



Civil Process 101

Constable Clerks
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Agenda

02.

What is Civil
Process??

04.

Your Role



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How long have you worked in a constable's office?

1. 1 year or less
2. 1-5 years
3. 6-10 years
4. 10+ years

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Constable Duties

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Must Do

Can Do

Cannot Do

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What is Civil Process?

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“

IT'S A CIVIL MATTER
LET THE CONSTABLE
HANDLE IT!

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Parties in a Civil Case

Plaintiff

Person/entity suing

Defendant

Person/entity being sued

**Judgment
Creditor**

Person/entity who the judgment is owed to

**Judgment
Debtor**

Person/entity that owes the judgment

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Civil Process is the broad term for the delivery of court papers to parties in a civil court case.

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What are Types of Civil Process?

Subpoenas

Citations &
Notices

Did we

forget
Protective
Orders?



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Serve + Return

Serve + Action + Return



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Process Related to Civil Cases & Judgments

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What is a Citation?

In general, citations are writs issued by a court commanding a person to appear at a certain time and place to do something demanded in the writ or show cause for why they have not done so.

In Texas, this term is used for the official notice to a defendant that a civil case has been filed against them. It directs defendants to file an answer with the court.

***Remember, class c misdemeanor tickets are also called citations, so when in doubt, clarify - civil or criminal?!*

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Rules for Citations Different in Each Court

- It is important to note that the rules in JP court are different than in county and district courts.

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Service by Social Media

- Yes, this can happen!
- **Civil Practice and Remedies Code 17.033** – substituted service through social media presence
- **Rule 106, Rule 500.3(e)**
- From the Rule comments: “In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology.”

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What is a Subpoena?

A document summoning a witness to come to court.

A subpoena duces tecum is a subpoena that requires a witness to bring documents, records, or some other item with them to court.

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What is a Writ?

A writ is a court order, usually telling an officer (constable, sheriff, process server, etc.), to do a specific thing related to a lawsuit.
(Action)

Common writs: writ of execution, writ of attachment, writ of sequestration, writ of habeas corpus, writ of reentry, writ of possession, writ of restoration, writ of retrieval, and writ of garnishment.

Common orders similar to writs: temporary restraining order, injunction, order of sale, order appointing receiver, turnover order, and distress warrant.

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Writs of Execution

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Property

- An order ordering an officer to seize property.
- Writs of attachment for property are ordered pre-judgment to ensure that the property is available to be sold to pay the judgment. These are sometimes confused with writs of sequestration.

Person

- A writ that orders an officer to take a person into custody and bring them before a court.
- Writs of attachment (for a person) or *capias* are sometimes ordered when a witness doesn't show up after being subpoenaed to court or they have violated some other court order (in contempt of court).

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Writs of Sequestration

A pre-judgment court order to an officer to seize specific personal property while a case is pending to preserve and protect the property until the case is decided.

This will usually be requested if a plaintiff is afraid that the defendant will sell, damage, or hide the property that the suit is about.

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Writs of Garnishment

A case where a creditor asks the court to order a third party who is indebted to or holds property of the debtor to turn over that property to the creditor.

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Garnishment Module

- For detailed information on Garnishment procedures, see the Garnishment Module under *Online Education & Self-Paced Modules* on the TJCTC website.

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Key Concept: Exempt Property

- Property that can't be seized to pay a debt.
- Each state chooses what property is exempt.
- The types of property are generally those types that would allow a person to keep their job and have a place to live.
- Common types in Texas: homestead, retirement/healthcare/college savings plans, tools of the trade, heirlooms, etc.

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Exempt Property Module

- For detailed information on exempt property and hearing procedures, see the Exempt Property Module under *Online Education & Self-Paced Modules* on the TJCTC website.

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Exempt Property Benchcard

The screenshot shows a website navigation menu with the following items: Justices of the Peace, Constables, Court Personnel, Legal Resources (selected), Online Learning, Contact Us, Log In, Handouts, and 2021 Legislative Updates. A dropdown menu is open under 'Legal Resources', listing: Overview, Legal Question Board, Deskbooks, Forms, Charts and Checklists, Bench Exchange Program and Virtual Hearings Module, Constable Resources, The Docket, Traffic Safety Initiative, and Additional Resources. The main content area below the menu includes an 'Expand' button, a prompt to 'Click the links below for specific resources', and a list of links: Administrative Proceedings - Updated January 2022, Civil Procedure - updated January 2022 (with 'Exempt Property Benchcard' highlighted), Default Judgment Flowcharts, Pre-Judgment Civil Procedure Flowchart, Post-Judgment Civil Procedure Flowchart, Post-Judgment Interest Flowchart, Criminal Procedure - Updated January 2022, Evictions - Updated December 2021, Fines, Fees, and Costs - updated January 2022, Inquests - Updated May 2022, Juvenile & Truancy, and Magistration - updated October 2021.

8/6/2024

Process Related Landlord/Tenant Issues



Landlord/Tenant Writs (Action)

Writs of Reentry

Writs of Retrieval

Distress Warrants

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Writs of Possession

- Many things under Texas law are called "writs of possession"
- In eviction cases this refers to an order requiring an officer to assist a landlord who won an eviction in taking possession of the residence that was in dispute.
- Most other types of "writs of possession" will be issued by a district court and will be handled as the rule/statute that allows them to be issued describes.

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Writs of Reentry and Restoration

Reentry

- An ex parte order requiring a landlord to let a tenant back into their rental unit after the landlord has locked the tenant out unlawfully.
- Procedures for writs of reentry can be found in *Property Code Chapters 92 (residential) and 93 (commercial)*.

Restoration

- An ex parte writ ordering a landlord who unlawfully shut off utility service to a residential tenant to restore the service. This is not available in commercial tenancies.

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Writs of Retrieval

- An order authorizing a peace officer to assist a person to enter their residence or former residence to retrieve specific items of personal property (listed in the statute) because the current occupant is denying them entry.
- **Items (*belonging to their applicant/dependent*) that can be retrieved:** medical records, medicine and medical supplies, clothing, child-care items, legal or financial documents (*and copies of electronic records of these documents*), checks or bank or credit cards in the name of the applicant, employment records, personal ID documents, assistance or service animals, wireless communication devices, tools/equipment/books/apparatus used in their trade or profession.

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Distress Warrants

An order to a sheriff or constable to seize a **commercial or agricultural** tenant's personal property, because the tenant owes back rent.

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Other Types of Process

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Protective Orders

An order requiring the person it is directed at to do or refrain from doing actions. This is sometimes called a "final protective order." Before issuing this order, a court will listen to evidence and make an affirmative finding that family violence occurred or make other findings related to sexual assault, stalking, or human trafficking.

These orders generally remain in place for 2 years. *There are additional time periods for some specific types of protective orders.* Violations of protective orders are criminally enforceable under Penal Code § 25.07.

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New Protective Order Forms

- The 88th Legislature passed SB 48, requiring OCA to create standardized forms for protective orders.
- Some forms are mandatory, and others are discretionary.
- Check with the courts you work with to make sure they know about this change.
- <https://www.txcourts.gov/rules-forms/standardized-protective-order-forms/>

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Criminal Subpoenas & Warrants

- Not technically civil process, but common for a constable's office to handle
- Criminal subpoenas have different requirements than civil subpoenas that can be found in the Code of Criminal Procedure
- Warrants are criminal writs ordering a law enforcement officer to take custody of a person charged with a crime and take them to jail or before a judge.

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Resources & Information

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Where is More Information on Civil Process??

TJCTC Deskbooks

- Civil Process Field Guide
- Practical Guide to Writs of Execution
- Civil Deskbook
- Evictions Deskbook

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

TJCTC Forms

- Civil Procedure Forms
- Eviction and Other Landlord-Tenant Forms

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

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Where is Even More Information on Civil Process??

TJCTC Self-Paced Modules Other Resources

- New to the Constable's Office Series
- Garnishment
- Legal Research & Resources


<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>

- Texas State Law Library - <https://www.sll.texas.gov/legal-help/>
- Texas Constitution & Statutes - <https://statutes.capitol.texas.gov/>
- Texas Rules of Civil Procedure – <https://txcourts.gov/rules-forms/rules-standards/>
- Attorney General Opinions - <https://www.texasattorneygeneral.gov/attorney-general-opinions>

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Your Role

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**What does your
day-to-day look like?**

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Remember, the Duties of the Constable Filter Down to the Rest of the Office

Duty of Successor in Office

Duty to Deliver Money Collected

Duty to Execute Process

Duty Related to Seized Personal Property

Duty to Endorse Writ Properly

Duty to Return Writ Properly

Duty to Levy and Sell

Duty to Hold Proper Sale

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Gathering Information Prior to Service

- Researching people before serving them can be helpful.
- DPS Secure Site:
<https://securesite.dps.texas.gov/DpsWebsite/index.aspx>
- Your county system (follow any policies for use).
- TLETS: It's possible that this can't be used for civil process (depending on interpretation of "criminal justice purpose" and exact circumstances). Follow the use policy and consult with your county attorney/DPS rep about what is acceptable.

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