

# Step by Step civil procedure: Filing through judgment

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1

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2

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- That information can be found by visiting TJCTC's Coronavirus Updates, Information, and Resources webpage:  
<https://www.tjctc.org/coronavirus.html>

3

On some slides in your handout, there will be a blank that you need to fill in.

The word that you need to put in the blank will be **bold and green** in the presentation slide.

Example:

- Handout will look like this:  
Step by Step \_\_\_\_\_ Procedure
- Presentation will look like this:  
Step by Step **Civil** Procedure

4

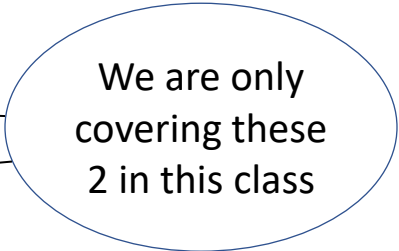
## What is civil procedure?

- The rules that apply to \_\_\_\_\_ 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 bracelet)

5

## 4 kinds of civil cases in Justice Court:

- Small Claims
- Debt Claims
- Evictions
- Repair and Remedy



We are only covering these 2 in this class

6

## Small Claims Case

- Seeking money damages or possession of an item
  - Examples:
    - Contracts
    - Car accidents
    - Someone falls at a grocery store
    - Dispute over who owns a pet
- Claim can be for no more than \$10,000 (\$20,000 if filed on or after 9/1/20)
  - If regarding an item, the item cannot be *worth* more than that amount.

7

UNUSUAL SMALL CLAIMS?

8

## Debt Claim Case

- Can ONLY be for a \_\_\_\_\_ (money owed)
- 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)
- *Usually* – credit card debt
- *Often* – debt bought by a 3<sup>rd</sup> party
- Claim can be for no more than \$10,000 (\$20,000 if filed on or after 9/1/20)

9

Where Can I Find Them?

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Texas Rules of Civil procedure

10

# Texas Rules of Civil Procedure

- Most of what you will need for a civil case
- There are 'special' rules that apply only to justice court
  - Part V of the Rules (Rules 500-510)
- The other rules can only apply if the judge decides to apply them for fairness

11

# Texas Rules of Civil Procedure

- These rules must be made available to anyone in your court
  - Some courts post them on their website, which is good!
  - Should also be able to 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

12

The screenshot shows the Texas Judicial Branch website. The header includes the text "Texas Judicial BRANCH" and a navigation menu with items: Home, Courts, Rules & Forms, Organizations, Publications & Training, Programs & Services, Judicial Data, eFile Texas, and Media. A dropdown menu for "Rules & Forms" is open, listing "Forms", "Rules Advisories", "Rules & Standards", and "Orders of Nondisclosure". A green arrow points to the "Rules & Forms" menu item. To the right of the dropdown is a "FIND MY CASE" button and a search box labeled "Site Search". Below the navigation is a "Supreme Court of Texas" section with a "THE SUPREME COURT OF TEXAS" heading, a group photo of the justices, and descriptive text. On the left, there are sections for "SUPREME COURT HOME" (with links like Contact Us, Self-Help Resources, etc.) and "CASE INFORMATION" (with links like Case Search, Document Search, etc.).

13

## Civil Deskbook

- TJCTC reference book
- Includes the law, rules and helpful practice tips
- Also contains links to additional \_\_\_\_\_

14

## Other resources – On TJCTC Website

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

- Forms (including examples shown throughout this presentation)
- Webinars
- Flowcharts and Checklists
- Legal Question Board

15

HOW DOES A CASE COME TO YOUR COURT?

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Petition & Filing Fee

16



## Petition and filing fee

- The plaintiff Files a 'petition' and
- Pays a filing fee or Statement of Inability to Afford Payment of Court Costs

17

## What if?

- 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?"
- *What would you say in response?*

18

# The Petition – small claims – TRCP 502.2

- The \_\_\_\_\_ is the document that begins a lawsuit that says:
  - 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”)
    - Can be money or an item of personal property

19

CAUSE NO. \_\_\_\_\_

	§	IN THE JUSTICE COURT
PLAINTIFF	§	
v.	§	PRECINCT NO. _____
	§	
DEFENDANT	§	_____ COUNTY, TEXAS

**PETITION: SMALL CLAIMS CASE**

**Defendant(s) address:** \_\_\_\_\_  
 \_\_\_\_\_

**COMPLAINT:** The basis for the claim which entitles Plaintiff to seek relief against Defendant is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**RELIEF:** Plaintiff seeks:  damages in the amount of \$\_\_\_\_\_,  return of personal property as described as follows (be specific): \_\_\_\_\_, which has a value of \$\_\_\_\_\_. Additionally, Plaintiff seeks the following:  
 \_\_\_\_\_  
 \_\_\_\_\_

**SERVICE OF CITATION:** Service is requested on Defendant(s) by:  personal service at home or work,  registered mail,  certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: \_\_\_\_\_

20

## The Petition – debt claim (1<sup>st</sup> rule different from small claims) – TRCP 508.2(a)

- There are different requirements for the petition depending on the account type and the circumstances.
- Credit Accounts and Personal/Business Loans have slightly different requirements, but both require information about:
  - The date the debt was due and the amount owed
  - The account information
  - What interest the plaintiff is seeking
- If the debt in question has been assigned or transferred, the petition must include information about who sold the debt and when it was sold

21

**ADDITIONAL INFORMATION (CASE BASED ON CREDIT CARD, REVOLVING ACCOUNT, OR OPEN ACCOUNT):**

Account/Credit Card Name: \_\_\_\_\_  
 Account Number (may be masked): \_\_\_\_\_  
 Date of Issue/Origination: \_\_\_\_\_  
 Date of Charge-Off/Breach: \_\_\_\_\_  
 Amount Owed: \$ \_\_\_\_\_ as of \_\_\_\_\_

**ADDITIONAL INFORMATION (CASE BASED ON PROMISSORY NOTE OR OTHER PROMISE TO PAY PERSONAL OR BUSINESS LOAN):**

Date/Amount of Original Loan: \_\_\_\_\_, \$ \_\_\_\_\_  
 Repayment Accelerated? \_\_\_\_\_  
 Date Final Payment Due: \_\_\_\_\_  
 Amount Due on Final Payment Date: \$ \_\_\_\_\_  
 Amount Owed: \$ \_\_\_\_\_ as of \_\_\_\_\_

**ONGOING INTEREST:** Plaintiff  does or  does not seek ongoing interest. If so, this interest is based on the following contractual/statutory reason: \_\_\_\_\_ and should be at \_\_\_\_%.  
 \$ \_\_\_\_\_ of interest was due as of \_\_\_\_\_

**ASSIGNMENT OF CLAIM:** Plaintiff  was or  was not assigned or otherwise transferred this claim. If so, the original claimant/creditor was \_\_\_\_\_  
 Subsequent holders were \_\_\_\_\_  
 The date the debt was assigned/transferred to Plaintiff was \_\_\_\_\_

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: \_\_\_\_\_

\_\_\_\_\_  
 Plaintiff's Printed Name

\_\_\_\_\_  
 Signature of Plaintiff  
 or Plaintiff's Attorney

**Defendant's Information (if known):**

Date of birth: \_\_\_\_\_  
 Last three digits of Driver License: \_\_\_\_\_  
 Last three digits of Soc. Sec. No.: \_\_\_\_\_

\_\_\_\_\_  
 Address of Plaintiff or Plaintiff's Attorney

22

## Filing Fee or statement of inability

- A filing fee is required to process the petition that is filed
- This fee covers the administrative costs of operating the court
- A plaintiff who is unable to \_\_\_\_\_ to pay the filing and service fees may file a Statement of Inability to Afford Payment of Court Costs (often called just a “Statement of Inability”)
  - Form on TJCTC website – TRCP 502.3

23

THE COURT MUST MAKE THE STATEMENT OF INABILITY TO PAY COURT COST FORM AVAILABLE WITHOUT COST AND WITHOUT THE PERSON HAVING TO REQUEST THE FORM.

- A. True
- B. False

24

## Statement of inability Form

- Your court **must** make this form available **for free** to anyone **without the person having to request the form**
- *How can your court make a form available to someone without them asking for it?*

25

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

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Citation & Service

26

# The Citation – TRCP 501.2

- What is it?
  - The document that officially \_\_\_\_\_ a defendant that they are being sued
- Why do we have it?
  - For due process – notice of a lawsuit
- Where does it come from?
  - The clerk ‘promptly’ issues (creates/prints out) the citation
  - The clerk keeps copy for the court’s file

27

CAUSE NO. \_\_\_\_\_

PLAINTIFF	§	IN THE JUSTICE COURT
v.	§	
DEFENDANT	§	PRECINCT NO. _____
	§	
	§	_____ COUNTY, TEXAS

**CITATION (SMALL CLAIMS OR DEBT CLAIM CASE)**

THE STATE OF TEXAS  
 TO: \_\_\_\_\_, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on \_\_\_\_\_, 20\_\_.  
 The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are:  
 \_\_\_\_\_  
 \_\_\_\_\_ Your answer must be filed with this  
 court, located at \_\_\_\_\_, \_\_\_\_\_, TX \_\_\_\_\_.

**YOU HAVE BEEN SUED.** YOU MAY EMPLOY AN ATTORNEY TO HELP YOU IN DEFENDING AGAINST THIS LAWSUIT. BUT YOU ARE NOT REQUIRED TO EMPLOY AN ATTORNEY. YOU OR YOUR ATTORNEY MUST FILE AN ANSWER WITH THE COURT. YOUR ANSWER IS DUE BY THE END OF THE 14<sup>TH</sup> DAY AFTER THE DAY YOU WERE SERVED WITH THESE PAPERS. IF THE 14<sup>TH</sup> DAY IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, YOUR ANSWER IS DUE BY THE END OF THE FIRST DAY FOLLOWING THE 14<sup>TH</sup> DAY THAT IS NOT A SATURDAY, SUNDAY OR LEGAL HOLIDAY. DO NOT IGNORE THESE PAPERS. IF YOU DO NOT FILE AN ANSWER BY THE DUE DATE, A DEFAULT JUDGMENT MAY BE TAKEN AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.

ISSUED AND SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
 \_\_\_\_\_ COUNTY, TEXAS

28

## The Citation

- 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

29

## 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

30

- Personal delivery (\_\_\_\_\_ it to them)
- Registered mail, return receipt requested
- Certified mail, return receipt requested
  - Also must have “restricted delivery,” meaning only the defendant can sign for it

31

## 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
- 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

32



What if service doesn't work?

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Alternative Service

33

## Alternative service

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

34

CAUSE NO. \_\_\_\_\_

PLAINTIFF \_\_\_\_\_ § IN THE JUSTICE COURT  
 v. \_\_\_\_\_ §  
 DEFENDANT \_\_\_\_\_ § PRECINCT NO. \_\_\_\_\_  
 \_\_\_\_\_ §  
 \_\_\_\_\_ § \_\_\_\_\_ COUNTY, TEXAS

**REQUEST FOR ALTERNATIVE SERVICE**

TO THE COURT:

The undersigned requests that the Court authorize an alternative method of service of process on the Defendant \_\_\_\_\_, as follows:  
 The usual place of business of the Defendant is: \_\_\_\_\_  
 The usual place of residence of the Defendant is: \_\_\_\_\_  
 The place where the Defendant can probably be found is: \_\_\_\_\_  
 The following attempts were made to deliver the citation to the Defendant  in person,  by registered mail,  by certified mail, return receipt requested:

Date of Attempt	Address of Defendant	Attempt and Result
_____	_____	_____
_____	_____	_____
_____	_____	_____

The following method of service will be reasonably effective to give the Defendant notice of the suit:

By mailing a copy of the citation with a copy of the petition attached by first class mail to the Defendant at \_\_\_\_\_, and also by leaving a copy of the citation with the petition attached at \_\_\_\_\_ (Defendant's residence or a place where Defendant can probably be found) with a person who is 16 years of age or older.

By mailing a copy of the citation with a copy of the petition attached by first class mail to the Defendant at \_\_\_\_\_, and also by serving a copy of the citation with the petition attached by the following method: \_\_\_\_\_

35

## The Court allows alternative service

- 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**:
  - 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 \_\_\_\_\_ to provide the defendant notice"

36

CAUSE NO. \_\_\_\_\_

	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
	§	_____ COUNTY, TEXAS
DEFENDANT	§	

**ORDER AUTHORIZING ALTERNATIVE SERVICE  
(SMALL CLAIMS OR DEBT CLAIM CASE)**

The Court having considered the Plaintiff's Request for Alternative Service of the Citation, and the sworn statement describing the method of service attempted under Rule 501.2(b), the Court:

- Denies Plaintiff's request;
- Grants Plaintiff's request and hereby authorizes alternative service under Rule 501.2(e) as follows:
  - By mailing a copy of the citation with a copy of the petition attached by first class mail to the Defendant at the address specified by Plaintiff in the Request for Alternative Service, and also leaving a copy of the citation with the petition attached at the Defendant's residence or other place where the Defendant can probably be found with any person there who is at least 16 years of age; **or**
  - By mailing a copy of the citation with a copy of the petition attached by first class mail to the Defendant at the address specified by Plaintiff in the Request for Alternative Service, and also serving a copy of the citation with the petition attached by the following method which the Court finds is reasonably likely to provide the Defendant with notice of this suit:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ISSUED AND SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

37

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

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Return of service

38

IF THE CITATION IS SERVED BY A CONSTABLE OR PRIVATE PROCESS SERVER, THEY MUST RETURN THE CITATION TO THE COURT AFTER SERVICE IS COMPLETED.

- A. True
- B. False

39

## Return of service

- Constable, Sheriff, or private process server must file a 'return of service'
- They will document when they received the citation
- Move forward with service 'without delay'
- Complete the return so the court knows what \_\_\_\_\_ with the citation

*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?*

40

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

§ IN THE JUSTICE COURT  
§  
§  
§  
§  
§  
§

v. \_\_\_\_\_  
PRECINCT NO. \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT

§ \_\_\_\_\_ COUNTY, TEXAS

**RETURN**

Having received the Citation in the above-styled and numbered cause with the Petition attached on the \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_.M., I attempted service in the following manner:

**DATES and MANNER OF ATTEMPTED SERVICE:**

Date	Address	Manner of Service	Diligence and Cause of Failure to Serve

The Citation was **EXECUTED** on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_M.,  
 by delivering a copy of the Citation together with a copy of the Petition to: \_\_\_\_\_, the defendant, or  
 by mailing a copy of the Citation together with a copy of the Petition by  certified mail or  registered mail, return receipt requested (copy of receipt attached).

For Alternative Service authorized by Court order:  
 By mailing a copy of the Citation with a copy of the Petition attached by first class mail to the defendant at \_\_\_\_\_ and also by leaving a copy of the Citation with the Petition attached at \_\_\_\_\_ with \_\_\_\_\_, a person who is 16 years of age or older.  
 By mailing a copy of the Citation with a copy of the Petition attached by first class mail to the defendant at \_\_\_\_\_, and also by serving a copy of the Citation with the Petition attached by the following method: \_\_\_\_\_

41

## Citation issued, but no return?

- If the citation has been issued, but no return of service has been filed, the 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

42

## Citation issued, but no return?

- 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

43

The defendant is served. now

—  
Answer or appearance

44

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 ANSWER ANY TIME THEY WANT

45

## The Answer – TRCP 502.5

- The response from the defendant
- It is their chance to deny the allegations
- They can state any \_\_\_\_\_
  - Defenses – legal ‘excuse’ for what you did
  - *“I did not pay the contractor because they did not complete the job”*
- The defendant must answer or otherwise appear by the 14<sup>th</sup> day after the defendant is served

46

CAUSE NO. _____	
_____ PLAINTIFF  v.  _____ DEFENDANT	§ § § § § § §
	IN THE JUSTICE COURT  PRECINCT NO. _____  _____ COUNTY, TEXAS
<b>DEFENDANT'S ANSWER (SMALL CLAIMS OR DEBT CLAIM CASE)</b>	
This Answer is made by Defendant _____, who:	
<input type="checkbox"/> generally denies each and every allegation made by Plaintiff and demands that all allegations be proven;	
<input type="checkbox"/> further answers as follows (describe other defenses, if any):	
_____ _____ _____	
<input type="checkbox"/> I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.	
<input type="checkbox"/> I hereby consent or <input type="checkbox"/> do not consent to email service of all motions, pleadings or other documents filed in this case to be sent to my email address as follows: _____	
_____	
Defendant requests that the Court enter judgment for Defendant, award Defendant's costs and for such other and further relief to which Defendant may prove to be justly entitled.	
Respectfully submitted,	
_____ Signature of Defendant Printed Name:	_____ Signature of Attorney, if any Printed Name:

47

## 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 5:00pm, it's due the court's next business day

48



## What about 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

49

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?*

50

What if we aren't the "right" court?

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## JURISDICTION & Venue

51

### Jurisdiction – wrong "kind of case"

- \_\_\_\_\_ means power for a court to act. Justice courts in civil cases have power to act (jurisdiction) on most cases under \$10,000 (\$20,000 if filed on or after 9/1/20)
  - No jurisdiction over slander or defamation cases, or divorce cases
- If a case, such as a divorce or a suit for \$50,000 is filed, the court should dismiss it for lack of jurisdiction
  - The court does this automatically, they do not wait for someone to bring up the issue

52

## Where is proper venue?

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

53

## What should the court do if the case is filed in the “wrong place”?

- In almost every situation – 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**

54

## WHAT IS THE TIME FRAME FOR FILING A MOTION TO TRANSFER VENUE?

- A. WITHIN 14 DAYS FROM THE DATE OF SERVICE
- B. AT LEAST 14 DAYS BEFORE THE TRIAL DATE
- C. BEFORE TRIAL AND NO LATER THAN 21 DAYS AFTER DEFENDANT'S ANSWER WAS FILED
- D. AT LEAST 21 DAYS BEFORE THE TRIAL DATE

55

## Motion to transfer venue – TRCP 502.4

- Defendant has \_\_\_\_ 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 the motion doesn't give the county and precinct to transfer to, the court must notify them of this and give them 7 days to fix it

56

CAUSE NO. \_\_\_\_\_

PLAINTIFF	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT NO. _____
	§	
DEPENDANT	§	_____ COUNTY, TEXAS

**MOTION TO TRANSFER VENUE**

Defendant \_\_\_\_\_ moves to transfer venue of this case to the Justice Court in \_\_\_\_\_ County, Precinct \_\_\_\_\_, because the venue chosen by the Plaintiff is improper for the following reasons: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Address & Phone Number \_\_\_\_\_

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE JUSTICE COURT OR NOTARY

57

## What does the court do with the motion?

- Must set a hearing
- Plaintiff may, but does not have to, file a response
- Listens to testimony and consider any documents provided
- Rule on the motion: Denied – it stays in your court  
Granted – it gets transferred

58

## 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
- 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*

59

CAUSE NO. \_\_\_\_\_

	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
	§	
DEFENDANT	§	_____ COUNTY, TEXAS

**ORDER ON MOTION TO TRANSFER VENUE**

The Court having considered the motion of Defendant to transfer venue of this case pursuant to Rule 502.4 of the Texas Rules of Civil Procedure, and the Court having heard the motion on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and having considered the evidence submitted by the parties at such hearing, the Court finds as follows:

The motion is denied.

The motion is granted for the following reasons(s): \_\_\_\_\_  
\_\_\_\_\_.

The Court orders this case transferred to the Justice Court of \_\_\_\_\_  
County, Precinct \_\_\_\_\_.

The Plaintiff has failed to specify the place of transfer and is ordered to do so within  
\_\_\_ days of the date of this order.

**ISSUED AND SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

60

## What if you are the court receiving the transfer?

- Notify the plaintiff that the case was received
- **ONLY IF** the case came from another county, notify the plaintiff that they have \_\_\_ days to pay the filing fee (or file a Statement of Inability)
  - If the plaintiff does not pay the filing fee the case will be dismissed
  - If the case was transferred from another court in your county, no new fees or Statement of Inability are needed

61

What if the Defendant never answers?

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Default Judgment

62

## 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!

63

## 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 (stating whether the defendant is in the military or not)

64



## Default judgment hearing

- In most cases, a default hearing must be held, where the plaintiff must prove its damages.
- No hearing is needed if the case is:
  - a debt claim case where the plaintiff filed proof of damages as required by Rule 508.3, or
  - a small claims case 'based on a written instrument' with proof of the instrument filed with the court. (See the \_\_\_\_\_ for more info)

65

## the default hearing

- The court doesn't set the hearing automatically, it is only set if the plaintiff requests the hearing, orally or in writing
- 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
- If the plaintiff doesn't appear, dismiss the case
- If the defendant doesn't appear, the judge hears the plaintiff's proof

66

## 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

67

## 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

68

What if the defendant wants to seek a remedy  
against the plaintiff?

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counterclaim

69

## 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 \_\_\_\_\_ to the claims in the plaintiff's original petition
- Must file a petition with the court and pay a filing fee or file a Statement of Inability to Afford Payment of Court Costs

70

## Filing a counterclaim

- The counterclaim is filed under the 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

71

DOES THE DEFENDANT IN A COUNTERCLAIM SUIT  
(PLAINTIFF IN THE ORIGINAL SUIT) HAVE TO BE  
SERVED WITH A CITATION?

A. Yes

B. No

72

## No citation for counterclaim

- The Court does not generate a citation for the counterclaim and no answer needs to be filed, because both parties are already on notice of the original suit
- 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

73

What if there are other claims involved?

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cross-claims &  
third party claims

74

## Cross-claim

- A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim
- The filing party must file a cross-claim petition, and must pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs
- A citation \_\_\_\_\_ be issued and served on any party that has not yet filed a petition or an answer
  - If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4

75

## Third party claim

- A defendant seeking to bring another party into a lawsuit who may be liable for all or part of the plaintiff's claim against the defendant may file a third party claim
- They must file a petition and pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs
- A citation must be issued and served

76

The case is filed & Defendant has answered (AND  
POSSIBLY Filed their own claim).  
what do I do now?

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Set the case for trial

77

HOW MANY DAYS NOTICE MUST EACH PARTY RECIEVE  
OF THE INITIAL TRIAL SETTING?

- A. 14
- B. 21
- C. 45
- D. 60

78

## Setting the case for trial – TRCP 503.3

- When?
  - Each party must get \_\_\_\_ days' notice of the initial trial setting
- How?
  - Notice is sent by the court to all parties and any attorneys 'of record'
- Postponing the trial (continuances)
  - A party of the court may ask to reschedule the trial (up to judge's discretion, 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 of work, etc.

79

## 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)
- 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.)
- 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

80



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

81

## What if someone doesn't show? - TRCP 503.6

- If the defendant fails to show
  - Postpone OR
  - Proceed – plaintiff must prove that the defendant did something wrong AND prove damages; if the plaintiff proves both, a judgment can be issued against the defendant
  - (If court proceeds and a counterclaim was filed, that claim can be dismissed)
- If the plaintiff fails to show
  - Postpone OR
  - Dismiss
  - If counterclaim was filed, can proceed on that claim as described above

82

trial is over?

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written Judgment

83

## Judgment – TRCP 505.1

- After the trial, the judge will render a judgment. In a jury trial, this judgment will be based on the jury's decision, called a \_\_\_\_\_
  - At least 5 of the 6 jurors must agree on the verdict

84

## What's 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, the plaintiff if they win could get paid for the filing/service fees they paid
- 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
- Be signed by the judge and dated with the date of the judge's signature

85

CAUSE NO. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
v.	§	PRECINCT NO. _____
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

### JUDGMENT FOR PLAINTIFF (BENCH TRIAL)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-styled and numbered cause was tried.

Plaintiff appeared  in person  by attorney: \_\_\_\_\_

Defendant appeared  in person  by attorney: \_\_\_\_\_

No jury was demanded, and trial was to the bench. The judge having heard the evidence and testimony of the parties believes that the Plaintiff proved the allegations of the petition, and finds that it is:

**ORDERED** by the court that Plaintiff recover of Defendant, the sum of \$\_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_% compounded annually together with costs.

**ISSUED AND SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_  
\_\_\_\_\_  
COUNTY, TEXAS

86

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

§ IN THE JUSTICE COURT  
§  
§  
v. § PRECINCT NO. \_\_\_\_\_  
§  
§  
DEFENDANT § \_\_\_\_\_ COUNTY, TEXAS

**JURY VERDICT (GENERAL)**

We, the jury, impaneled in the above-styled case, find as follows:

On Plaintiff's claim for \_\_\_\_\_:

- We find in favor of Plaintiff and against Defendant and award Plaintiff the following damages: \$ \_\_\_\_\_; or
- We find in favor of Defendant and against Plaintiff.

On Plaintiff's claim for \_\_\_\_\_:

- We find in favor of Plaintiff and against Defendant and award Plaintiff the following damages: \$ \_\_\_\_\_; or
- We find in favor of Defendant and against Plaintiff.

Our verdict is:

- Unanimous (as signified by the signature of the foreperson below)
- Not Unanimous; however five of six jurors agree on the verdict, as signified by our signatures below:

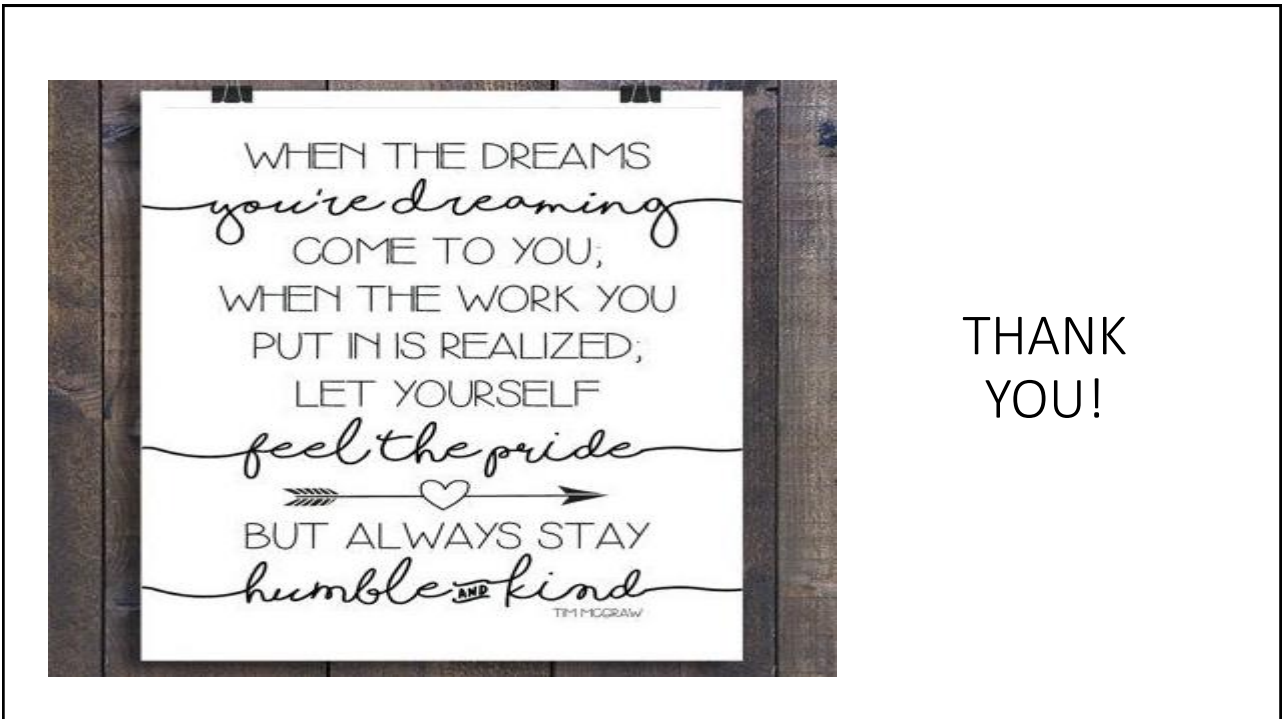
\_\_\_\_\_  
Foreperson

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

87



88