

# Defaults and Civil Dismissals

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## Class Includes:

Jurisdiction  
Dismissals

Default  
Judgments

Non-suits  
and No  
Shows

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## Resources:

[www.txcourts.gov](http://www.txcourts.gov)

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

[statutes.capitol.texas.gov](http://statutes.capitol.texas.gov)

- Texas Constitution and Statutes

[www.tjctc.org](http://www.tjctc.org) (TJCTC website)

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

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# What is Jurisdiction?

Power of a Court to Act

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## Subject Matter Jurisdiction – Wrong “Kind Of Case”

- Justice courts in civil cases have power to act on most cases under \$20,000. No jurisdiction over slander or defamation cases, or divorce cases.
- Cannot be waived.

*See Government Code § 27*

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## Personal Jurisdiction –Power Over The Person?

- Justice courts cannot have personal jurisdiction over a person who does not have minimum contacts within Texas
- Waived if not asserted  
*See CPRC 17, Subchapter C*

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

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**Counterclaim**

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## Filing A Counterclaim (1 Of 2)

- 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

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## Filing A Counterclaim (2 Of 2)

- 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

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**Poll 1:** A contractor sues a homeowner for \$19k for installing a new roof, and the homeowner files a counterclaim for \$18k for damage caused by a defective roof. This makes the total case over our \$20k jurisdictional limit.

- A. True—it is under one cause number so both claims added together must be under \$20k
- B. False—this is two separate claims, and both are under our \$20k limit

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**Poll 2:** A homeowner sues a contractor for \$10K for installing a new roof incorrectly, and the contractor files a counterclaim for \$9k for defamation for posting a false story on social media. There are no issues with jurisdiction here because it is well under our jurisdictional limit.

- A. True
- B. False

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## What Happens with Jurisdictional Issues?

- Wrong case type
- Too much money
- No authority over a person

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### Poll 3:

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.

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## Poll 4:

- 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.

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## Poll 5:

If the plaintiff's pleading is insufficient, 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 for insufficient pleading and the plaintiff fails to correct it after they receive notice of insufficiency.

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## **Something Missing in Filings**

Court does not automatically dismiss if something is missing in petition or other filings because:

- Judge may develop the case in civil cases
- Parties can file motions for clarification on insufficient pleadings
- Parties have a right to amend pleadings

See TRCP 500.6 and 502.7 for more information

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## **What If The Defendant Never Answers or Appears?**

**Default Judgment**

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## Default Judgment

- A judgment given after a defendant does not answer and the plaintiff proves its damages
- System is set up so that a defendant cannot just avoid the judgment by not showing up or answering the lawsuit
- In general, the plaintiff needs to ask for a default judgment from the court

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## Default Rules

- Court will assume that the defendant admits they have done something wrong because they have not answered the lawsuit:
  - Meaning, court takes the petition as true
  - Petition must still be complete
    - Small claims requirements in TRCP 502.2
    - Debt claims requirements in TRCP 502.2 and 508.2
- Plaintiff Must Prove Damages!

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

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## **What Must Be Filed To Proceed With A Default?**

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

*TRCP 501.3 & 50 U.S.C. §3911(5), Civil Deskbook Ch. 4.L.6*

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## **What If Court Is Concerned With Service?**

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

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

- Court may set a hearing on the issue
- Court may order the private process server (or other person who served) and the plaintiff to court to explain issues with service

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## 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!

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## Discussion Question 1:

- 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 court grant a default judgment?**

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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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## **Necessary Facts About Military Service?**

- 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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## **Military Affidavit Form:**

- 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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## **Discussion Question 2:**

Small claims case where defendant does not answer within 14 days. Do you have to wait 45 days to have a default hearing? Or, can plaintiff request the default hearing prior to the scheduled trial?

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## Deciding Damages

- Damages = the amount of money (or the item) that is what the plaintiff claims the defendant owes them
- Court 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)*

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## Default Damages—3 Ways

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

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## Default for Small Claims

- Small Claims that are **not** based on a written document!

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## The Default Hearing (1 Of 2)

- 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*

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## The Default Hearing (2 Of 2)

- Plaintiff must appear (may appear by phone, Zoom, etc.)

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*

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## Default for Small Claims

- Small Claims that are based on a written document!

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## Small Claims –No Hearing if:

- **No hearing** if the small claims based on a written document signed by defendant
- A copy of the document is filed with court and served on defendant, **and**
- Plaintiff filed sworn statement that the doc is true and accurate copy, the relief sought is owed, and all payments, credits, and offsets due to the defendant have been accounted for.

*Texas Rules of Civil Procedure, Rule 503.1*

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## Default for Debt Claims

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## 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.

*Texas Rules of Civil Procedure, Rule 508.3*

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## 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*

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## Proof Considerations (1 Of 2)

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

- It is court's 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;

*Texas Rules of Civil Procedure, Rule 508.3*

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## Proof Considerations (2 Of 2)

- 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*

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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

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## 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)

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## TRCP 508.3(b)(4)—Debt Claim Damages

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)—Debt Claim Damages

- 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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## Outcome Of The Default-Small and Debt Claims

- Court will issue a judgment for the amount of damages that the **plaintiff can prove**
- If the plaintiff cannot prove its damages, court must issue a judgment in favor of the defendant!

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

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## What If A Defendant Answers Late?

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

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## **Poll 5:**

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 we have to have a hearing before granting a default judgment?

- a. Yes
- b. No

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## **Poll 6:**

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?

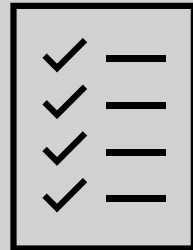
- a. Yes
- b. No

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## Handouts!

- Handouts include:
  - Small Claims Default Judgment Checklist
  - Debt Claims Default Judgment Checklist



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## Non-suits and No Shows!

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# Non-suit?

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## Non-suit Rules (1 Of 2)

- It is the mechanism that the plaintiff uses when they want to proactively dismiss their own case.
- Notice of Non-suit must be served on other party
  - Service here is “other than a citation” service rules
- Cannot dismiss adverse party’s claim
  - Example:
    - Filing a non-suit cannot stop a counterclaim

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## Non-suit Rules (2 Of 2)

- Non-suit shall have no effect on motion for sanctions, attorney's fees, or other costs pending at time of dismissal
- General rule is costs goes against person dismissing, unless otherwise ordered by the court.
- It is too late to file non-suit **if** opposing party has finished presenting their case

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## DWOP?!

- Case not moving forward

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## 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

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## 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



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## **What if Return of Service Filed, 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

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## **At Trial No Shows?**

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**Poll 7:** If one party does not show up for trial, the other party automatically wins.

- A. True
- B. False

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### **What If Someone Does Not Show At Trial ? (1 of 2)**

- If the Defendant fails to show
  - Postpone OR
  - Proceed – Plaintiff must prove case; if proven, a judgment can be issued against the Defendant (this is called a post-answer default)
  - If court proceeds and a counterclaim was filed, that claim can be dismissed

*TRCP 503.6*

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## **What If Someone Does Not Show At Trial? (2 of 2)**

- If the Plaintiff fails to show
  - Postpone OR
  - Dismiss
  - If counterclaim was filed, can proceed on that claim as described above

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## **Dismissals/Defaults Can be Set Aside or Appealed**

- Post-Judgment/Post-Dismissal Motions
  - Motion to Reinstate
  - Motion to Set Aside Default Judgment
  - Motion for New Trial
- Appeal
  - Do not have to file a post-judgment/post-dismissal motion before filing an appeal.

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