

Civil Trials

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Resources

Trial Notebook Deskbook

Civil Deskbook

Rules 500 – 510, Texas Rules of Civil Procedure

Civil Practice and Remedies Code

Legal Board Questions

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Class Participation Throughout

- Things labeled **“Questions”**
 - Raise hand
- Things Labeled **“Activity”**
 - Discuss answers with table
 - Nominate spokesperson to share the table’s answers

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Activity 1--Before Taking The Bench Read Petition and Answer Handout

- What is this case about?
- Should I read all the pleadings?
- What is each side asking for?
- Is there anything I need to know before the trial?
- What should I **not do**?
- Any other best practices?

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Controlling Court Room Questions

- What is the best way to handle cell phones going off?
- Make everyone turn their cell phones in?
- Remove anyone whose cell phone goes off?
- What if it happens again?
- Three strikes and you are out rule?

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Control Of The Courtroom

- The court should exercise reasonable control over the presentation of evidence and examination of witnesses.
 - TRE 611
 - Court may apply it under Rule 500.3(e)
- How should the court maintain control?

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Civil Jury Question

Is the judge
correct about
civil jury trials?

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Right To A Jury Trial

- Either party is entitled to a jury trial.
- But the party must file a written demand for a jury no later than 14 days before the date the case is set for trial.
- And pay a jury fee of \$22.
-- Rule 504.1(a) and (b)

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- A demand for a jury may be included in a pleading (a petition, answer or counterclaim).
- 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)

Right To A Jury Trial Continued

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Motion To Dismiss Questions

- Now what do you do?
- Take up the motion to dismiss?
- Is that even a motion in justice court?
- Do you explain what a motion for summary disposition is?
- Should you give both sides an SRL packet and reset the trial date or set it for a pretrial conference?
- Should you have set it for a pretrial conference to begin with?

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Summary Disposition

Elements:

- There are no genuinely disputed facts that would prevent a judgment in favor of the party;
- There is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or
- There is no evidence of one or more essential elements of the plaintiff's claim.

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Summary Disposition 2

Should be granted **very rarely!**

The court must not consider a motion for summary disposition unless it has been on file for at least 14 days

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Pretrial Conference

- Remember: The court may hold a pretrial conference at the request of either party, or on its own, in any case once the parties have appeared (the defendant has filed an answer).
- Issues for a pretrial conference:
 - Discovery
 - Amendment or clarification of pleadings
 - Admission of facts or documents

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Pretrial Conference

Limitation on the number of witnesses

Identification of any facts the parties agree on

Mediation

Possibility of settlement

Trial dates

Interpreters

Any other issue the court believes is appropriate

- -- Rule 503.4(a)

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Continuance

- A party may file a motion requesting that the trial be postponed.
- The motion must state why a postponement is necessary.
- The judge, for good cause, may postpone any trial for a reasonable time.

-- Rule 503.3(b)

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SRL Packets

- What are they?
 - Self-Represented Litigation Packets
 - Information packets and forms you can give to parties who are not represented by a lawyer in your court to help them understand what they have to do.
- They are available at this page on the TJCTC website:
<https://www.tjctc.org/SRL>

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SRL Packets Continued

Packets include:

- Filing A Small Claims Case
- When A Small Claims Case Has Been Filed Against You
- When A Debt Claims Case Has Been Filed Against You
- Filing An Eviction Case
- When An Eviction Case Has Been Filed Against You

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SRL Referral Numbers

- 2020 Referral Directory from the Legal Access Division of the State Bar of Texas - 1.800.204.2222, Ext. 1855
- The State Bar Lawyer Referral & Information Service - 1.800.252.9690
- Texas Rio Grande Legal Aid - 1.888.988.9996
- Lone Star Legal Aid - 1.713.652.0077
- Legal Aid of Northwest Texas - 1.888.529.5277

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SRL Referral Websites

- <http://www.texascourthelp.gov> --General helpful information and forms
- <http://www.sll.texas.gov> - Statutes
- <https://www.txcourts.gov/rules-forms/rules-standards> - Rules of Civil Procedure

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Potential Juror Roll Call Occurs

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Selecting Jury Panel (AKA Venire)

First, check with your county to see if they have system in place

Your clerk may need to contact potential jurors

Summons sent—either by Clerk, Justice Court, or County or District Court (County specific)

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Juror Screening

- Mandatory questions
- Check with County—may be handled by previous juror registration system
- If not, you must ask them!
- Jurors must have certain qualifications-Voir Dire handout
- Other excuses may apply (missed work usually not good enough), ex: scheduled surgery
- Exemptions Apply—Voir Dire Handout
 - Can still serve if they want to

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Voir Dire

Both side asks questions

- Usually, each side gets limited time
- Generally, 15 minutes each for Justice Court

Court asks questions

Questions not allowed:

- Irrelevant, immaterial, repetitious, or commitment

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Peremptory And Batson

Each side may strike 3 people from the jury pool without telling the court a reason, as long it is not challenged by a Batson Challenge

Batson is when one side argues (and objects) that the other side used a peremptory strikes to eliminate jurors for race, ethnicity, or sex.

If objected to, the party will have to give a reason and the court decides if it is neutral and not related to race, ethnicity, or gender.

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Strikes For Cause

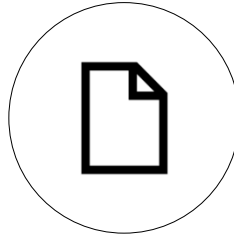
- Objection made alleging juror is disqualified
- Such as bias or prejudice
- Party must explain to the judge reasoning
- No limit on #
- Example: "I don't like lawsuits. People should work it out privately."
- Judge can always follow up and ask if they can put that aside and be fair and impartial

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Remember!



Jurors take two oaths!!!



See voir dire handout!

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The Rules of Evidence Do Not Apply To Cases In Justice Court:

- unless the judge decides that a particular rule must be followed to ensure the proceedings are fair to all parties;
or
- unless specifically provided by law or the rules of civil procedure. -- Rule 500.3(e)
- Good Examples: Evidence of offers to compromise and if someone had liability insurance=not admissible. TRE 408 and 411

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How To Rule?

- “I will give it the weight to which it is entitled.”
- “The objection is overruled.”
- “The objections is sustained.”
- You do not need to explain your ruling; just rule and move on.

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Legal Issue 1

- **What is a hold harmless clause?**
 - A term of an agreement in which one of the parties agrees not to hold the other one responsible for any loss, damage or legal liability.
- **Is it always enforceable?**
 - No! It must be conspicuous!
 - That means it must be in all caps or bold or underlined or marked in some way to call attention to it.



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Legal Issue 2

- **What is an independent contractor?**
 - A person who performs services for an entity free from the control of the entity paying for the services.
 - An independent contractor works under his own name, uses his own equipment, and manages the details of the work.
 - An employee works under the control of their employer.
- What counts is what they actually do, not what is in a contract between the entity and a third party (for example, a customer).

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How Could You Know This?

- If you are aware of the issues before trial:
 - Search the TJCTC Legal Board for similar questions
 - Post a question on the TJCTC Legal Board
 - Call TJCTC
 - Check with another judge
 - Do an online search to find some authority
- If you become aware of them at trial:
 - Take a recess and do the above if possible
- Use your common sense!

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Activity 2—Reviewing the Evidence

- Go through case documents
- Determine what is most important and why
- Determine the tables favorite dog name from groomer's calendar!

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Judge To Develop The Case

- In order to develop the facts of the case, 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

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Activity 3--Developing The Case

- What else would you want to know?
- What questions do you have?
- What can you do to learn more?
- Do you need to hear from the groomer?
- If so, what questions would you want to ask her?

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Zoom Questions

Is this procedure
okay?

Zoom okay still?
Teleconference?

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See TRCP 500.10

- Judge may allow or require appearance by videoconference, teleconference, or other available electronic means
- Many factors to consider in that determination
 - Case type, number of parties/witness, objections (etc.)
- Reasonable notice required in the papers of the case
- Open court still generally required

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Activity 4—Judgment Time

- Who wins: Bruce Ways or Bewitching Bark Salon?
- How much in damages do you award to whoever wins?
- What do you say to the parties when you announce your decision/jury decision?
- What do you sign?

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Questions?

