

# Fundamentals of Civil Cases: Filing through Judgment

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Training Center

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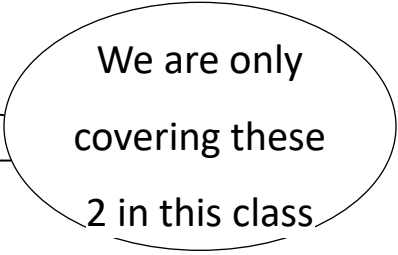
## What is civil procedure?

- 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)

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## 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

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## 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

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## Examples of Small Claims Cases

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

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## Debt Claim Case

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

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## 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)

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## Debt Claim Case 2

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

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

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

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What are the Rules and  
where can I find them?

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Texas Rules of Civil procedure

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## Texas Rules of Civil Procedure

- Most of what you will need for a civil case

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## 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.

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## Texas Rules of Civil Procedure 2

- The other Rules of Civil Procedure can only apply if the judge decides to apply them for fairness

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## Texas Rules of Civil Procedure 2

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

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## 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

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# 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

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## Other Resources – On TJCTC Website

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

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

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# Filing

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How does a case come to  
your court?

Petition & Filing Fee or  
Statement of Inability to Pay

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The Petition –

Small Claims –

TRCP 502.2

The petition is the document that begins a lawsuit.

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## 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

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## The Petition – Debt Claim

*(1<sup>st</sup> rule different from small claims)*

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

TRCP 508.2 (a)

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## 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.

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## 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 (it was \$46 for most cases filed before January 1, 2022).

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## 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!

TRCP 502.3

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## Group DISCUSSION!

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

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## Group DISCUSSION 2!

Someone comes in and says, "I loaned my brother \$2,000 and he won't pay me back. Should I sue him in your court to get my money?"

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OK, a case is filed & docketed –  
now what happens?

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Citation & Service

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## The Citation – TRCP 501.2

- 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

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## The Citation 2

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

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## The Citation 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

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## Who Will Serve the Citation?

- Constable or Sheriffs (or their deputies)
- Private process server (person certified by a Supreme Court process)
- 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!

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## 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)

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## Cost of Service

- Plaintiff is responsible for service and for any fees
- Commissioners sets the fee for constables and sheriffs (average \$100)
  - 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

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## Cost of Service 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

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What if service doesn't work?

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Alternative Service

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## Alternative Service – TRCP 501.2

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

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## Alternative Service 2

- 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*

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## Alternative Service 3

- 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;**

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## Alternative Service 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"

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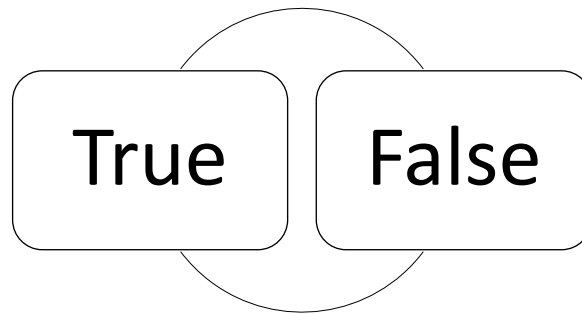
How does the court know if a  
defendant has been served?

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Return of Service

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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.



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## Return of Service

- Constable, Sheriff, or private process server must file a “return of service”
  - not the citation itself
- Says when they received the citation

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## Return of Service 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?*

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## Citation Issued, but No Return?

- 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 shouldn't be dismissed

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## Citation Issued, but No Return 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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The defendant is served. now  
what?  
--  
Answer or Appearance

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## 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”*

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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.

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## The Answer – TRCP 502.5

The defendant must answer *or otherwise appear* by the 14<sup>th</sup> day after the defendant is served

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## 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's due the next business day
  - If the 'due date' lands on a day the court closes before 5:00 pm, it's due the court's next business day

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## 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

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## Group activity!

**Use the calendar on the next slide (it is also in your materials) to answer the question.**

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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 6<sup>th</sup>. The 9<sup>th</sup> and 23<sup>rd</sup> are holidays. The court closes at 4:30 PM each day.

*What day is the defendant's answer due?*

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What if we aren't the "right"  
court?  
--  
Jurisdiction & Venue

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## 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

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## Where is Proper Venue?

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

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# 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)

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## 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**

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## 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

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## 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

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## If the Case is Transferred

- 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

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## If the Case is Transferred 2

- 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*

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## If the Case is Transferred 3

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

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

- A. True
- B. False

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## Filing Fees if the Case is Transferred

- If from another county, the receiving court must notify the plaintiff that they have **14 days** to pay a new filing fee (or file a Statement of Inability)

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## Filing Fees if the Case is Transferred 2

- If the plaintiff does not pay the filing fee the case will be dismissed
- If the case transferred within same county, no new fees or Statement of Inability are needed

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What if the defendant never  
answers?

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Default Judgment

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## Default Judgment – TRCP 503.1

- Generally, the plaintiff doesn't "automatically" win if the defendant doesn't 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!

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## 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

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## 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

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## The Default Hearing

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

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## The Default Hearing 2

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

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## The Default Hearing 3

- If the plaintiff doesn't appear, dismiss the case
- If the defendant doesn't 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

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## 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!

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## No Answer, but no Default Request?

- If the defendant doesn't answer, but the plaintiff hasn't 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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## 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)

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**Group activity!**

**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 found on in the Deskbook?**

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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

- 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 *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

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

- A. Yes
- B. No

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## No Citation for Counterclaim

- No citation or answer necessary
- The Plaintiff in a counterclaim suit (Defendant in the original suit) must serve a copy of the counterclaim as provided by Rule 501.4 – service of documents other than citation
  - In person, by mail, by fax, by email (if authorized), or by any other manner directed by the court

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The case is filed & Defendant has answered  
(*and may have filed their own claim*).

what do I do now?

--Set the Case for Trial

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### 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"

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## Setting the Case for Trial 2

- 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.

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## Pretrial Issues and hearings

- 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)

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## Pretrial Issues and hearings 2

- 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.)

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## Pretrial Issues and hearings 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

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## 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”

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## Jury Trial or Bench Trial 2

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

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POLL #6: If one party doesn't show up for trial,  
the other party automatically wins.

- A. True
- B. False

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## What if Someone Doesn't Show? - TRCP 503.6

- 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

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## What if Someone Doesn't Show? 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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What must be done once the  
trial is over?

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Written Judgment

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## 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**

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## 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

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## What Does the Judgment Look Like? 2

- 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

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## 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>

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# Questions?

Thank you!

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