

Pre-Judgment Civil Procedure

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Funded By A Grant From The Texas Court Of Criminal Appeals

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How to Decide What Procedures Apply to Civil Cases

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Texas Rules Of Civil Procedure

- Most of what you will need for a civil case

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Justice Court Rules

- Some rules 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

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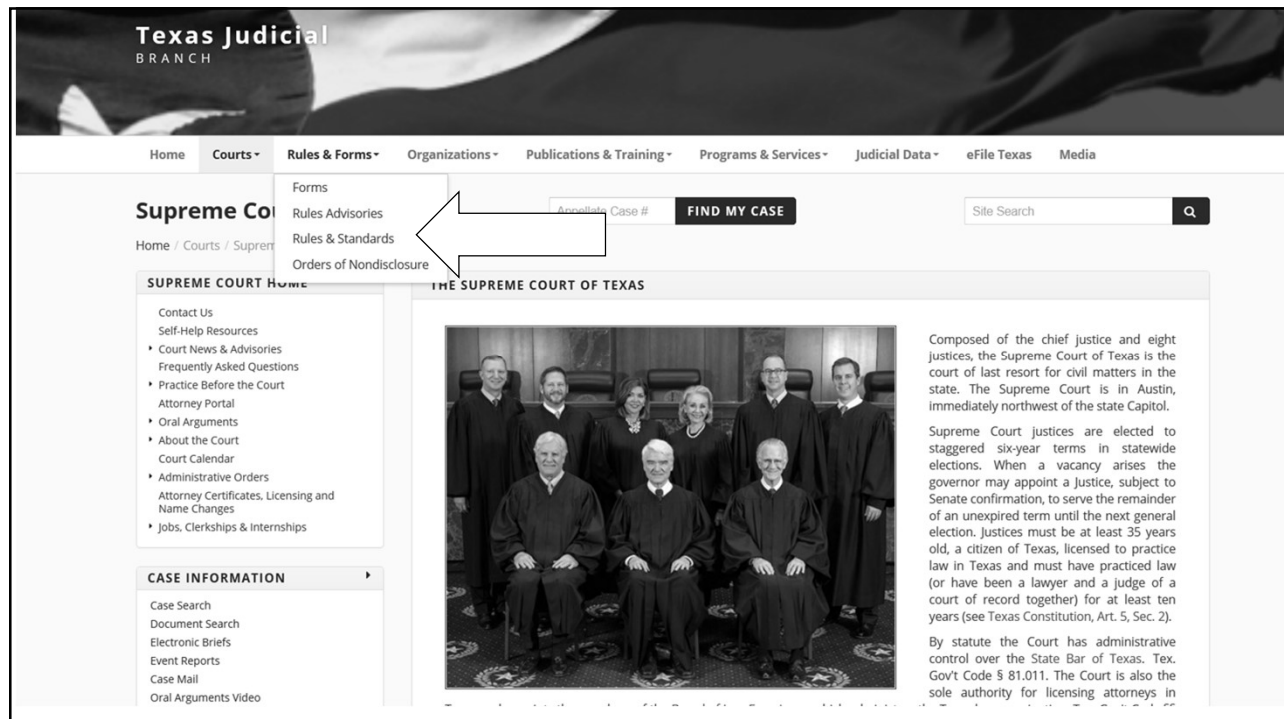
- Rules 500 – 507 apply to all civil cases in justice court except where one of the specific rules above says something different.
- The other Rules of Civil Procedure (apply to county/district courts) can only apply if the judge decides to apply them for fairness.

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TRCP must be made available to litigants

- 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 – TJCTC Website

www.tjctc.org

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

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4 Kinds Of Civil Cases In Justice Court:

- Small Claims 
- Debt Claims 
- Evictions
- Repair & Remedy

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Small Claims Case

- Seeking money damages of no more than \$20,000 **or** possession of an item worth no more than \$20,000
- How would you know how much an item is worth?

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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), less than
\$20,000

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Debt Claim Plaintiffs

- 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 Cases

- *Usually* – credit card debt
- *Often* – debt bought by a 3rd party

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Filing

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How Does A Case Come To Your Court?

1. Petition
2. 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
*(1st 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 Affidavit"*
- 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?"

How should you respond?

What if they just file a debt claim petition with this information?

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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

- The clerk 'promptly' issues (creates/prints out) the citation – document that notifies the defendant of the suit
- The clerk keeps copy for the court's file

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Service of 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

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Who Will Serve The Citation?

- Constable or Sheriffs (or their deputies)
- Private process server (person certified by the Supreme Court)
- Court clerk – by registered or certified mail only
- A person authorized by written court order who is 18 or older
- The plaintiff or any other interested party may not 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 obtaining service and for payment of any fees
- Commissioners sets the fee for constables and sheriffs (average \$80)
 - 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 – Process Servers & Clerks

- Private process servers charge the plaintiff directly
- If the clerk serves by mail, may **only** charge actual costs 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 Request

- 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*
- The judge decides whether to allow alternative service

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Alternative Service Process

If approved, the judge should order the constable, sheriff, or process server to:

1. mail the petition first class ***and***
- 2a. Leave with someone over 16 years of age at defendant's residence or other place where defendant can likely be found

OR

- 2b. Any other method the court finds "reasonably likely to provide the defendant notice"

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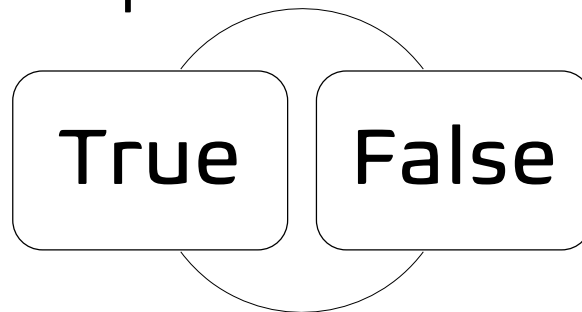
How Does The Court Know If A Defendant Has Been Served?

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Return of Service

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Poll: If the citation is served by a constable or process server, they must return the original 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
- Return says when and how the defendant received the citation

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Discussion Question

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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How Long to Wait?

- 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?
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Answer or Appearance

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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: 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 14th day after the defendant is served

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How Do You Determine Deadlines? – TRCP 500.5

- 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:

Defendant was served on the 6th. The 9th and 23rd 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 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 counterclaim stating any claim against the plaintiff that is within the jurisdiction of the court
- May file 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: 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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What If We Aren't The "Right" Court?

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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
- If a case is filed that isn't within the jurisdiction, 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 is listed, 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 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

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Poll: 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 transferred 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 cont.

- 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 (SCRA) affidavit

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SCRA Affidavit – Military Information

- The court cannot go forward with a default without this
- If an affidavit has been filed:
 - If the defendant is not in the military, the court can proceed as normal.
 - See Ch. 4L of the 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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Notice and Hearing

- Send notice to both parties (TRCP 501.4 requires all parties receive at least 3 days' notice of any hearing requested by a party)
- If the plaintiff doesn't appear, may 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!
- Court must immediately send notice of judgment to defendant's address

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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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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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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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The Case Is Filed & Defendant Has Answered
(And May Have Filed Their Own Claim).
What Do I Do Now?

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Set the Case for Trial or Pretrial Hearing

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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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Pretrial Issues

- 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.)

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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"

81

Continuances (Postponements)

- Postponing the trial (continuances)
 - In judge's discretion to determine if there is a good reason, but should generally be allowed at least once for each party, or if continuance is agreed
 - 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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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”

83

Requesting a Jury

- To request a jury, a party must make a written request at least 14 days before trial and pay a \$22 jury fee (or submit a Statement of Inability)

84

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

- A. True**
- B. False**

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What If the Defendant 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 the Plaintiff Doesn't Show?

- 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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Questions?

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