

The Clerk Side of Civil Trials

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Resources

- TJCTC Website
www.tjctc.edu
 - Deskbooks, charts, forms, self-paced modules, webinars, legal board, etc.
- Texas Constitution and Statutes Website
<https://statutes.capitol.texas.gov/>
- Texas Courts Website – Rules and Standards
<https://www.txcourts.gov/rules-forms/rules-standards/>
 - Texas Rules of Civil Procedure, Texas Rules of Evidence, etc.
- Sample Documents in Handouts

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Agenda

- Ice Breaker – Real or Ridiculous?
- Jury Logistics (Civil and Criminal Cases)
- Civil Trial Topics

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Disclaimer

- Much of what will be discussed and the example documents in the handouts are samples and suggestions.
- Get on the same page as your judge and figure out what they want/expect – every court is different.
- Use checklists and modify resources/examples for your own purposes. Don't reinvent the wheel!

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Ice Breaker – Real or Ridiculous?

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Real or Ridiculous #1

A juror brought their pet parrot to court because it “helps them focus.”

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Real or Ridiculous #2

A witness refused to be sworn in, saying “I only swear on Harry Potter.”

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Real or Ridiculous #3

A party tried to pay filing fees with Monopoly money.

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Real or Ridiculous #4

A juror claimed they were psychic and already knew the verdict.

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Real or Ridiculous #5

An attorney tried to introduce a live chicken as an exhibit.

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Real or Ridiculous #6

A party demanded the clerk “secretly tell them the judge’s decision” before trial.

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Real or Ridiculous #7

A litigant filed a lawsuit against their neighbor's dog.

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Real or Ridiculous #8

Juror fell asleep and began snoring loudly.

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Jury Logistics (*Civil and Criminal Cases*)

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Getting Juror Summons Sent Out

- What is the process in your county?
 - Who do you ask/what system do you use?
 - What information do you need to provide?
 - How do you decide how many jurors should be summoned?
 - Anyone sending summons directly on their own? What is your process?
 - (In the 2023 legislative session, justice court clerks were added to the list of who can send initial juror summons. Government Code §62.013, 62.015, 62.411(a), 62.412(c))

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Last Minute Juries

- Most often going to be an issue in eviction cases, but could potentially happen in other cases as well.
- How does your court handle rounding up juries on short notice?
- Anyone going out themselves and finding jurors? What's your process?
 - (In the 2023 legislative session, justice court clerks were added to the list of who can be ordered by the judge to summon additional jurors for a panel when there aren't enough (instead of sending a constable). Government Code §62.013, 62.015, 62.411(a), 62.412(c))
- *See sample order to constable and blank jury summons in sample documents.*

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Not Enough Jurors

- ***Show of hands: Who has ever not had enough jurors?***
- Can follow same procedure as when rounding up jurors for last minute juries, and the jurors who did show up will just wait while that is happening.
- What other options are there? What does your court do?

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Consequences for Jurors Not Appearing

- Technically, a juror can be held in contempt for not appearing, but usually more work than it is worth and not great for public sentiment.
- Efforts are often unsuccessful even when made.
 - Not worth the resources to track people down if they don't respond.
 - Communications may be ignored - Harris County juror contempt scam example.
 - Public notice sent out: *SCAM ALERT – Text messages claiming to be from the District Clerk's Office and demanding payment on jury summons fine have been reported. If you receive this message, do not click on any links or provide any personal information.*
- **What does your court do?**

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Exemptions and Disqualifications

- How can jurors let the court know ahead of time? Can the clerk confirm with them if they don't have to come?
- What if they show up but tell the clerk when they arrive?
- *See sample documents in handouts.*

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Excuses

- When there is not a disqualification or an exemption, it is up to the judge to decide whether they are going to excuse someone.
- What is your process for when someone calls ahead of time? Any ability for them to do it online? What if they tell the clerk when they arrive?
- Do you have a process for rescheduling due to conflicts?
- Are there any excuses that the clerk has authority to automatically accept?
- How does your court handle jurors who do not speak or understand English?

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Giving General Information to Jurors

- Information about qualifications, exemptions, and excuses.
- General information about the process and logistics.
- **How does your court provide this information prior to and during juror service?**
- *See example documents in handouts.*

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Juror Compensation

- How does your court/county handle compensation?
- Do you have any specific duties related to making sure jurors get their payments?

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Civil Trial Topics

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Civil Trial Checklist

- See document at front of example documents handout – basic duties and requirements for bench and jury trials.
- Remember that this is just an example from one court – make sure you are following your court's policies and procedures.

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Which Laws/Rules Apply? (1 of 2)

- Texas Rules of Civil Procedure
 - Small Claims: Rules 500 – 507
 - Debt Claims: Rules 500 – 508 (but 508 governs if any conflict with the other rules)
 - Repair and Remedy: Rules 500 – 507 and 509 (but 509 governs if any conflict with the other rules)
 - Evictions: Rule 510
- Any applicable statute for the specific case

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Which Laws/Rules Apply? (2 of 2)

- The other Rules of Civil Procedure and the Rules of Evidence **do not** apply except for in non-eviction cases:
 - 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
 - when otherwise specifically provided by law or the TRCP.

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Helpful Information for Parties

- TRCP and Rules of Evidence must be made available for examination during court's business hours.
- <https://www.tjctc.org/srl.html>
 - TJCTC's Self-help packets, attorney search, and more.
 - Includes links to additional resources and a series of videos to help parties to know what to expect and how to prepare for court.
- Any information packets your courts has.
- Self-represented litigants may need more information and help regarding logistics.
- *Remember: just make sure anything provided is legal information and not legal advice!*

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Interpreters

- Resources and information on this topic are available in the Spanish Terms and Court Interpreters/Language Barriers class and in TJCTC's Interpreters self-paced module:
<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>

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Jury Trial Request

- The default in civil cases is a bench trial.
- If a party wants a jury trial, they must request it and pay the jury fee (\$22) or file a Statement of Inability by the deadline:
 - Evictions: at least three days from service or three days before the date set for trial, whichever is later.
 - Other civil cases: no later than 14 days before the date set for trial unless a late filing is excused by the judge for good cause.
- The jury must have 6 jurors, and 5 of the 6 must agree to reach a verdict.

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Organizing Dockets

- Organizing dockets strategically can help improve court efficiency and allow for more consistent outcomes.
- How do you organize dockets in your court? How many at a time, how often, which kinds together, etc.?

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Representation

- An individual who is a party to a civil case in justice court may be represented by:
 - Himself or herself,
 - An attorney, or
 - An authorized agent in an eviction case (but not in a small claims case, debt claim case, or repair and remedy case).
- A corporation or other entity - such as a partnership or an LLC (a limited liability company) - that is a party to a civil case in justice court may be represented by:
 - An employee, owner, officer, or partner of the entity who is not an attorney,
 - An attorney, or
 - A property manager or other authorized agent in an eviction case (but not in a small claims case, debt claim case, or repair and remedy case).

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Assisted Representation

- The court may also allow an individual who is representing himself or herself, upon showing good cause, to be assisted in court by a family member or other individual who is not being compensated.

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Discovery

- Pretrial discovery is limited to that which the judge considers reasonable and necessary.
- Any requests for pretrial discovery must be presented to the court.
- Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.
- *For information regarding discovery, see TJCTC's Trial Notebook.*

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Pretrial Hearings

- How often do you have them and for what types of cases?
- Why are they helpful?
- What issues can be discussed?
- When should a pre-trial be done significantly before the trial date as opposed to right before trial on the same day?

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Requests for Continuances

- What are your court's procedures for requests for continuances (both in advance and same day)?
- What is the clerk's role?

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Parties Not Appearing for a Pre-Trial Hearing

- **Plaintiff doesn't appear:** re-set pre-trial, set case on a dismissal docket, or set for trial (if not already set) and proceed.
 - *Note:* If the pre-trial hearing notice states that if the plaintiff does not appear, the case may be dismissed, then that is also an option.
- **Defendant doesn't appear:** re-set pre-trial or set for trial (if not already set) and proceed.
 - *Note:* Entering a default judgment is **not** appropriate if a defendant doesn't appear for a pre-trial hearing.

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Parties Not Appearing for Trial

- **Plaintiff doesn't appear:** re-set or dismiss.
 - *Note: the trial notice should state that the case may be dismissed if they don't appear.*
- **Defendant doesn't appear:** re-set, default (assuming all requirements for a default have been met – see Civil and Evictions Deskbooks for more info), or judgment for defendant.
 - *Note: the trial notice should state that a default judgment may be entered if they don't appear.*
- **What is the clerk's role to make sure the judge has the information they need to know whether they ought to re-set, dismiss, or enter a judgment?**

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What if Parties Appear, but Notice was Insufficient?

- **Evictions and Repair and Remedy:** Trial held 10-21 days after petition filed. Defendant must be served 4 days for evictions/6 days for Repair & Remedy before trial. Return of service must be on file 1 day before trial (regardless of answer/appearance).
- **Small Claim and Debt Claim:**
 - *Trial notice after answer filed:* 45-day notice unless the judge determines that an earlier setting is required in the interest of justice (timing of service/return irrelevant).
 - *No-Answer Defaults:* All parties must have three days notice of any hearings. Return of service must be on file 3 days before a default can be entered.
- If has been re-set, all parties must get reasonable notice of the new setting.
- **So what does the court do if there wasn't sufficient notice or the return of service wasn't on file long enough?**

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Attorneys Not Appearing for Trial

- What should the court do if the parties both appear but one or both of them has an attorney that doesn't appear?

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Charging the Jury

- Jury charges (instructions to the jury about the law) are **not** allowed in civil cases in justice court.

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Post-Trial Paperwork and Procedures

- What is the clerk's role after the trial is over?
 - Do you draft the judgment for the judge to review?
 - What notices might be required?
 - Any reporting duties (OCA, county-specific, other)?

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Timing of Written Judgment

- When should the judgment be put in writing and signed by the judge?
- Are judgments given before parties leave? If no, how soon do they get them?
- What are problems that can arise if this is not done timely?
- What are best practices for this?