

Introduction to Civil Procedure

with Mark Zuniga
and John Lackey

1

Resources

- Civil Deskbook
- Rules 500-507 of Texas Rules of Civil Procedure
- Chapter 15 of the Civil Practice & Remedies Code
- www.tjctc.org
 - Flowcharts, forms, self-represented litigant info packets

2

What are civil cases?

- Lawsuits
 - *Personal injury (car accident)*
 - *Breach of contract (fail to pay a mechanic)*
 - *Evictions*

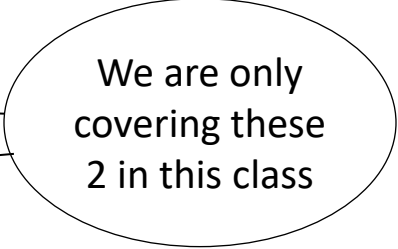
3

What kinds of civil cases can
you hear?

4

4 kinds of civil cases in justice court:

- Small Claims
- Debt Claim
- Evictions
- Repair and Remedy



We are only covering these 2 in this class

5

Small Claims Case

- Seeking money damages, possession of an item, personal injury or property damage
 - Car accidents
 - Someone falls at a grocery store
- Claim can be for no more than **\$20,000**
 - You count attorney's fees but not court costs

Texas Rule of Civil Procedure 500.3(a); Civil Deskbook Chapter 2 for more discussion on jurisdictional limits

6

Debt Claim Case

- Can **only** be for a debt (money owed)
 - Can **only** be filed by:
 - an “assignee” (someone who bought the debt from another), collection agency, a financial institution, or a person or entity “primarily engaged in the business of lending money at interest” (bank, credit union, payday lender)
 - *Usually* – credit card debt
 - *Often* – debt bought by a 3rd party
 - Claim can be for **no more than \$20,000 at time of filing**
 - Include attorney’s fees but not court costs
- Texas Rule of Civil Procedure 500.3(b)

7

Poll 1:

Plaintiff sues Defendant for stealing his credit card and running up charges on it. Is this a small claims case or a debt claim case?

- Small claims
- Debt claim

8

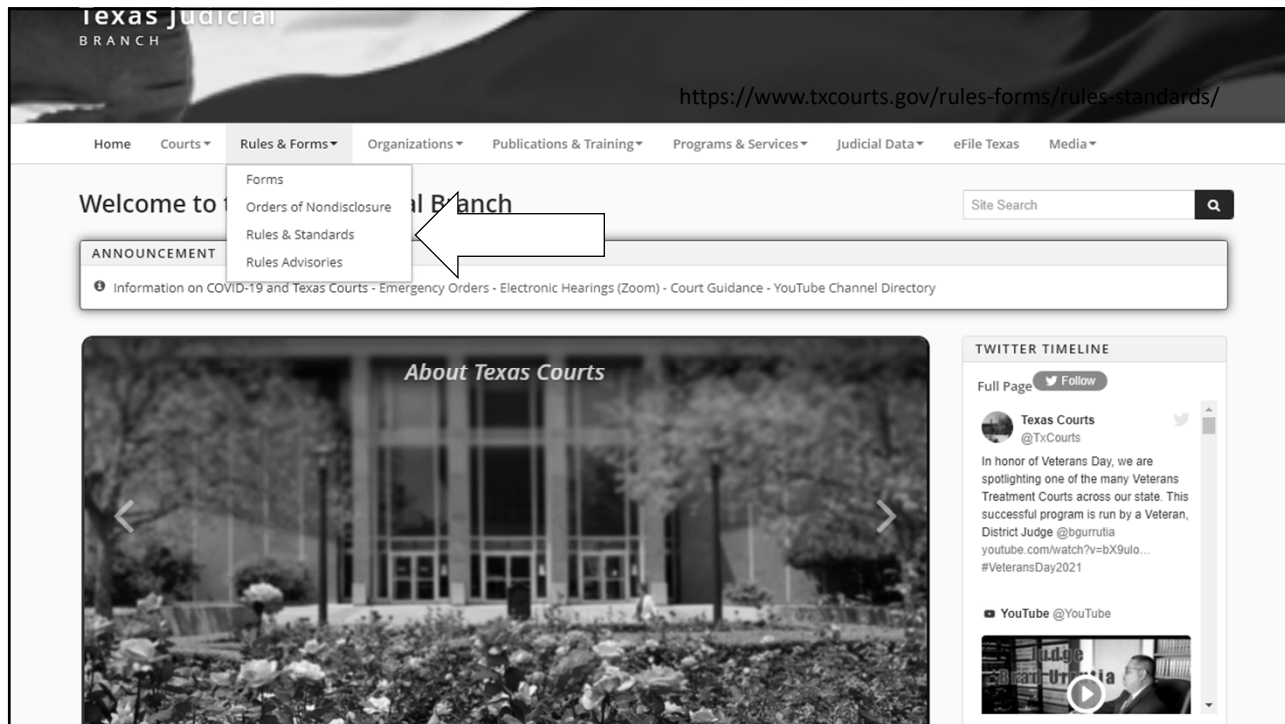
What are the rules and
where can I find them?

9

Texas Supreme Court

- Creates the Rules of Civil Procedure
- The rules are found on their website:
www.txcourts.gov

10



11

Justice Court Rules

"TEXAS RULES OF CIVIL PROCEDURE

PART V - RULES OF PRACTICE IN JUSTICE COURTS

[RULES 523 to 591. Repealed effective August 31, 2013]

RULE 500. GENERAL RULES

RULE 500.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

- (a) the past, present, and future tense each includes the other;
- (b) the term "it" includes a person of either gender or an entity; and
- (c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

- (a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

12

Texas Rules of Civil Procedure

- Within the TRCP are special **Justice Court Rules (500-510)**
- These rules apply so that people don't need an attorney to come to court.
- District and county court rules are more formal, and don't apply unless you choose to apply one for fairness to all parties.

Texas Rules of Civil Procedure 500.3(e)

13

Example: Nunc Pro Tunc

- This is an action the court can take if there was a clerical mistake in a judgment
 - Example: \$500 entered as the judgment amount when it should have been \$5000
- There is no rule for this in the justice court rules
- Wouldn't it be **fair to all parties** to correct a judgment if it is wrong?
This is a good example of when you would follow the district and county court rules

Texas Rules of Civil Procedure Rule 316

14

Civil Practice & Remedies Code

- This code contains many of the statutes (the laws passed by the legislature) governing civil cases
- The Civil Practice and Remedies Code sets out things such as jurisdiction, venue, and judgments

15

The screenshot shows the top navigation bar of the Texas Constitution and Statutes website. It includes a logo of the Texas State Capitol, the text "Texas Constitution and Statutes", and a "Home" link. Below the navigation bar is a search and navigation menu with options for "Home", "Search", "Download", and "Statutes By Date". A paragraph of text explains that the statutes are current through the 1st Called Session of the 85th Legislature, August 2017, and that the constitution text is current through amendments approved in November 2017. A "Quick Search" section contains a form with three dropdown menus: "Code" (set to "Civil Practice and Remedies Code"), "Article/Chapter" (set to "Select Chapter"), and "Art./Sec.". Below the form are "Go" and "Reset" buttons. On the right side, a "Quick Links" box contains several links: "Linking to Texas Constitution and Statutes", "Texas Legislature Online", "Index to Sections Affected", "Texas Administrative Code", "Texas Law Timeline", "Amendments to the Texas Constitution Since 1876", and "Constitutional Amendments Search". At the bottom left, there are two expandable menu items: "TEXAS CONSTITUTION" and "TEXAS STATUTES".

https://statutes.capitol.texas.gov/

16

CIVIL PRACTICE AND REMEDIES CODE
TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE B. TRIAL MATTERS

CHAPTER 15. VENUE

SUBCHAPTER A. DEFINITIONS; GENERAL RULES

Sec. 15.001. DEFINITIONS. In this chapter:

(a) "Principal office" means a principal office of the corporation, unincorporated association, or partnership in this state in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a principal office.

(b) "Proper venue" means:

- (1) the venue required by the mandatory provisions of Subchapter B or another statute prescribing mandatory venue; or
- (2) if Subdivision (1) does not apply, the venue provided by this subchapter or Subchapter C.

Added by Acts 1995, 74th Leg., ch. 138, Sec. 1, eff. Aug. 28, 1995.

Sec. 15.002. VENUE: GENERAL RULE. (a) Except as otherwise provided by this subchapter or Subchapter B or C, all lawsuits shall be brought

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
(2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;
(3) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or
(4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

(b) For the convenience of the parties and witnesses and in the interest of justice, a court may transfer an action from a county of proper venue under this subchapter or Subchapter C to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the answer, where the court finds:

- (1) maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal

17

Civil Deskbook

- TJCTC reference book
- Includes the law, rules, and helpful practice tips
- Also links to additional resources

18

Civil Deskbook Website

<https://www.tjctc.org/tjctc-resources/Deskbooks.html>

19

What is one of the first rules you must follow when setting up your court to hear civil cases?

20

Must make various rules and code sections available to the public

Which ones? (*hint: look at the Justice Court Rules*)

- Rules of Civil Procedure
- Rules of Evidence
- Civil Practice and Remedies Code chapter on venue
- All of the above

This should already be in place, but you may improve or modify to increase access to justice

Texas Rules of Civil Procedure 500.3(f), 502.4(a)

21

How to make them accessible?

Possibilities:

- Link on your website
- Have copies you can sell for 10 cents a page
 - Texas Administrative Code Title 1, Part 3, Chapter 70, Rule § 70.10
- Have copies people can borrow and return

22

Best Practice

- Have the JP rules of procedure (the “500s”) as an additional, separate handout from the whole set of rules
- Have the post-judgment rules as an additional separate handout
- Have the “to borrow” handouts in folders and laminated or in clear folders to keep them from wearing out

23

TJCTC Website

- You are always welcome to link to the TJCTC website
- **Resources, including:** self-represented litigant packets, deskbooks, charts, and forms are available to the public without the need to log in

24

What is the best mindset for justice court?

25

The People's Court

- Rules are not supposed to be used as “gotcha” tactics
- In most courts, the party who is able to argue their case within the rules of procedure and evidence should win
- In justice court, the rules are set up so that the party who has the facts on their side should win, instead of needing a lawyer to make snazzy arguments or find legal loopholes

26

Special authority of the judge in justice court

- JPs have special authority to “**develop the facts of the case**”
- This is so a court can emphasize fairness over procedure

What does that mean?

- You may question a witness or party (Example: if a party forgot to state how much they are owed)
- You may summon any person or party to appear as a witness

When can you do this?

- When you consider it necessary to **ensure a correct judgment and a speedy disposition.**

27

But isn't this helping a party or being an advocate for one side?

- No! Your questions should be targeted to discover what actually happened, not to try to ensure one party wins or loses.
- Sometimes the questions will help the plaintiff (when they have a good case).
- Sometimes they will help the defendant (when the plaintiff doesn't have a good case).

28

Poll 2:

- A plaintiff has filed a small claims suit, but already has a judgment for what appears to be the same claim in another county. Can the court set a hearing and ask the plaintiff questions to determine whether it is really the same claim?
 - Yes
 - No

29

Exceptions to “ex parte” for JP court

- Normally, a judge is not supposed to speak with one party about a case if the other party is not present
- There are 2 exceptions for justice court
 - You can discuss with a party on one side which court can hear a case
 - Example: *you can tell one side it is the right kind of case for a JP and can be filed in your court*
 - You can discuss if a case might more appropriately be resolved in some other judicial or non-judicial forum
 - Example: *you can tell one side that the eviction case should be filed in a different precinct*

Texas Code of Judicial Conduct, Canon 6

30

What You Can't Say

- You may not provide help or have discussions about the merits of the case – that would be legal advice
 - Example: *you cannot tell them if you think they have a good case*
 - Example: *you cannot tell them who they should sue*
 - Example: *you cannot tell them what kind of case to file if they explain a problem that they have*

Texas Code of Judicial Conduct, Canon 6

31

Access and Technology

- Because of the high volume of self-represented litigants (SRL), it is very important to make information and resources:
 - Accessible
 - User-friendly
 - Practical

Article: Changing Times, Changing Relationships for the Bench and Civil Bar, Paula Hannaford-Agor, *Trends in State Courts*, NCSC

32

Breakout Question 1:

What can you do in your court to make information and resources accessible, user-friendly, and practical for self-represented litigants?

33

How does a case come to your court?

- File a petition
- Pay a filing fee

34

The Petition – Small Claims

The document that begins a lawsuit that says:

- Who is suing – Plaintiff
- Who the Plaintiff is suing – Defendant
- What the Plaintiff claims that the Defendant did wrong
- What the Plaintiff wants (called “relief”)
 - Money
 - Personal Property

Texas Rules of Civil Procedure, Rule 502.2

35

The Petition – Debt Claim

Debt claim petitions require additional information

Three kinds of debt claim petitions:

1. Credit Accounts
2. Assigned Debt
 - Requires information about who sold the debt

3. Personal & Business Loans:

These petitions require information about:

- Date the debt was due
- Account information
- Interest is plaintiff seeking

Texas Rules of Civil Procedure, Rule 508.2 (a)

36

Filing Fee

- A filing fee is required to process the petition that is filed
- This fee is the total of a few different fees that are charged

For a full explanation of the fees, see the Fines, Fees, & Costs Deskbook

37

What if the plaintiff cannot afford a filing fee?

- A plaintiff who is unable to afford to pay the filing and service fees may file a Statement of Inability to Afford Payment of Court Costs
- Often just called a Statement of Inability
- A copy of the Statement is available on the TJCTC website

38

Statement of inability to pay form

- Your clerk **must** make this form available for free to anyone without the person having to request the form.
 - For example, if someone says, “I don’t have enough money”
- This is an access to justice issue, and it must be easy for the plaintiff to get and fill out this form.

Texas Rules of Civil Procedure, Rule 502.3

The case will not be filed without a petition and a filing fee or Statement of Inability

39

If a petition is presented & a
filing fee paid (or Statement of
Inability filed)

Your clerk should **accept** the case and put it on
the docket

40

The Docket

- What is it?
 - Ledger book or computer system that inputs the data from cases
- Why do we have it?
 - To keep the hundreds or thousands of cases organized

41

But wait! They filed a suit I
cannot hear!

Wrong case
Too much money

42

Wrong case? Too much money?

- You do not have **jurisdiction** (power to hear a case) over defamation (writing false things about another), slander (saying false things about another), or divorce cases
- You do not have jurisdiction over cases seeking more than \$20K, **but** cases may become worth more **after** they have been filed:
 - For example - the attorney does additional work and has increased the bill, or the plaintiff continues to get medical treatment and has more bills
 - This is called the “mere passage of time” exception
 - You still have jurisdiction if you had it when the case was filed
- Some cases are filed seeking more than \$20K
 - When you become aware of these cases, you should **dismiss** them.

43

Poll 3:

- A debt claim is filed in your court seeking \$19,000. While the case is pending, the debt gathers interest, raising the amount in controversy above \$20,000. Can you hear the case?
 - a. Yes
 - b. No

44

Dismissing a Civil Case

- Dismiss – ended by order of the court
- You would sign an order dismissing the case and should state the court does not have jurisdiction over:
 - The type of case filed *or*
 - The amount of money sought

45

OK, a case is filed & docketed – now
what happens?

Citation & Service

46

The Citation

- What is it?
 - The document that officially notifies a defendant that they are being sued
- Why do we have it?
 - For due process – it is notice of the lawsuit
- Where does it come from?
 - The clerk “*promptly*” issues (creates/prints out)
 - The clerk keeps copy for the court’s file

Texas Rules of Civil Procedure, Rules 500.2(b) & 501.(a)

47

What happens with the citation?

What is going to happen with it?

- Someone will give it to the defendant along with the petition and anything else the plaintiff filed with the petition (like a Statement of Inability)
- Called **service** – term used to refer to the delivery of the citation to the defendant

Texas Rules of Civil Procedure, Rule 500.2(z) & 501.2

48

Who will serve the citation?

- Constable or Sheriff (or their deputies)
- Private process server (person certified by a Supreme Court process)
- Court clerk – *by registered or certified mail only*
 - The plaintiff is responsible for service, but cannot serve it themselves
- A person authorized by court order who is at least 18

Texas Rules of Civil Procedure, Rule 501.2(a)

49

How are the citations served?

1. In person
2. By registered/certified mail – restricted delivery
– with a return receipt

Texas Rules of Civil Procedure, Rule 501.2 (b)

50

Cost of Service

- Plaintiff is responsible for service and for any fees
- The fee is given to whoever serves the process, but the court usually collects the constable & sheriff fees
- Commissioners court sets the fee for constables and sheriffs (average \$100)
- Private process servers vary greatly (can be over \$400)
- If by clerk, may ONLY charge reasonable amount for certified mail *“may collect advance payment for the expense of postage for serving process by mail”*

Texas Rules of Civil Procedure, Rule 501.2(c) & Attorney General Opinion No. DM-250A October 29, 1996

51

What if plaintiff filed a statement of inability to pay?

- The constable, sheriff, or clerk will still serve

Yes, this means that service will happen with no cost to the plaintiff

- If the plaintiff wins, the defendant may be asked to pay the service fee and filing fee

52

Poll 4:

- When can a Statement of Inability to Pay be challenged?
 - a. Any time
 - b. When the Statement is not accompanied by a legal aid provider certificate

53

How does the court know service happened?

Constable, Sheriff, or private process server must file a **“return of service”**

- They will document when they received the citation
- Move forward with service *“without delay”*
- Complete the return so the court knows what happened with the citation

Texas Rules of Civil Procedure, Rule 501.3(a)

54

What if service doesn't work?

Alternative Service

55

Alternative Service

- The person (constable, sheriff, private process server) will file a request with the court for alternative service
- The request must:
 - ***Be a sworn statement***
 - *Describe how they tried to serve*
 - *List the defendant's usual place of business, home, or other place where they can likely be found*

Texas Rules of Civil Procedure, Rule 501.2 (e)

56

The Court Allows Alternative Service

- You **choose** whether to allow the alternative service to go forward. The constable, sheriff, or process server will:
 - Mail the petition first class; **and**
 - Leave with someone over 16 years of age at residence or other place where defendant can likely be found, **or**
 - Any other method the court finds “**reasonably likely to provide the defendant notice**”

A return is still required with alternative service

Texas Rules of Civil Procedure, Rule 501.2(e)

57

The defendant is served – now
what?

Answer & Appearance

58

The Answer

- The response document from the defendant
- It is their chance to deny the allegations
 - They can just say, “I deny the plaintiff’s claims,” or “what the plaintiff says isn’t true,” or even just “deny,” or anything similar
- They can also admit to some allegations
- They can state any defenses
 - Defenses – legal excuse for what you did
 - *“I did not pay the contractor because they did not complete the job”*

Texas Rules of Civil Procedure, Rule 502.5 (a)

59

General Denial

- The defendant may deny the plaintiff’s claims with just one word: like “denied” or “disagree” or “wrong”
- They do not have to specifically deny each statement or fact
- They do not have to state any defenses at the time of answering – they can state them later during the case or the trial

Texas Rules of Civil Procedure, Rule 502.5(b)

60

Poll 5:

- If a defendant wants to raise a statute of limitations defense in a civil case in justice court:
 - a. It's sufficient if they file a general denial.
 - b. They have to plead it as an affirmative defense.

61

When is the answer due?

- By the **14th day** after the defendant was served
- The court **must** still accept a "late" answer unless a default judgment has already been signed
 - *More info on default judgments coming later*

Texas Rules of Civil Procedure, Rule 502.5(d)

62

Deadlines and Timing

- To determine a due date:
- Do not count the day something was filed
- Count every calendar day (**Saturday, Sunday, Holidays**)
- If the due date is a weekend or holiday, it is due the next business day
- If the due date lands on a day the court closes before 5:00pm, it is due the court's next business day

Texas Rules of Civil Procedure, Rule 500.5(a)

63

What about if a document is mailed?

- It is considered **on time** if:
 - If it is mailed on or before the due date
- and**
- The court receives it within 10 days of the due date

Texas Rules of Civil Procedure, Rule 500.5(b)

64

You may always extend a deadline as the judge, if you think it is justified

Exception: cannot extend deadlines for a new trial or appeal

Texas Rules of Civil Procedure, Rule 500.5(c)

65

Breakout Question 2:

What are some circumstances where you think it would be appropriate to extend a deadline?

66

Venue

How do I know if the case was filed in the “right” place?

67

The Easy Answer:

- In almost every situation – there is no reason for the court to be concerned about where a case was filed **unless** the defendant brings it up
- The defendant may request to move the case through a motion to transfer venue (a **motion** is where a party asks the court to do something)
- If the defendant does not raise the issue, it stays in the court it was filed in

68

Venue

- The geographical place that a case is supposed to be heard
- Meaning, which court is the “right” court for the case to be filed

Texas Rules of Civil Procedure, Rule 502.4(a)

69

Where is proper venue?

- Generally, county **and** precinct where the:
 - Defendant lives;
 - Incident happened (car accident, property damage);
 - Contract was to take place (where the building is located that the new roof was to be put on); **or**
 - Property is located (if suing for possession of an item)

Texas Rules of Civil Procedure, Rule 502.4 (b); Civil Practice and Remedies Code, Chapter 15, Subchapter E

70

Motion to Transfer Venue

- Defendant has 21 days after they answer to file
- Must have a sworn statement
- State the county **and** precinct where the case should be transferred
 - If missing this information, must give the party notice and a chance to fix it
- State why the venue is improper

Texas Rules of Civil Procedure, Rule 502.4(d)

71

What does the court do with the motion?

- Must set a hearing
- Plaintiff may, but does not have to, file a response
- Listens to testimony and consider any documents provided
- Rule on the motion:
 - Denied – it stays in your court and moves forward
 - Granted – it gets transferred to the other court as requested

Texas Rules of Civil Procedure, Rule 502.4 (d)(1)(A)-(D)

72

Court's Order Granting Motion to Transfer

- Must give a reason if transferring
- Must name the court (county and precinct) where the case is transferred to
- What gets sent to the new court?
 - *a certified transcript,*
 - *copy of the docket,*
 - *bill of costs* (list of the money spent by the plaintiff on the case, such as filing fees and service), and
 - *original case papers* (similar to an appeal, which we will talk about later)

Texas Rules of Civil Procedure, Rule 502.4 (d)(1)(g)

73

What if you are the court receiving the transfer?

- Notify the plaintiff that the case was received
- **Only if** the case came from **another county**, notify the plaintiff that they have 14 days to pay a new filing fee (or file a Statement of Inability)
 - If the plaintiff does not pay the **filing fee** the case will be dismissed
 - **Does not** have to pay a new fee if transferred within same county

Texas Rules of Civil Procedure, Rule 502.4(d)(1)(G)

74

Poll 6:

- If the court does not have jurisdiction over a case, then:
 - a. The case must be dismissed by the court even if a motion to dismiss is not filed.
 - b. The court only dismisses the case if the defendant files a motion asking the court to dismiss it.

75

Poll 7:

- If the court does not have venue over a case, then:
 - a. The case must be transferred by the court even if a motion to transfer is not filed.
 - b. The court only transfers the case if the defendant files a motion asking the court to transfer it.

76

There are two other kinds of motions to transfer venue.

77

1. Fair Trial Venue Change

- Either party believes the court **or** precinct will not be fair
- File a sworn motion
- Include 2 affidavits by credible people
- Case will be transferred to the closest precinct, or another judge may hear the case in your court
- Must be filed at least 7 days before trial, unless the court makes an exception

Texas Rules of Civil Procedure, Rule 502.4(e)

78

2. Both Parties Agree to Transfer

- Need written consent by all parties
- Transfer to the court that the parties asked for

Texas Rules of Civil Procedure, Rule 502.4 (f)

79

What if the
defendant never
answers?

Default Judgment

80

Default Judgment

- What is it?
 - A judgment given after a defendant doesn't answer and the plaintiff proves its damages
- Why do we have it?
 - So that a defendant cannot just avoid the judgment by not showing up or answering the lawsuit
- How will we know we are going to hear it?
 - In general, the plaintiff needs to ask for a default judgment from the court

81

What must be filed to proceed with a default?

1. Proof that the defendant was served
Texas Rules of Civil Procedure, Rule 503.1(a)
2. Return of service on file for 3 days before hearing
Texas Rules of Civil Procedure, Rule 501.3(h)
3. Statement of defendant's last known address
Texas Rules of Civil Procedure, Rule 503.1(d)
4. Servicemember's Civil Relief Act affidavit
50 U.S.C. §3911(5), Civil Deskbook Ch. 4.L.6

82

What if you are concerned with service?

- You “must ensure that service was proper, and may hold a hearing for this purpose”

Texas Rules of Civil Procedure, Rule 503.1(a)

- You may set a hearing
- You may order the private process server (or other person who served) and the plaintiff to court to explain your concerns with service

83

Examples of Concerns with Service

- Numerous cases served all over the county in a very small amount of time
- A description of the person served that does not match the defendant
- Make sure the person was alive when served!

84

Breakout Question 3:

- Your court receives a return of service from a private process server.
- Under Rule 501.3(e), returns of service from anyone other than a sheriff, constable, or clerk of the court must be signed under penalty of perjury, but this private process server did not attach an affidavit to the return of service.
- The defendant does not appear.
- **Can you grant a default judgment?**

85

The Default Hearing

- Notice
 - The court should send notice of the hearing to **both** the plaintiff and defendant so that the parties have at least 3 days notice of the hearing
 - Texas Rules of Civil Procedure 501.4
- Plaintiff must appear (may appear by phone)
 - Texas Rules of Civil Procedure 503.1(a)
- In small claims, a hearing is **required** for a default **unless** it is a suit over a document signed by the defendant. For that procedure, see Civil Deskbook Chapter 4 (L)(3).

86

Issue to Decide at the Hearing

- You will assume that the defendant admits they have done something wrong because they have not answered the lawsuit
- Only **damages** are left for you to decide
 - Damages = the amount of money (or the item) that is what the plaintiff claims the defendant owes them
 - You can hear testimony and review documents – receipts, a contract, pictures of damage
 - The plaintiff still must **prove** the damages – they do not automatically get a judgment

Texas Rules of Civil Procedure, Rule 503.1(a)(2)

87

Defaults – Debt Claim – No Hearing

- **No hearing** if the plaintiff gives sufficient written proof of damages
- Otherwise, the plaintiff may request a default judgment hearing to prove its damages.
- How do you let the plaintiff know the proof they submitted isn't good enough?
 - *Use TJCTC's default judgment form to tell them you could not grant the default*

Texas Rules of Civil Procedure, Rule 508.3

88

Defaults – Debt Claim – Plaintiff’s Proof

- Plaintiff’s proof of damages must either be attached to the petition and served on the defendant or filed with the court after the defendant failed to answer
- Proof may be offered in a sworn statement or in live testimony and may include documentary evidence.

Texas Rules of Civil Procedure, Rule 508.3

89

Defaults – Debt Claim

How do you know what to look for in the proof?

- It is your discretion, but consider if they proved:
 - 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;
 - That the amount due on the account or loan as of a date certain after all payment 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.

Texas Rules of Civil Procedure, Rule 508.3

90

Outcome of the Default *(same for both kinds of cases!)*

- You will issue a judgment for the amount of damages that the plaintiff can prove
- If the plaintiff cannot prove its damages, you must issue a judgment in favor of the defendant

Texas Rules of Civil Procedure, Rule 503.1(a) (2)

We will discuss how to issue a judgment and what a judgment is later...

91

What if a defendant answers late?

If there is an answer of any kind before you have signed the default judgment – even if the defendant runs through the courthouse door at the default hearing – you **may not** issue a default.

92

Poll 8:

- A small claims case is filed in your court for personal injuries the plaintiff claims he suffered when the defendant ran into him while driving an electric scooter. The defendant fails to file an answer to the petition. Do you have to have a hearing before granting a default judgment?
 - a. Yes
 - b. No

93

Poll 9:

- A debt claim case is filed in your court and the plaintiff attaches documentation showing that the defendant had a credit card account, breached the terms of payment, the amount due on the account and that the plaintiff owns the account and how they acquired it. The defendant fails to file an answer to the petition. Do you have to have a hearing before granting a default judgment?
 - a. Yes
 - b. No

94

The case is filed, the
defendant has answered –
what do I do now?

Set the case
for trial

95

Setting the case for trial

- When?
 - The first setting has to give **at least 45 days notice**
- How?
 - Notice is sent by the court to all parties and any attorneys of record
- Postponing (continuances)
 - A party may need to reschedule the trial
 - The new date should be reasonable – not too far in the future, but also enough time to let people prepare and take time off work, etc.

Texas Rules of Civil Procedure, Rule 503.3

96

What if the case is not moving on your docket?

- It is the plaintiff's obligation to keep the case moving
 - *Example: the plaintiff hasn't gotten good service, and hasn't asked for alternative service*
 - The plaintiff may forget about the case
 - The plaintiff may not be sure what to do next
 - The plaintiff may be trying to settle the case
- You may set the case for a dismissal docket (sometimes called DWOP) when there is a lack of activity

97

Dismissals

- Before a case is dismissed, due process requires **notice**.
- If dismissed at trial or for any other reason, the court should have provided notice to the plaintiff and an opportunity to be heard (show cause).
- The court has inherent authority to manage its docket.

Villarreal v. San Antonio Truck & Equipment, 994 S.W.2d 628 (1999)

98

How to proceed with a dismissal?

1. Send notice to the plaintiff that their case will be dismissed if they do not respond by a listed date and time
2. Set it on a dismissal docket (if you have or want to create one)
3. If the plaintiff does not respond – dismiss the case
4. If the plaintiff does respond, you decide if their explanation is acceptable to continue the case (it almost always should be)
 - Many courts call dismissals and the dockets DWOP (*Dismissal for Want of Prosecution*)

99

What else can happen once the case is scheduled?

Pretrial conference

- Some courts find this helpful so that the parties can get organized, and the court can explain the rules and procedure of trial before the actual date
 - For example, a party may not realize that they can have a witness summoned by the court to appear and testify

Texas Rules of Civil Procedure, Rule 500.2(k)

100

Discovery & Summary Disposition

Discovery may take place

- This is the exchange between the parties of documents, witnesses and other information that may be used or discussed during the trial
- You will have a separate course on Discovery in Stage III

Summary Disposition – when a party thinks there isn't a need for a trial in a case. Summary Disposition is discussed in Chapter 4 of the Civil Deskbook

Texas Rules of Civil Procedure, Rule 503.2 & 503.4

101

What if there are other documents the parties want to serve?

Service of papers *other than citation*

Documents other than citation must be served on the other side by the filing party in one of the following ways:

- In person
- Mail – courier, certified, or registered mail
- Fax
- Email – If both parties agree to this in writing or in the petition

Must give the other side 3 days notice of a hearing

Parties must include a certificate of service

Texas Rules of Civil Procedure, Rule 501.4

102

What if the Plaintiff wants to modify their pleadings?

The Plaintiff can do this as much as they want up to 7 days from trial. If it is less than 7 days from trial, they can modify their pleadings as long as it doesn't create an unfair surprise to the defendant.

What are some examples of changes that are and are not unfair surprise?

If the Plaintiff needs to make a change that does create unfair surprise, the Defendant should be granted a continuance, so that they can prepare for this new information.

Texas Rules of Civil Procedure, Rule 502.7

103

What should happen at trial?

The actual procedure is **very**
straightforward!

104

The Day of Trial

- Call the case set
 - “Jeff Smith vs. Credit One Bank, case number 12345-6A”
 - “Is the plaintiff here?”
 - “Is the defendant here?”
 - Texas Rules of Civil Procedure, Rule 503.6

105

Who has to be there? Both parties!

- If the plaintiff fails to show
 - Postpone *or*
 - Dismiss
- If the defendant fails to show
 - Postpone *or*
 - Proceed – plaintiff must prove that the defendant did something wrong *and* prove damages; if the plaintiff proves both, a judgment can be issued against the defendant

Texas Rules of Civil Procedure, Rule 503.6

106

How straightforward?

- Opening statement
 - Plaintiff
 - Defendant's response
- Plaintiff's case
 - May have a witness testify
 - Can show the court documents, pictures, etc.
 - Plaintiff "rests"
- Defendant's case
 - May have a witness testify
 - Can show the court documents, pictures, etc.
 - Defendant "rests"
- Plaintiff's rebuttal case
- Closing arguments

107

Don't worry – you have resources!

- Trial Notebook – Located on TJCTC website
- Stage III will include a walk-through of a criminal and civil trial

108

Burden of Proof in Civil Cases

- Remember this from the intro class?
- The plaintiff has the burden in civil cases (***preponderance of the evidence***)
- Different from criminal
- Examples of ways to think of it:
 - *More likely than not*
 - *51%*
 - *One side tips the scales slightly in favor of the other*
 - *Which side do you believe most*

109

Who decides which party wins?

- Jury
 - **Only** if a party requested one (*different than criminal cases*)
 - Must request 14 days before the trial
 - Must pay a \$22 jury fee
 - Decision is called a **verdict**
- Judge
 - **bench trial** means a trial with no jury

Texas Rules of Civil Procedure, Rule 504.1

110

What do you tell the jury to do?

- Do **not** charge the jury (*give specific definitions of the law*)
- Do give them instructions to select a foreperson and decide the case
- Do have your bailiff take them to the jury room to deliberate (*decide the case*)
- Do give them the jury verdict form

Texas Rules of Civil Procedure, Rule 504.3

111

The Judgment

Document that
states who won the
case and how much,
if anything, is owed

112

Judgment

- What is the purpose?
 - To have written (*or electronic*) proof of the outcome of a court proceeding
 - To conclusively resolve the issues heard during the trial

113

What must be in the judgment?

- Clearly state who won the case
- Be signed by the judge
- Be dated the date of the judge's signature
- Must award costs allowed by law to the successful party
- Include a post-judgment interest rate (all money judgments must include one, see the front page of TJCTC site for link to find the rate, and Civil Deskbook Chapter 7.A.4 for more information)

114

What must be in the judgment? cont.

- All judgments that award money must include a specific warning in English and Spanish to the defendant, required by the Texas Supreme Court:
 - If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.

Texas Rules of Civil Procedure, Rule 505.1(c) – (d)

115

How long do you have authority over a case?

- 21 days after the date the judgment is signed
- This is called **plenary power**
- You cannot make any changes to a judgment more than 21 days later
 - **Exception:** Nunc pro tunc (*the example from earlier*) is authority to correct a mistake in the written judgment
 - This change can always be made, even many years later
 - Example: the court ordered the judgment for \$5000, but the clerk accidentally wrote \$500

Texas Rules of Civil Procedure, Rule 507.1

116

Poll 10:

- Which of the following changes can you **not** make with a nunc pro tunc?
 - a. Correct a typo in a party's name
 - b. Correct the judgment date
 - c. Change a dismissal with prejudice to a dismissal without prejudice

117

When the Judgment is
for Personal Property

118

Judgment for Personal Property

- A person may sue someone in justice court to get some item of personal property back (provided it is worth less than \$20,000).
 - For example, someone borrows your lawn mower and refuses to return it.
 - Or an angry ex-girlfriend takes her ex-boyfriend's fancy racing bike.
- A judgment in such a case must order that the plaintiff recover the specific articles of personal property, if they can be found, and if not, then their value as assessed by the judge or jury.
 - Rule 505.1(e)

119

“Special Writ”

- When a judgment is for personal property, the court may award a “Special Writ” for the seizure and delivery of that property to the plaintiff.
 - Rule 505.2
- What is a “special writ?”
 - Some courts use a form called “writ of possession” – confusing because of eviction cases.
 - Others just use a form called “special writ for seizure and delivery of property.”
 - Still others use a “writ of execution for specific articles.”
 - The title isn't important as long as the writ directs the constable to do what Rule 505.2 says.

120

Writ of Sequestration

- Another filing you may see in a case for personal property is a request for a **writ of sequestration**. This is a pre-judgment tool that allows a court in some situations to order property seized until the trial is over, so that it is not sold, hidden, damaged, or destroyed during the pendency of the case.
- For more, see Civil Deskbook Chapter 10.C.2.

121

What if a party
doesn't like the
outcome of a
case?

Post-Judgment
Motions & Appeal

122

Post-Judgment Motions

- **Post-judgment:** after the judgment is signed
- **Motion:** a request from the court

- Motion to Reinstate the Case
- Motion to Set Aside Default
- Motion for New Trial

123

Motion to Reinstate the Case

- Remember when a case is dismissed because of failure to move forward?
- This motion allows the case to be restarted
- Why not just re-file?
 - Filing and service fees
 - Maybe the statute of limitations has now run (*More about statutes of limitations in civil cases in Stage 3*)

124

Motion to Set Aside Default

- Remember when a case ends in a default because a party failed to answer?
- This motion allows the case to be re-opened and the defendant to respond
- Why would someone fail to answer and then file this motion?
 - They never received notice

125

Motion for New Trial

- Filed if the case went to a trial and the party thinks they lost because of how the trial proceeded
- This motion allows the case to be reheard **in the same** justice court
- Why would someone ask for a new trial?
 - Maybe they were not able to call a witness who could not make the trial date?
 - Maybe they have discovered new information?

126

When, How, & Why – All 3 Types

- File within 14 days of the signed dismissal or default
- Party filing must serve other side by next business day
- Court has 21 days from the judgment date to rule
- Reason for granting motion
 - Motion to reinstate & set aside default: **Good cause**
 - Motion for new trial: **Justice was not done in the trial of the case**

Texas Rules of Civil Procedure, Rule 505.3

127

When are post-judgment motions denied as a matter of law (*automatically*)?

If the judge has not ruled on one of these motions, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

Texas Rules of Civil Procedure, Rule 505.3(e)

128

Poll 11:

- Does a party need to file a post-judgment motion in order to get a higher court to review the case?
 - a. Yes
 - b. No

129

What if the party wants a higher court to review?

- **Appeal:** when a party asks for the next higher court to review a case
- What is the deadline to file?
 - 21 days after the judgment is signed **or**
 - 21 days after the motion to set aside, motion for new trial, or motion to reinstate is denied
- Where does the case go?
 - County court
 - **De Novo** – The entire case is presented all over as if there had been no previous trial

Texas Rules of Civil Procedure, Rules 506.1 (a) & 506.3

130

Breakout Question 4:

- What are some reasons why someone would appeal a case?
- What are the pros and cons of an appeal:
 - From the parties' perspective
 - From the court's perspective

131

Appeal Bond

- What is a bond?
 - A promise to see the appeal through and cover any damages if they fail to
- How is a bond made?
 - Surety – another person promises to pay
- What are the alternatives to a bond?
 - Statement of inability to pay
 - Cash deposit
- **How do you decide the amount?**

132

Appeal Bond Amount

- Plaintiff = \$500
- Defendant = double the amount of the judgment

Texas Rules of Civil Procedure, Rule 506.1 (b)-(d)

133

Statement of Inability to Afford Payment of Court Costs

- These statements can be contested if no legal aid certificate – one party can claim that the other does not qualify to have the bond waived
- Your decision on the Statement of Inability can be appealed to county court to challenge your ruling
- This does not happen often, but can be tricky

See Civil Deskbook Chapter 8 for full procedure

134

Who sends notice of the appeal?

- If filed with a Statement of Inability:
 - **The court must provide notice** to all other parties by the **next business day**.
- If posting a cash deposit or surety bond:
 - **The appealing party** must serve written notice of the appeal on all other parties **within 7** days (can mail or fax this)

Texas Rules of Civil Procedure, Rule 506.1(e)

135

What happens next?

- The clerk will send the following to county court:
 - Certified copy of all docket entries
 - A certified copy of the bill of costs
 - The original papers in the case, and
- Collect a Transcript fee of \$10.00

Government Code § 101.151(2)(A) & Texas Rules of Civil Procedure, Rule 506.2

136

Jurisdiction & County Court

- An appeal is complete or perfected once a bond, cash or Statement of Inability is posted
- A perfected appeal means jurisdiction is transferred and the justice court judgment no longer exists
- **But**
- The party appealing must also **pay the filing fee in county court**
- If the party does not pay the filing fee, county court will not consider the case perfected and will dismiss the appeal and return it to justice court for enforcement of the original judgment.

Texas Rules of Civil Procedure, Rule 506.1(h)&(i), 143a

137

Poll 12:

- If a party wants to appeal a judgment in a small claim case, they may file:
 - a. A notice of appeal.
 - b. An appeal bond.
 - c. A motion to transfer the case to the county court.

138

Poll 13:

- When a case is appealed from justice court to county court, the county court will:
 - a. Hear the case de novo, meaning starting all over from scratch.
 - b. Only reverse the justice court if it finds a serious error in the way the justice court decided the case.

139

A judgment is signed, now
what?
Enforcement of Civil
Judgments

140

How Long Can Judgments Be Enforced?

- A judgment is good for 10 years after it is issued.
- If the 10-year clock gets down to zero without a writ of execution being issued, the judgment cannot be enforced, and is called a **“dormant judgment.”**

141

How Long Can Judgments Be Enforced?

- When a writ of execution is issued, it resets the clock, and the judgment is now good for 10 years from that date.
 - This can happen over and over again!
 - Only writs of execution reset the clock, not garnishments, abstracts, or anything else!

142

How Long Can Judgments Be Enforced?

A dormant judgment can be revived within 2 years of going dormant. The process to revive the dormant judgment is called a **scire facias**.

If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

143

Writ of Scire Facias

- A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived.
- The court doesn't issue this on its own, only on request by the judgment creditor.
- See Chapter 10.J of the Civil Deskbook for more!

144

Judgment Deadline Calculation Discussion

- A judgment is issued on October 29, 2015. If no writ of execution is ever issued, when would it go dormant? When would it die?
- Now, say instead the judgment creditor gets a writ of execution on September 1, 2019 and an abstract of judgment on January 15, 2023. Assuming nothing else happens, when would it go dormant? When would it die?

145

Payment of Unclaimed Judgments

Civil Practice & Remedies Code Sec. 31.008

146

Payment of Unclaimed Judgments

- There is a process available for judgment debtors who either cannot locate the judgment creditor to pay the judgment, or for situations where the judgment creditor refuses to give a release of judgment.
 - Maybe they sued for \$13,000 and got \$2,000 and won't sign off unless they are paid \$13,000.
- See Chapter 10.I of the Civil Deskbook for details

147

Post-Judgment Discovery



- If the plaintiff doesn't know what assets the defendant has that might satisfy the judgment, the plaintiff can request **post-judgment discovery**.
- These are questions designed to determine what assets exist.
- This will be covered at Stage 3!

148

Discussed in-depth in Stage III (and in Ch. 10 of the Civil Deskbook!)

- Common tools to enforce judgments that will be discussed include:
 - Abstracts of Judgment – can be used to place a lien on defendant's property
 - Writs of Execution – take a defendant's property and sell it
 - Writs of Garnishment – take property of the defendant's held by a third party (like a bank)
 - Turnover Orders – order the defendant to turn over property to satisfy the judgment
 - Receiverships – appoint a person to work to find property belonging to the defendant or negotiate a payment plan
 - Exempt Property Hearings – when the court must decide if the defendant's property is legally allowed to be used to satisfy the judgment.

149

Reminder!

- Not every topic that comes up in civil cases can be addressed in these classes! Take a look in the Civil Deskbook for other topics such as:
 - Bill of Review (used to re-open a case after judgment) – Chapter 9B
 - Domesticating Foreign Judgments (to allow collection in TX of another state's judgment) – Chapter 10K
 - Lien Foreclosures on Personal Property – Chapter 11
 - Deed Restriction Cases – Chapter 12
 - Ordering Production of POA Documents – Chapter 13

150