

Fundamentals Of Civil Cases: Filing Through Judgment

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1

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2

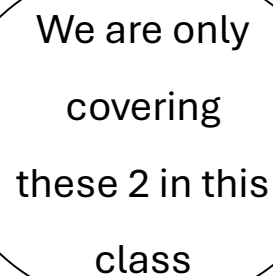
What Is Civil Procedure?

- The rules that apply to **civil** cases!
- So, what are civil cases?
 - When a person or company is suing another person or company
 - For money or for return of personal property (like a car or jewelry)

3

4 Kinds Of Civil Cases In Justice Court:

- Small Claims
- Debt Claims
- Evictions
- Other Landlord/Tenant Areas



We are only
covering
these 2 in this
class

4

Small Claims Case

- Seeking money damages or possession of an item
- Claim can be for no more than \$20,000
- If regarding an item, the item cannot be **worth** more than that amount.

5

Examples Of Small Claims Cases

- Contracts
- Car accidents
- Someone falls at a grocery store
- Dispute over who owns a pet

6

Debt Claim Case Basics

- Can **only** be for a debt (money owed)

7

Debt Claim vs. Small Claims

- Debt cases can only be filed by:
 - an 'assignee' (someone who bought the debt)
 - a collection agency,
 - a financial institution, or
 - a person or entity 'primarily engaged in the business of lending money at interest' (payday loan place)

8

Debt Claim Case

- **Usually** – credit card debt
- *Often* – debt bought by a 3rd party
- Claim can be for no more than \$20,000

9

Poll #1: Which cases have you had experience working on?

- A. Small Claims
- B. Debt Claims
- C. Both
- D. Neither

10

What Are The Rules And Where Can I Find Them?

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Texas Rules of Civil procedure

11

Texas Rules Of Civil Procedure

- Most of what you will need for a civil case

12

There Are 'Special' Rules That Apply

- only to justice court – Part V of the Rules (Rules 500-510)
 - There are specific rules for certain case types:
 - 508 = debt claim; 509 = repair and remedy; 510 = evictions
 - Rules 500 – 507 apply to all civil cases in justice court except where one of the specific rules above say something different.

13

Texas Rules Of Civil Procedure Outside of 500's and Rules of Evidence

- Can only apply if the judge decides to apply them for fairness or expressly stated elsewhere (usually related to enforcing judgments).

14

Texas Rules Of Civil Procedure Requirement

- These rules must be made available to anyone in your court

15

Rules Available?

- Some courts post them on their website, which is good!
- Get them in person in the court
 - Could have sets available to buy by paying the copy costs
 - Could have a laminated set available to borrow

16

Rules and Statutes:

www.txcourts.gov

- Has Texas Rules

www.sll.texas.gov/legal-help

- Has Texas Laws

17

Civil Deskbook!

- On TJCTC website
- Covers additional information and details not included in this presentation
- Includes the law, rules, and helpful practice tips
- Also contains links to additional resources

18

Other Resources – On TJCTC Website

www.tjctc.org

- Forms
- Recordings for Credit
- Live Webinars
- SRL Packets
- Self-Paced Modules
- Flowcharts and Checklists
- Legal Question Board/calls

19

Filing

20

How Does A Case Come

To Your Court?

Petition & Filing Fee or
Statement of Inability to Pay

21

The Petition –

Small Claims –

TRCP 502.2

The petition is the
document that
begins a lawsuit.

22

The Petition States:

- Who is suing (filing a case) – Plaintiff
- Who the Plaintiff is suing – Defendant
- What the Plaintiff claims that the Defendant did wrong (called a “cause of action”)
- What the Plaintiff wants (called “relief”)
 - Money (“damages”) or personal property

23

The Petition – Debt Claim

(1st rule different from small claims)

There are different requirements for the petition depending on the account type and the circumstances.

TRCP 508.2 (a)

24

Debt Claim Petition Differences

- Need to include date the debt was due, and amount owed.
- Need to include the account information.
- The interest amount being sought and if based on contract or statute
- If debt has been assigned or transferred, needs info on who sold the debt and when it was sold.

25

Filing Fee

- A filing fee is required to process the petition that is filed
- This fee covers the administrative costs of operating the court
- Effective January 1, 2022, in most counties the filing fee is \$54

26

Statement Of Inability Form

- A plaintiff who is unable to afford to pay the filing and service fees may use this form.
- *Formerly called "Pauper's Oath"*
- Courts must make form available for free and without the person having to request the form.
 - Must use this form or have the same information of the form

TRCP 502.3

27

Class Discussion 1

How can your court make a form available to someone without them asking for it?

How does your court make these forms available?

28

Class Discussion 2

Someone comes in and says, “I loaned my brother \$2,000 and he will not pay me back. Should I sue him in your court to get my money?”

29

A Case Is Filed & Docketed – Now What Happens?

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Citation & Service

30

The Citation (1 of 3)

- What is it?
 - The document that officially **notifies** each defendant that they are being sued
- Why do we have it?
 - For due process – notice of a lawsuit

TRCP 501.2

31

The Citation (2 of 3)

- Where does it come from?
 - The clerk 'promptly' issues (creates/prints out) the citation
 - The clerk keeps copy for the court's file

32

The Citation (3 of 3)

- 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
 - Called “service” -- term used to say that the citation will be delivered to the defendant

33

Who Will Serve The Citation?

- Constable or Sheriffs (or their deputies)
- Process server certified under order of the Supreme Court
- Court clerk – by registered or certified mail only
- A person authorized by court order who is 18 or older
- **No interested party may serve the citation!**

34

How Are The Citations Served?

- Personal delivery (**handing** it to them)
- Registered or certified mail, return receipt requested
 - Must also have "restricted delivery," meaning only the defendant can sign for it
- Alternative Service (More on this later)

35

Cost Of Service (1 of 2)

- Plaintiff is responsible for service and for any fees
- Commissioners sets the fee for constables and sheriffs
 - The plaintiff owes the fee to the constable/sheriff unless they filed a Statement of Inability
 - Often, they pay the fee to the court, and the court forwards it to the constable

36

Cost Of Service (2 of 2)

- Private process servers charge the plaintiff directly
- If the clerk serves by mail, may **only** charge reasonable amount for certified or restricted mail, cannot charge the same “service fee” as constables

37

What If Service Does Not Work?

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Alternative Service

38

Alternative Service (1 of 4)

- The plaintiff (or constable, sheriff, private process server) will file a request with the court for **alternative service**
TRCP 501.2

39

Alternative Service (2 of 4)

- 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

40

Alternative Service (3 of 4)

- The judge decides whether to allow alternative service
- If approved, the judge should order the constable, sheriff, or process server to mail the petition first class,
- and;

41

Alternative Service (4 of 4)

- Leave with someone over 16 years of age at defendant's residence or other place where defendant can likely be found
- **Or**
- Any other method the court finds "reasonably likely to provide the defendant notice"

42

How Does The Court Know If A Defendant Has Been Served?

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Return of Service

43

Poll #2: If the citation is served by a constable or process server, they must return **the citation** to the court after service is completed.

True

False

44

Return Of Service (2 of 2)

- Let's the court know if, when, and how service was attempted and/or completed

If the clerk serves by mail, how do they indicate that it has been done? Do they have to file a return of service with the court?

45

Citation Issued, But No Return? (1 of 2)

- Court cannot move forward
- Anytime the court cannot move forward on a case, it can be set on a dismissal docket (often called DWOP docket for “dismissal for want of prosecution”)
 - At this docket, the plaintiff must give a reason why the case should not be dismissed

46

Citation Issued, But No Return? (2 of 2)

- There is no set amount of time that a court must wait for a return of service
 - Many courts wait 3-6 months
 - This usually is only an issue in cases with private process servers



47

The Defendant Is Served. Now

What?

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Answer or Appearance

48

What Is The Answer? – TRCP 502.5

- Written response from the defendant
- It is their chance to deny the allegations
 - General Denial okay
- 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”*

49

Poll #3: Once the citation is served, how many days from the date of service does the defendant have to file an answer?

- A. 7 days
- B. 14 days
- C. 21 days
- D. They can file an answer anytime they want.

50

How Do You Determine Deadlines? – TRCP 500.5

- To determine a due date:
 - Do not count the day something was filed
 - Count every calendar day (including Saturdays, Sundays, and 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 5:00 pm, it is due the court's next business day

51

How Do You Count If A Document Is Mailed?

- It is considered 'on time' if:
 - If it is mailed on or before the due date (how do you know?)
 - **and**
 - The court receives it within **10 days** of the due date

52

Group Activity 1

**Use the calendar
on the next slide
to answer the
question.**

53

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|----------------------|---------|-----------|----------|--------------------|----------|
| 1 | 2 | 3 | 4 | 5 | 6 SERVED | 7 |
| 8 | 9 Holiday | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 Holiday | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

**Use The
Calendar To
Answer The
Question:**

Defendant was served on the 6th. The 9th and 23rd are holidays. The court closes at 4:30 PM each day.

What day is the defendant's answer due?

54

What If We Are Not The “Right” Court?

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Jurisdiction & Venue

55

Jurisdiction – Wrong “Kind Of Case”

- **Jurisdiction** means power for a court to act. Justice courts in civil cases have power to act (jurisdiction) on most cases under \$20,000. No jurisdiction over slander or defamation cases, or divorce cases
- Divorce or a suit for \$50,000 is filed, the court must dismiss it for lack of jurisdiction
 - The court does this automatically, they do not wait for someone to bring up the issue

56

Where Is Proper Venue?

Venue is the issue of what place the suit should be filed in.

57

Proper Venue--

- Generally, the 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**
 - Personal property is located (if suing for possession of an item)

58

What Should The Court Do If The Case Is Filed In The “Wrong Place”?

- In these cases– there is no reason for the court to be concerned about **where** the case was filed **unless** the defendant brings it up
 - Do **not** discourage a plaintiff from filing a civil case in your court or encourage them to file in a different court
- The defendant may request to move the case through a **motion to transfer venue**

59

Motion To Transfer Venue – TRCP 502.4

- Defendant has **21** days after they answer to file
- Must have a sworn statement that
 - States the county **and** precinct where the case should be transferred **and**
 - States why the current venue is improper
 - If no new county and precinct to transfer to, the court must notify them of this and give them 7 days to fix it

60

What Does The Court Do With The Motion?

Must set a hearing

Plaintiff may, but does not have to, file a response

Listen to testimony and consider any documents provided

Rule on the motion:

- Denied – it stays in your court
- Granted – it gets transferred

61

If The Case Is Transferred (1 of 3)

- The court issues an order transferring the case, giving the reason for the transfer, and naming the court (county and precinct) where the case is transferred to

62

If The Case Is Transferred (2 of 3)

- Clerk would send 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*

63

If The Case Is Transferred (3 of 3)

- The receiving court must notify the plaintiff that the case was received

64

Poll #4: If a case is transferred, a new filing fee must **always** be charged.

- A. True
- B. False

65

**What If The Defendant Never
Answers?**

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Default Judgment

66

Default Judgment – TRCP 503.1

- Generally, the plaintiff does not “automatically” win if the defendant does not answer within 14 days
- Instead, the case is now eligible for a default judgment hearing
- The court cannot give a default judgment if the defendant has answered, even if they answer late!

67

What Must Be On File To Proceed With A Default?

- Proof that the defendant was served
- Return of service on file for 3 days before hearing
- Statement of defendant's last known address
- Servicemember's Civil Relief Act affidavit

68

Servicemember's Civil Relief Act Affidavit (Military Affidavit)

- Cannot move forward unless SCRA affidavit confirms defendant is not in the military
- Civil Deskbook for what to do if the affidavit states that the defendant is in the military or that the plaintiff is unsure whether the defendant is in the military

69

The Default Hearing (1 of 3)

- In most cases, a default hearing must be held, where the plaintiff must prove its damages
- The court does not set the hearing automatically, it is only set if the plaintiff requests the hearing, orally, or in writing

70

The Default Hearing (2 of 3)

- Send notice to both parties
- Needs at least 3 days notice of the hearing

71

The Default Hearing (3 of 3)

- If the plaintiff does not appear, dismiss the case
- If the defendant does not appear, the judge hears the plaintiff's proof
 - If the defendant **does** appear, the court may **not** proceed with the default and the case must be set for trial

72

The Default Hearing - Judgment

- The court will issue a judgment for the amount of damages that the plaintiff can prove
- If the plaintiff cannot prove its damages, the court must issue a judgment in favor of the defendant even though they are not there!
- Either way, court must immediately send notice of judgment to defendant's address

73

No Answer, But No Default Request?

- If the defendant does not answer, but the plaintiff has not requested a default hearing, the court can set the case on a dismissal or DWOP docket at which time the plaintiff might request a default hearing

74

When A Default Hearing Is Not Required

- No hearing is needed, and the court should go ahead and enter a default judgment (if all other requirements are met) if the case is:
 - a debt claim case and the requirements of Rule 508.3 are followed; or
 - a small claims case ‘based on a written document’ and the requirements of Rule 503.1(a)(1) are followed

(See Chapter 4 of the Civil Deskbook for more info)

75

Group Activity 2

Use the Civil Deskbook to answer the question:

What are the requirements for when a default judgement can be granted without a hearing in a small claims case? And what page is this in the Deskbook?

76

What If The Defendant Wants To Seek A Remedy Against The Plaintiff?

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Counterclaim

77

Filing A Counterclaim

- A defendant may file a counter claim stating any claim against the plaintiff that is within the jurisdiction of the court
- Whether or not it is related to the claims in the plaintiff's original petition
- They must file a petition with the court and pay a filing fee or file a Statement of Inability to Afford Payment of Court Costs

78

Filing A Counterclaim Continued

- Same cause number, but is a separate claim
 - The Defendant in the original claim is now the Plaintiff in the counterclaim (“counter-plaintiff”)
 - The Plaintiff in the original claim is now the Defendant in the counterclaim (“counter-defendant”)
- The Judge will most likely hear both the original and the counterclaim together at the same time

79

Poll #5: Is the Defendant in a counterclaim suit (plaintiff in original suit) required to be served with a citation?

A. Yes

B. No

80

**The Case Is Filed & Defendant Has
Answered (And May Have Filed Their Own
Claim).**

What Do I Do Now?

--Set the Case for Trial

81

Setting The Case For Trial – TRCP 503.3

- Each party must get **45 days'** notice of the initial trial setting
- Notice is sent by the court to all parties and any attorneys "of record"

82

More On Setting The Case For Trial

- Postponing the trial (continuances)
 - In judge's discretion to grant, but should generally be allowed at least once for each party, if continuance is agreed, or if there is a good reason)
 - 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.

83

Pretrial Issues And Hearings (1 of 3)

- Pretrial discovery (TRCP 500.9)
 - Limited to what is reasonable and necessary – must be approved by the judge; certain procedures apply
- Mediation prior to trial (TRCP 503.5)

84

Pretrial Issues And Hearings (2 of 3)

- Other pre-trial motions and issues
 - Summary disposition, motion to dismiss, need for interpreters, issues with pleadings, etc. (TRCP 502.7, 503.2, 503.4, etc.)

85

Pretrial Issues And Hearings (3 of 3)

- Pretrial hearings (TRCP 503.4)
 - Optional once all parties have appeared in the case (at a party's request or court can set on its own) – must give reasonable notice to all parties
 - Good opportunity to address any outstanding issues and give parties a chance to settle

86

Jury Trial or Bench Trial? – TRCP 504.1

- In civil cases, the judge decides the case unless a party specifically requests a jury
 - A trial with the judge deciding is called a “bench trial”

87

Jury Trial Request

- To request a jury, a party must make a written request at least 14 days before trial and pay a \$22 jury fee

88

Poll #6: If one party does not show up for trial,
the other party automatically wins.

- A. True
- B. False

89

**What Must Be Done Once The
Trial Is Over?**

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Written Judgment

90

Judgment – TRCP 505.1

- The judge must announce their ruling in open court
- After the trial, the court must enter a written judgment that reflects that ruling
 - In a jury trial, this judgment will be based on the jury's decision, called a **verdict**

91

What Does The Judgment Look Like? – TRCP 505.1

- Clearly state who won the case, and how much is awarded
- Must award costs allowed by law to the successful party
 - For example, if the plaintiff wins, they would get the filing/service fees they paid
- Judgment Interest Rate (can be zero)
- Attorney's fees (if applicable)

92

Judgments Continued

- If the case was about possession of a specific item, the judgment must state the value of the item and order that the plaintiff recover the item
- Must be signed by the judge and dated with the date of the judge's signature

93

TRCP 505.1(c)(5) Requirement

If judgment awards monetary damages:

- It **must** state: "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. / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property."
- This requirement applies to default judgments as well.

94

Appeal Notice Requirement

Civil judgments must have:

- “You may appeal this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 21 days after this judgment was signed. See Texas Rule of Civil Procedure 506.”
- This requirement applies to default judgments as well.

95

Prohibited In Civil Judgments

- Payment Plans
 - Parties are free to make agreements with each other, but those agreements are separate from the judgment.
- Injunctive Relief
 - Ordering to do or refrain from doing something
 - Unless specifically authorized by statute.

96

We Have Judgment Forms!

- TJCTC has 4 separate judgment forms for use, depending on which party wins, and whether it was a bench or jury trial.
- <https://www.tjctc.org/tjctc-resources/forms.html>

97

Questions?

Thank you!

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98