

Civil Evidence: Guidelines and Best Practices

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Resources:

www.txcourts.gov

- Texas Rules of Evidence (TRE)
- Texas Rules of Civil Procedure (TRCP)

statutes.capitol.texas.gov

- All statutes other than the Rules of Civil Procedure

www.tjctc.org (TJCTC website)

- Deskbooks
- Legal question board, forms, webinars, modules, etc.

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Class Topics:

- TRE Issues
- TRCP Guidelines
 - Default Damages
 - Military Affidavit

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TRE Guidelines

The Rules of Evidence **do not apply except:**

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

TRCP 500.3 and TRE 101(f)

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Otherwise Specifically Provided By Law or These Rules

Example?

- Criminal Cases!

See CCP 45.011

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Scenario Question 1—

Work With Your Table and See Handout 1:

Plaintiff files suit for a contract dispute. Defendant files a motion to dismiss citing the Plaintiff's willingness to settle. Also, there is no Certificate of Service or other indication that the motion was served on Plaintiff. You dismiss the motion and send the dismissal to both parties. Plaintiff requests a copy of the motion after receiving the dismissal. Next, you order parties to mediation, and then you receive a motion (see Handout 1).

1. How do you rule on this motion? Explain your answer.

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Scenario Question 2—

Debt Claim



**Both Parties Have
Attorneys**



How Do You Rule?



**Attorneys file
Agreed Motion to
Apply all TREs.**

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Scenario Question 3—

Plaintiff files a case involving a car wreck. It involved a left turn into traffic and caused minor physical injuries and significant damage to Plaintiff's car. During the pre-trial hearing, Plaintiff talked for several minutes about how the Defendant was not insured against liability. Plaintiff says this shows how irresponsible the Defendant is and helps prove the Defendant would engage in unsafe driving and bad actions.

1. What is TRE 411?
2. If you get a motion after pre-trial to apply the rule, how do you rule?
3. Why?

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Scenario Question 4—

There is an eviction trial in your court. Plaintiff has an attorney and Defendant does not. The attorney keeps objecting citing that Defendant is violating the Texas Rules of Evidence. One example is the attorney is objecting to hearsay. What do you say to this attorney? Would anything change if it was a jury trial?

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JP Evidence Rules Found in TRCP

Today, we will cover:

- Default Damages
- Military Affidavits

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Default Damages—3 Ways

- Small Claims
- Small Claims—Based on a Written Document
- Debt Claims

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Small Claims

- Plaintiff request hearing
- Provides evidence of damages at hearing
 - ❑ If damages proven at hearing—gets default
 - ❑ If not—judgment for defendant

TRCP 503.1(a)(2)

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Small Claims—Based on a Written Document

No hearing Needed if:

- Claim based on written doc **signed by Defendant**
- Document filed with court
- Document served on Defendant
- Plaintiff filed sworn statement that:
 - True and accurate copy
 - Relief sought is owed
 - Payments, credits, and offsets due to Def. are accounted for

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Need to be Notarized?

No! See Civil Practice and Remedies Code Section 132.001. Needs to be:

- In writing; **and**
- subscribed by the person making the declaration as true under penalty of perjury.
- Form on next slide

Should be Substantially the Following Form:

"My name is _____, my
(First) (Middle) (Last)
date of birth is _____, and my address is
_____, _____, _____,
(Street) (City) (State) (Zip Code)
and _____. I declare under penalty of
(Country)
perjury that the foregoing is true and correct.
Executed in _____ County, State of _____, on the _____ day of _____,
(Month) (Year)

Debt Claims

- Proof of Damages must be attached to petition and served on Defendant , or
- Submitted to court after defendant’s failure to timely answer

May be in a sworn statement or live testimony

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Business Records Affidavits?

1. TRCP 500-510 issue standards for documentary evidence, but do not use the phrase “Business Records Affidavit”.

2. Thus, we do not look at “Business Record Affidavit” Rules—TRE 803 (6-7) or 902(10).

3. JP courts look to TRCP 508.3(b)(4) for Debt Claim Documentary Evidence Standards!

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TRCP 508.3(b)(4)

Documentary evidence may be considered if it is attached to a sworn statement:

- (A) the documents were kept in the regular course of business;
- (B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;
- (C) the documents were created at or near the time or reasonably soon thereafter;
and
- (D) the documents attached are the original or exact duplicates of the original.

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TRCP 508.3(b)(5)

- A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation **indicate lack of trustworthiness**.
- But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

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Military Affidavit

- The Servicemembers Civil Relief Act (“SCRA”) imposes certain procedural requirements in all civil cases in justice court.

50 U.S.C. § 3931(b).

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SCRA Requirements

In any civil case in which the defendant does not make an appearance, before entering a default judgment, the court shall require the plaintiff to file with the court an affidavit:

- stating whether or not the defendant is in military service **and showing necessary facts** to support the affidavit; or
- stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. § 3931(b).

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Affidavit May Be:

- A statement, declaration, verification, or certificate,
- In writing,
- Subscribed and certified or declared to be true under penalty of perjury.

50 U.S.C. § 3931(b)(4).

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Necessary Facts?

- Usually, it is shown by printout from Department of Defense website
- Can it be something else?
- What about an affidavit from defendant's brother stating that he was never in the military?

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Questions?
Thank you!

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