to the TJCTC website: http://www.tjctc.org/tjctc-resources/forms.html

How and by Whom is a Subpoena 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 I Order Mediation?

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.

Texas Policy on Mediation

The state's policy on mediation is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation. But the court needs to be mindful of the additional cost of mediation and whether it is appropriate in light of the nature of the case and the positions of the parties.

KEY POINT

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.*

To further this policy a judge may order any case to mediation or another appropriate generally accepted alternative dispute resolution process.

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.

CHAPTER 6: TRIAL

A. How Do I 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.


COMMON PITFALL

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).* In order for the court to dismiss the case the plaintiff must have received notice of the trial date and the notice should have informed the plaintiff that failure to appear for trial could result in dismissal.


KEY POINT

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 for the relief 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. How Does a Party Get a Jury Trial?

How Do You 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.

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).*

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 still 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).*

C. How Do I Empanel a Jury?

The procedure for empaneling a jury in a civil trial is explained in detail in the Quick Reference Trial Handbook at pages 2-17. Here is a summary of that procedure:

Empaneling a Jury

Here is a step by step procedure for empaneling a jury in a civil case in justice court.

Step 1: Select the Jury Panel
A jury panel 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 the Jury Panel
After drawing the names and making the list, the judge must swear the jury panel as follows: "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: 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. We believe it is helpful to

let them know what the case is about generally and what the next steps will be; also 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 and 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:

(1) is at least 18 years of age;

(2) is a citizen of the United States;

(3) is a resident of Texas and of the county in which the person is to serve as a juror;

(4) 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);

(5) is of sound mind and good moral character;

(6) is able to read and write;

(7) 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;

(8) has not been convicted of misdemeanor theft or a felony; and

(9) 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. A person qualified to serve as a juror may establish an exemption from jury service if the person:

(1) is over 70 years of age;

(2) 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;

(3) is a student of a public or private secondary school;

(4) is a person enrolled and in actual attendance at an institution of higher education;

(5) 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;

(6) 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;

(7) is the primary caretaker of a person who is unable to care for himself or herself;

(8) 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

(9) 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

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 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 judge, the parties or their attorneys are allowed to question the 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: Challenge for Cause

A party may challenge 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: Challenge Not for Cause (Peremptory Challenge)

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

KEY POINT

But a prospective juror may **not** be excused because they happen to belong to a constitutionally protected class. *Rule 504.2(e).* This means a person may not be excused from jury service solely based on their race, ethnicity or gender. ***Batson v. Kentucky*; *Edmonson v. Leesville Concrete.***

KEY POINT

If a juror belonging to a protected class is excused through a peremeptory challenge, the opposing party may ask the judge to require the party striking the juror to articulate a non-discriminatory reason for the strike, and if the party is unable to do so, then the judge may order the juror not to be excused.

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

When May a Juror Not be Excused?

A party may **not** excuse a prospective juror solely because the juror belongs to a constitutionally protected class. This means they may not be excused solely because of their race, ethnicity or gender.

Step 10: Seating the Jury

After all the challenges 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: Instructions to the Jury (Optional)
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. We believe it is helpful to let them know how the case will proceed (the plaintiff will go first and present their evidence, then the defendant will present their evidence); to remind them of the previous instructions (for example, not to use their cell phones to look up information on the parties; and that they should not talk to the parties, lawyers or witnesses outside the courtroom); and to let them know about restroom breaks and when the court will recess for lunch.

D. How Do I Conduct the Trial?

The procedure for conducting a civil trial is explained in detail in the Quick Reference Trial Handbook at pages 1-39. 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.*

So if neither party to a civil case calls 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?

It is standard practice in a civil trial to exclude from the courtroom witnesses who have not yet testified until it is time for them 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.*

But 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.

What is "Invoking The Rule"?

When a lawyer says they are "invoking the rule," they are asking the judge to exclude from the courtroom any witnesses who will be testifying in the case so they cannot shape their testimony based on what a prior witness says. But "the rule" does not apply to a party or their spouse, a company representative or a person who is essential to the presentation of a party's case (such as an expert).

These persons 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 we Need an Interpreter?

When May the Court Appoint an Interpreter?

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, in the discretion of the court. *Rule 183.*

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." *Govt. Code § 57.002(b-1).* But a court may appoint a spoken language interpreter **who is not a licensed court interpreter**:

- In a county with less than 50,000;
- In a county with more than 50,000 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; OR
  - 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; OR
  - 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.

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

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 a Licensed Interpreter?

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

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.

Govt. 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.

Govt. 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/.

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 certified interpreters may be found by going to http://www.txcourts.gov/lap/interpreters/, clicking on the Licensed Court Interpreters link, then

clicking the Generate Excel button. Also, there are many telephonic interpreter services available, which may be found by doing a Google search for "telephone interpreter services Texas."

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

4. Control by the Court

KEY POINT

The court should exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- make the interrogation and presentation effective for the ascertainment of the truth;
- avoid needless consumption of time; and
- protect witnesses from harassment or undue embarrassment.

Rule 611, Texas Rules of Evidence.

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 may apply Rule 611 of the Texas Rules of Evidence to maintain control over the proceedings.

5. How Do I Handle a Request to Bring in a Court Reporter or Otherwise 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 in a justice court).

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 of Evidence

KEY POINT

The Rules of Evidence do not automatically apply in justice court. 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. *Rule 408, Texas Rules of Evidence.*

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 that a person was or was not insured against liability is not admissible to determine whether the person acted negligently or otherwise wrongfully. *Rule 411, Texas Rules of Evidence.*

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.

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 is not precluded from asking 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.

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 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.*

Jury verdict forms for use in justice court may be found at the following link to the TJCTC website: http://www.tjctc.org/tjctc-resources/forms.html

CHAPTER 7: JUDGMENT

A. How Do I Enter Judgment?

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 (that is, a judgment in favor of the party whom the jury found against). *Rule 505.1(a).*

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. *Rule 505.1(b).*

Costs:

The judge must award costs allowed by law to the successful party. *Rule 505.1(c).*

If the Judgment is for Specific Articles:

If the judgment is for the recovery of specific articles, 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(d).*

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

KEY POINT

What Motions May be Filed?

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

(1) 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).*

(2) 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).*

(3) 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).*)

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.

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, 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.

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).*

C. What is a Judgment Nunc Pro Tunc and When May I 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 10 for more information on plenary power.***

Nunc pro Tunc

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

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, 2017" when the judgment was actually signed on January 3, 2018;
- 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 recital in support of a default judgment, such as that the defendant failed to appear and answer when 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.


KEY POINT

No Deadline for Filing:
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.***

D. Forms

Forms relating to entering a judgment and ruling on post-dismissal and post-judgment motions may be found on the TJCTC website at the following link:
http://www.tjctc.org/tjctc-resources/forms.html

CHAPTER 8: APPEAL

A. How to File an Appeal

KEY POINT

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:

1. filing a bond;

2. making a cash deposit; or

3. filing a Statement of Inability to Afford Payment of Court Costs.

Either party is entitled to file an appeal. *Rule 506.1(a).*

B. How to Calculate the Time for Appeal

The rules for computing time discussed above ***(see pages 21-23)*** apply to the calculation of time to file an 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 2018

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 5:00 p.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 28, 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 21-23.*

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 2018

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 2018

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

C. Appeal Bond or Cash Deposit

1. Amount of the Appeal Bond

KEY POINT

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).*

2. 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).*

3. Cash Deposit in Lieu of Bond

In lieu 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).*

4. Notice of Filing the Appeal Bond or Making a Cash Deposit

Within **7 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 27-29).*** *Rule 506.1(e).*

D. Statement of Inability to Afford Payment of Court Costs

1. 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).*

A copy of the form may be found on the TJCTC website at the following link:
http://www.tjctc.org/tjctc-resources/forms.html

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

COMMON PITFALL

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).*

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

a. Contest

The statement of inability to afford payment of court costs may be contested as provided in Rule 502.3(d) within **7 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 page 15.***

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

b. Hearing

The judge must 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.

c. 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 7 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).*

d. 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).*

e. 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:

- 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.

E. 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).*

2. But 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.

Note, however, that if the appellant appealed by filing a statement of inability to afford payment of court costs, and the statement was approved, this should cover the fees in the county court.

F. What Happens When an Appeal is Perfected?

1. 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.*

2. Trial De Novo; Justice Court Judgment is Void

KEY POINT

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.

G. What if the Appeal was Sent to County Court Even Though it was not Properly Perfected?

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.***

KEY POINT

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 ground 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).*

H. 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.

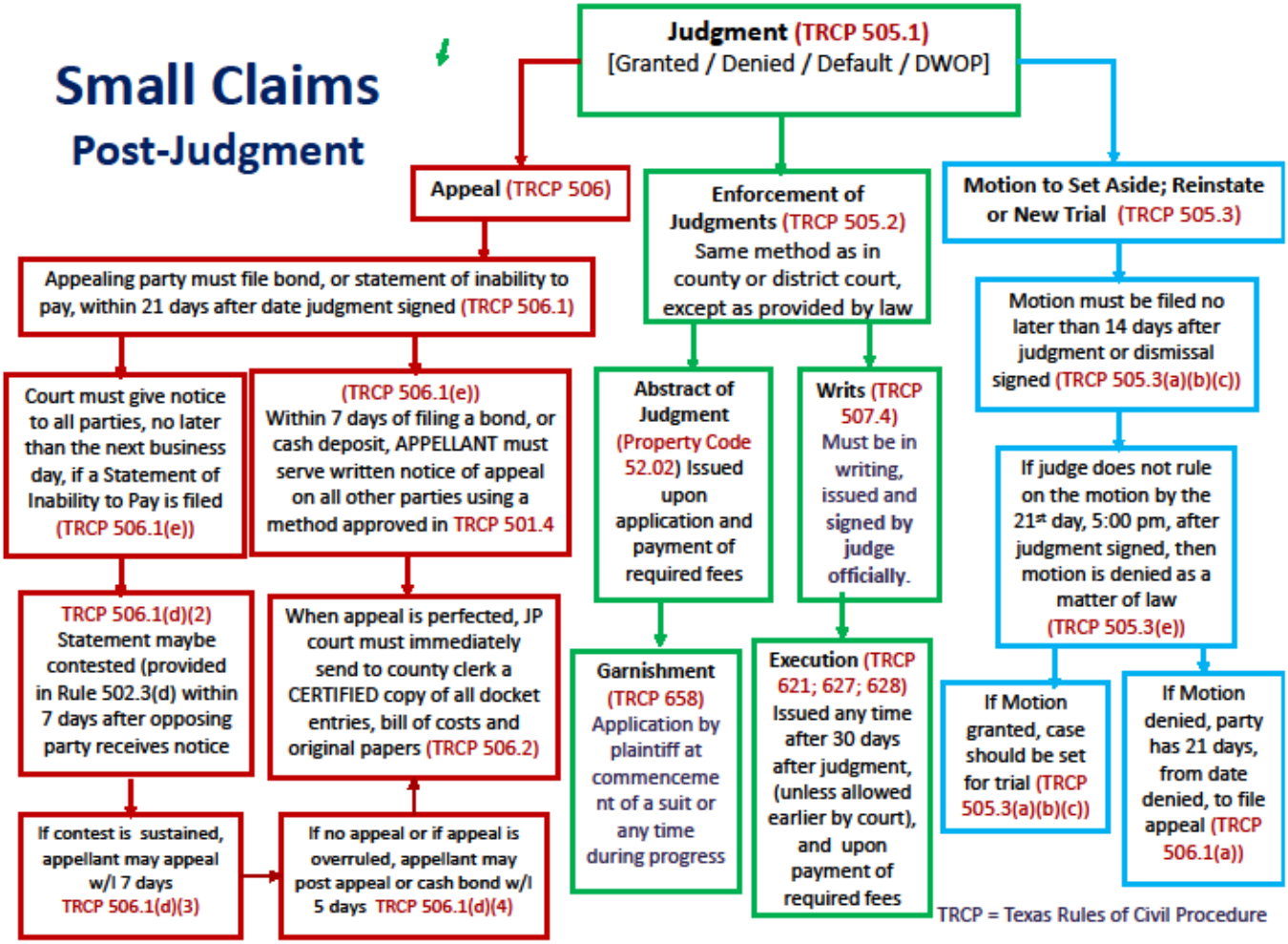
"If the appeal was not properly perfected..."

A justice court could treat a writ of procedendo from the county court as an order of dismissal **only if the appeal was not properly perfected** (including as a result of the failure of the appellant to pay filing fees in the county court).

As discussed above, 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.***

I. Flowcharts

Here is a flowchart for post-judgment issues in a small claims case:



CHAPTER 9: OTHER POST-JUDGMENT REMEDIES

A. Writ of Certiorari

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).*

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).*

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.

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

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***.

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 should 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. ***Caldwell v. Barnes***. This element is conclusively established if the party proves he was not served. ***Caldwell v. Barnes.*** 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:

(1) 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.

(2) 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***.

(3) 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 action, issue citation to the defendant on the bill of review (the former plaintiff) 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 case.

If the petitioner proves his claims at trial, then a single 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

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

Judgment for Personal 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. In addition to the other relief granted in such cases, the court may enforce its judgment by attachment and fine. *Rule 505.2.* This means that if the defendant does not turn over the personal property, the court may issue a writ of attachment to have the defendant brought before the court to show cause why they should not be held in contempt and fined.

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.

C. Abstract of Judgment

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.*


KEY POINT

What is the Purpose of an Abstract of Judgment?

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.

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.

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 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.*

When May an Abstract of Judgment be Issued?

An abstract of judgment may be issued when a final judgment has been entered. *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.

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.

D. Writ of Execution

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. Property Code §§ 42.001, 42.002.

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.

When May a Writ of Execution be Issued?

COMMON PITFALL

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 thirtieth 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.*

KEY POINT

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.

KEY POINT

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: (1) the requirements for appeal are not met, that is the appeal was not properly perfected; (2) the case is

one which cannot be appealed; or (3) 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 76-78.*** 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 clerk or the judge, 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. *Rule 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.*

How Long is the Writ Valid?

KEY POINT

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 524(j).* When the writ is returned, the judge must note the return in the docket and show the manner in which it was executed. *Rule 524(j).*

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

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.

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 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*

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.***

E. Writ of Garnishment

What is a Writ of Garnishment?

KEY POINT

A writ of garnishment is a process for seizing assets 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. A writ of garnishment is the legal process by which the plaintiff can require the bank to turn over the money in the account to satisfy the judgment.

Justice Court May Issue the Writ

A clerk of a justice court may issue a writ of garnishment returnable to the court. *Civil Practice and Remedies Code § 63.002.*

When May the Writ be Issued?

A writ of garnishment may be issued either before a judgment has been entered or after judgment. *Civil Practice and Remedies Code § 63.001*; *Rules 657, 658.*

Requirements for Issuance of a Writ of Garnishment:
In order for a writ of garnishment to issue, one of the following requirements must be met:

- A writ of attachment has been issued. ***See pages 96-99.***
- 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.
- The plaintiff has a final judgment and files an affidavit 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.

If the Garnishment is Before the Judgment:
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," that is it must be readily ascertainable by reference to a document signed by the defendant. A pre-judgment garnishment is not available for a tort claim (such as a personal injury suit) or if the amount of the claim is uncertain, indefinite or unliquidated. ***In re ATW Investments, Inc.; Fogel v. White.***

Also, if the writ is sought before final judgment, then there must be a court hearing, which may be ex parte, and the plaintiff must post a bond in an amount fixed by the court conditioned on the plaintiff prosecuting his suit and paying, to the extent of the bond, all damages and costs adjudged against him for wrongfully suing out the writ of garnishment. *Rule 658, 658a.*

What Property May be Seized?

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A writ of garnishment may be levied only against **personal property**, not real property. ***Fitzgerald v. Brown, Smith & Marsh Bros.*** 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.* 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.***

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.* A garnishee is a person holding property of the judgment debtor, such as a bank in which the judgment debtor has opened an account. Once the requirements for issuance of the writ are met, the clerk or judge must docket the case in the name of the plaintiff 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.*

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).

Proceedings Following the Garnishee's Answer to the Writ:

What happens next in a writ of garnishment proceeding depends on how the garnishee responds to the writ:

Possible Course of Proceedings

What happens depends on the garnishee:
(1) Fails to answer;
(2) Admits indebtedness to defendant;
(3) Denies indebtedness to defendant;
(4) Answer is controverted; then there is a trial.

(1) Garnishee Fails to Answer: If the garnishee fails to file an answer, then the court may issue a default judgment against the garnishee for the full amount of the judgment against the defendant. *Rule 667.*

(2) Garnishee Answers and Admits Indebtedness 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 for the amount found to be due from the garnishee to the defendant (unless the amount of the indebtedness exceeds the amount of the plaintiff's judgment against the defendant, in which case the judgment against the garnishee shall be in the full amount of the judgment rendered against the defendant). *Rule 668.*

(3) Garnishee Denies Indebtedness: If the garnishee files an answer denying that it is indebted to the defendant, or has any of the defendant's property in its possession, and that it does not know of anyone else who holds the defendant's property

(or if he does he 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.*

(4) Garnishee's Answer is Controverted: Either the plaintiff or the defendant may controvert 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; **Atteberry, Inc. v. Standard Brass & Mfg.***

Costs:

If the garnishee is discharged based on its answer, the costs (including reasonable attorney's fees for the garnishee) are taxed against the plaintiff. If the answer of the garnishee is not controverted and judgment is against the garnishee, then costs are taxed against the defendant. If the answer is contested, then costs are awarded based upon the outcome of the trial. *Rule 677.*

Replevy Bond:

The defendant has a right to replevy (that is, to recover) any property subject to garnishment by posting a bond 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 action. *Rule 664.* The defendant may also file a motion to substitute property for the property garnished, and the defendant or the garnishee may move to dissolve or modify the writ of garnishment. *Rule 664, 664a.*

F. Turnover Orders and Receivership

1. What is a Turnover Order?

KEY POINT

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 receiver or a constable for satisfaction of a judgment that has been rendered against them.

2. Authority to Issue a Turnover Order

A judgment creditor is entitled to receive aid from a 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. *Civil Practice and Remedies Code § 31.002*; ***Tanner v. McCarthy.***

3. 2017 Amendment

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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 has to 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.

4. Requirements for Issuance of a Turnover Order

Before a court may grant a turnover order, a judgment creditor must prove that:

(1) The judgment debtor owns property, including present or future rights to property; and

(2) The property is not exempt from attachment, execution, or seizure.

Black v. Shor; Tanner v. McCarthy.

Because Section 31.002 authorizes a turnover order 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.***

5. Must Notice be Given to the Judgment Debtor?

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.***

6. Where May the Application be Filed?

KEY POINT

The application must be filed in a court "of appropriate jurisdiction." This means either:

- The court that issued the judgment; or
- A court in which a judgment issued by another court was domesticated under the Uniform Enforcement of Foreign Judgments Act. ***Tanner v. McCarthy.***

Therefore, a justice court may not issue a turnover order for a judgment issued by another court unless that judgment is a foreign judgment (for example, a judgment from another state) that is domesticated by filing it in the justice court under the procedures required by the Uniform Enforcement of Foreign Judgments Act.

7. What May the Court 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;

- Otherwise apply the property to the satisfaction of the judgment; or

- Appoint a receiver with authority to take possession of nonexempt property, sell it and pay the proceeds to the judgment creditor as required to satisfy the judgment.

Civil Practice and Remedies Code § 31.002(b); ***Williams Farms Produce Sales, Inc. v. R & G Produce Co.***

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.***

KEY POINT

8. 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.**

9. If the Court Appoints a 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; the amount of the bond is 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.***

An order must be definite, clear and precise so that the person to whom it is directed has sufficient information as to his duties and does not have to interpret it or draw inferences or conclusions.

How Do You Handle Costs?

Costs may be included in a turnover order since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

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But if a receiver is appointed any finding of reasonable fees should not be made until **after** the work is completed. This is because a reasonable fee for the receiver cannot be determined in advance. The receiver's fee should be measured by the value of services rendered; and the results that the receiver accomplishes must be considered in determining a reasonable fee. ***Congleton v. Shoemaker.***

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.***

KEY POINT

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.

10. Summary of Turnover and Receivership Procedure:

1. The application must include evidence that the property requested is non-exempt.

2. The application must be filed in the court that issued the judgment or in which the judgment was domesticated under the Uniform Enforcement of Foreign Judgments Act.

3. The court may no longer require the judgment creditor to attempt to collect the judgment first by means of a writ of execution or writ of garnishment.

4. The court may but is not required to hold a hearing.

5. An order needs to provide guidance as to the property to be turned over and state that it is non-exempt.

6. Whether or not a receiver is appointed is within the court's discretion; instead of appointing a receiver, the court may order the property to be turned over to a constable or sheriff.

7. If the court appoints a receiver, an award of costs (including reasonable attorney's fees) should not be made in advance, but only after the work is completed and the results may be considered to determine whether the fee is reasonable.

G. Writ of Sequestration


KEY POINT

What is a Writ of Sequestration?

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.*

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 court until the court decides the rights of the parties to it. ***Harding v. Jessee Denning, Inc.***

When is a Writ of Sequestration Available?

A writ of sequestration is available in justice court in a lawsuit for:

- Title or possession of personal property or fixtures, or
- Foreclosure or enforcement of a lien or security interest on personal property or fixtures,

Where there is:

- 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, it 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. *Civil Practice and Remedies Code § 62.002.*

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

(1) 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.*

(2) Court Hearing: The writ may be issued only after a court hearing, which may be ex parte. *Rule 696.*

(3) 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.*

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; Memdoza 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 ten 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.*

H. Writ of Attachment


KEY POINT

What is a Writ of Attachment?
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*.

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.***

What Must the Plaintiff Show?

For a writ of attachment to issue the plaintiff must show the following:

(1) the defendant is indebted to the plaintiff;

(2) the attachment is not sought for the purpose of injuring or harassing the defendant; and

(3) 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, it 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. *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 so much of the property of the defendant found in the county of a value in the amount set by the court. *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.*

I. Payment of Unclaimed 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 is encumbered by 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 to 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*.

J. 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.

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.

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.*

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 **ten 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.

K. Revival of Dormant Judgment

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.

When Does a Judgment Become Dormant?

KEY POINT

If a writ of execution is not issued **within ten years** after rendition of a judgment, the judgment becomes dormant and execution may not issue unless the judgment is revived. If a writ of execution is issued within ten years after rendition of a judgment, and a second writ of execution is not issued within ten years of the first writ, then the judgment becomes dormant. 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.*

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; **In re E.D.***

Procedure When a Motion is Filed:

When someone files a request for a writ of scire facias along with the appropriate fees, 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 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.*** Therefore, any method of service allowed under Rule 501.4 would be sufficient. ***See pages 27-29.***

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 citation must be issued and served on the defendant as with any new case. 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 the Writ?

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 need only 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. 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.

L. Forms in a Civil Case

Forms relating to civil cases may be found on the TJCTC website at the following link: http://www.tjctc.org/tjctc-resources/forms.html

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.

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 provided the amount in controversy is within the court's jurisdiction. *Govt. Code § 27.031(a)(3).* The court does not have jurisdiction to foreclose a lien on real property. A lien foreclosure suit is filed and treated as a small claims case.

How Do We 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, suppose John Smith bought a car for $12,000 two years ago and has now defaulted on his loan and the car is currently worth $8,000. 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 94-96 for more information on sequestration.***

What if the Holder of the Lien Has Already Sold the Property?

A lien holder 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 sufficient 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 he was 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.

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."

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 to the jury; otherwise it will be tried to 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: RESOURCES

1. TJCTC Resource page: http://www.tjctc.org/tjctc-resources.html

    a. Legal Question Board: You may search the Legal Question Board for answers to a question you currently have or a similar question.

    b. Important Legal Updates

    c. Publications, including Newsletters, Forms and Flowcharts

    d. Electronic Publications

    e. Justice Court Rules – Time Periods

2. Quick Reference Trial Handbook 2013: http://gato-docs.its.txstate.edu/jcr:ce4a8589-dd94-4f7b-ac5c-82c5895a64a4/2013%20Quick%20Reference%20Trial%20Handbook.pdf

3. Texas Rules of Civil Procedure (including Rules 500 – 510): http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf

4. Texas Rules of Evidence: https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal2&Template=/CM/ContentDisplay.cfm&ContentID=27715

5. O'Connor's Texas Rules (Civil Trials 2017): https://www.oconnors.com/store/products/details/oconnors-texas-rules-civil-trials-2017

6. O'Connor's Texas CPRC Plus (2017-18): https://www.oconnors.com/store/products/details/oconnors-cprc-plus-2017

7. O'Connor's Texas Causes of Action (2017): https://www.oconnors.com/store/products/details/oconnors-texas-causes-of-action-2017

CHAPTER 14: APPENDIX OF CASES

*A-1 Parts Stop, Inc. v. Sims, 2016 WL 792390, at *3 (Tex. App.—Dallas Mar. 1, 2016, pet. denied)*

Alexander v. Hagedorn, 226 S.W.2d 996, 1001 (1950)

American Mortgage Corp. v. Samuell, 108 S.W.2d 193, 199 (Tex. 1937)

Atteberry, Inc. v. Standard Brass & Mfg., 270 S.W.2d 252, 255 (Tex. App.—Waco 1954, writ ref'd n.r.e.)

Baker v. Goldsmith, 582 S.W.2d 404, 406, 408-09 (Tex. 1979)

Batson v. Kentucky, 476 U.S. 79 (1986)

Beck v. Beck, 771 S.W.2d 141, 141-42 (Tex. 1989)

Black v. Shor, 443 S.W.3d 170, 175 (Tex. App.—Edinburg 2013, no pet.)

Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554-55 (Tex. 2000)

Borden v. McRae, 46 Tex. 396, 1877 WL 8543 (1877)

Burke v. Adoue, 3 Tex.Civ.App. 494, 22 S.W. 824, 825 (Galveston 1893, no writ)

Butler v. Contiental Airlines, Inc., 31 S.W.3d 642, 647 (Tex. App.—Houston [1st Dist.] 2000, pet. denied)

Cadle Co. v. Rollins, 2010 WL 670561, at *2 (Tex. App—Houston [1st Dist.] Feb. 25, 2010, no pet.)

Caldwell v. Barnes, 154 S.W.3d 93, 96, 97 (Tex. 2004)

Campbell v. Knox, 52 S.W.2d 803, 806 (Tex. Civ. App.—Eastland 1932, writ dism'd)

Carey v. Sheets, 218 S.W.2d 881, 882 (Tex. Civ. App. 1949)

Carpenter v. Carpenter, 476 S.W.2d 469, 470 (Tex. App.—Dallas 1972, no writ)

Cavazos v. Hancock, 686 S.W.2d 284, 287 (Tex. App.—Amarillo 1985, no writ)

Centro Jurici de Instituto Tecnologico v. Intertravel, Inc., 2 S.W.3d 446, 449 (Tex. App.—San Antonio 1999, no pet.)

Chance v. Peace, 151 S.W. 843, 845 (Tex. Civ. App.—Galveston 1912, no writ)

Chandler v. El Paso Nat'l Bank, 589 S.W.2d 832, 836 (Tex. App.—El Paso 1979, no writ)

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.)

Failing v. Equity Management Corp., 674 S.W.2d 906, 908-09 (Tex.App.-Houston [1st Dist.] 1984, no writ)

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.)

Harding v. Jessee Denning, Inc., 176 S.W.2d 862, 864 (Tex. Civ. App.—San Antonio 1929, writ ref'd n.r..e.)

Harter v. Curry, 105 S.W. 988, 988-89 (Tex. 1907)

Henderson v. Chrisman, 2016 WL 1702221, at *3 (Tex. App.—Dallas Apr. 27, 2016, no pet.)

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.)

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)

Kieschnick v. Martin, 208 S.W. 948, 951 (Tex. Civ. App.—Austin 1919, no pet.)

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)

Moyer v. Moyer, 183 S.W.3d 48, 53-54 (Tex. App.—Austin 2005, no pet.)

Memdoza v. Singer Sewing Mach. Co., 84 S.W.2d 715, 716 (Tex. 1935)

Mullins v. Coussons, 745 S.W.2d 50 (Tex. App.—Houston [14th Dist.] 1987, no writ

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)

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.)

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)

Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc., 780 S.W.2d 952, 954 (Tex. App.—Fort Worth 1989, no writ)

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)