

LIFE AFTER JUDGMENT

CIVIL CASES

Life after judgment

Judge KaTina Whitfield
Dallas County Justice of the Peace
Katina.Whitfield@dallascounty.org

© Copyright 2022. All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, TX, 78701.

Resources:

www.tjctc.org

- Civil Deskbook
- Self-Represented Litigant Info Packets (tjctc.org/SRL)
- Legal Question Board

Civil Practice & Remedies Code

Texas Rules of Civil Procedure

What We Will Cover:

What Rules Apply and Where Can I Find Them?

Post-Judgment Motions & Appeals

Enforcement of Judgments

- Abstract of Judgment
- Post Judgement Discovery
- Writs of Execution
- Special Writs

Revival of Dormant Judgment

What are the Rules and
Where can I Find Them?

5

Texas Supreme Court



Create the Texas Rules of Civil Procedure



The rules are found on their website:
www.txcourts.gov/rules-forms/rules-standards/

6

3

Texas Rules of Civil Procedures

Within the TRCP are “special”
Justice Court Rules (500-510)

- Rule 506 is the rule for appeals from civil cases in justice court.

Other rules apply to
enforcement of judgments.

- Execution of Judgments: Rules 621 – 656

7

CIVIL PRACTICE & REMEDIES CODE

This code contains the statutes (*the laws passed by the legislature*) governing civil cases

- Revival of Dormant Judgment: Section 31.006

4

8

CIVIL DESKBOOK

- TJCTC reference book
 - Includes the law, rules and helpful practice tips
 - Also links to additional resources
 - Clickable table of contents, so it is easy to navigate



<https://www.tjctc.org/tjctc-resources/Deskbooks.html>

APPEALS & OTHER POST-JUDGMENT MOTIONS

Plenary Power – TRCP 507.1

Once a judgment is signed, the court can make changes to it for up to 21 days after the date the judgment is signed

Changing the judgment should be a very rare occurrence

Once the 21 days expires, the court **cannot** make any changes to a judgment

11

Clerical Errors in the Judgment

An exception to this limit is when a “clerical error” in the judgment needs to be fixed.

What the judge announces in court is the “real” judgment, and the paper judgment can be changed to make sure it reflects the “real” judgment.

For example, the date is entered as 2/9/2020 instead of 2021

Or the judge awarded \$6000, but the paper judgment says \$600

6

12

Judgment Nunc Pro Tunc

A judgment that corrects a clerical error is called a **judgment nunc pro tunc**.

A judgment nunc pro tunc can be issued whenever the error is discovered, even if the court's plenary power has expired.

- Because the "real" judgment is what is announced in court, we aren't changing the "real" judgment by issuing a nunc pro tunc.

13

Legal Errors

Judgments nunc pro tunc **cannot** be used to correct **legal errors** in a judgment.

For example, say the judge thinks that contracts must be in writing. She rules against a plaintiff who was suing based on an oral contract. She comes to school and learns that oral contracts are valid. Can she change the judgment? – **POLL** yes or no

14

7

BRAIN BREAK FUN FACT:

A CROCODILE CANNOT STICK OUT IT'S TONGUE.

Crocodiles have a membrane that holds their tongue in place on the roof of their mouth **so it doesn't move**. This makes it impossible for them to stick it outside of their narrow mouths. ... It wouldn't want to accidentally snap its own tongue off when eating prey.

15

WHAT IF A PARTY DOESN'T LIKE THE OUTCOME OF A CASE?

16

8

POST-JUDGMENT MOTIONS – TRCP 505.3

Three main post-judgment motions to get rid of a judgment **and stay in justice court:**

- Motion to Reinstate the Case
- Motion to Set Aside Default Judgment
- Motion for New Trial

Motions and orders for all of these can be found on www.tjctc.org

17

MOTION TO REINSTATE THE CASE

Remember when a case is dismissed because of failure to move forward (DWOP)?

This motion allows the case to be restarted

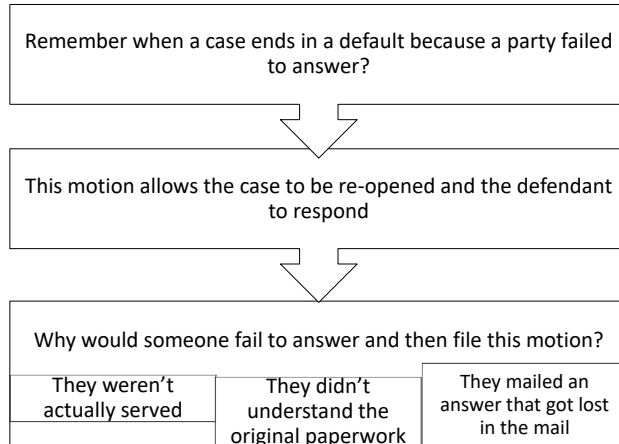
Why not just re-file?

To save filing and service fees
Maybe the statute of limitations has now run out, so they can't start from scratch

9

18

MOTION TO SET ASIDE DEFAULT JUDGMENT



19

MOTION FOR NEW TRIAL

If the case went to a trial and the party thinks they lost because of how the trial proceeded in an unfair way

This motion allows the case to be reheard IN THE SAME justice court

Why would someone ask for a new trial?

Maybe they were not able to call a witness who could not make the trial date?

Maybe they have discovered new information?

10

20

POST-JUDGMENT MOTIONS

<p>Must be filed within 14 days of the signed judgment, dismissal, or default.</p>	<p>The party making the motion must serve other side by next business day</p>	<p>Court has 21 days to rule from the day of the judgment, dismissal, or default (not from the day the motion is filed).</p>
<p>Reason for granting motion:</p> <ul style="list-style-type: none"> • Motion to reinstate or motion to set aside default: "Good cause" • Motion for new trial: "Justice was not served in the trial of the case" 		

21

DENIAL OF POST-JUDGMENT MOTIONS

If the judge has not ruled on one of these motions, the motion is **automatically denied** at 5:00 p.m. on the 21st day after the day the judgment, dismissal, or default was signed.

11

22

WHAT IS AN APPEAL?

An appeal is when a party wants **another court** to decide the case because they don't like the decision of the justice court.

How long does a party have to file an appeal?

- 21 days after the judgment is signed OR
- 21 days after the justice court denies a motion for new trial (or a motion to set aside a default judgment or a motion to reinstate a case that has been dismissed).

Rule 506.1(a)

23

THE APPEAL

Can either side appeal?

- Yes!
- Even if they have an agreed judgment (unless they expressly waive any right to appeal)

Where does the case go?

- To the County Court (or a county court at law if your county has one)

12

24

HOW DOES SOMEONE APPEAL A CASE?

Three ways to appeal a case from justice court:

- Appeal bond
- Statement of Inability to Afford Payment of Court Costs
- Cash Deposit

Rule 506.1(a)

Key Point: Starting Jan. 1, 2022, a party must file **ANOTHER** filing fee (\$54) to the justice court in order to appeal, **UNLESS** they filed a Statement of Inability to Pay.

The \$54 filing fee for the appeal is not the filing fee for the county court.

25

APPEAL BOND

An appeal bond is a promise to see the appeal through and cover any damages if they don't pursue the appeal.

What is the amount of the bond?

If **Plaintiff** appeals = \$500

If **Defendant** appeals = double the amount of the judgment against the Defendant

For example, if the judgment is for \$3,500, then the Defendant's appeal bond would have to be for \$7,000.

13

26

APPEAL BOND PROCEDURES



How is the bond made?

A **surety** must sign it.

A surety is someone promising to pay if the party fails to pursue the appeal.



Who notifies the other side that the appeal bond has been filed?

The party filing the appeal is required to serve a written notice of the appeal on all other parties within seven days of filing the appeal bond. *Rule 506.1(b) and (e)*

27

STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS OR APPEAL BOND

What is this?

- It is a statement that the party cannot afford the costs of filing an appeal (or other costs).
- It must be signed under oath before a notary/clerk or be signed under penalty of perjury.
- It must contain complete information about the party's income and monthly expenses.
- It must be on the form approved by the Supreme Court or contain the information in that form.
- The clerk must make this form available to everyone **without charge or request**.
- The statement may be the same one filed with the petition (if one was filed then).

Rule 506.1(d), Rule 502.3(b)

14

28

NOTICE OF STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS OR APPEAL BOND

Notice of the Statement of Inability:

If a Statement of Inability is filed, the **court** must notify all other parties that the Statement was filed no later than the **next business day**.

These statements may be **contested** – one party can claim that the other does not qualify to have the appeal bond waived.

Procedure for a contest: see Civil Deskbook P. 22.

Rule 506.1(d) and (e)

29

CASH DEPOSIT



Instead of filing an appeal bond, the person who wants to appeal may deposit **cash** with the clerk of the court in the amount required for the appeal bond.



The cash deposit is payable to the appellee (the person who won in justice court) and is conditioned on the appellant (the person who lost and is appealing) pursuing the appeal and paying any judgment and costs rendered against them on appeal.



If the appellant files a cash deposit, then they (not the court) are required to send a written notice of the appeal to all other parties within seven days of filing the cash deposit. Rule 506.1(c) and (e).

15

30

THE APPEAL

What happens?

When an appeal bond, a Statement of Inability, or a cash deposit is properly filed with the justice court, then the appeal is “**perfected.**”

Once that happens the judgment of the justice court is “vacated” and no longer exists.

The case is sent to the county court which will hear it from scratch.

The entire case is presented all over as if there had been no previous trial!

This is called “de novo” review.

It means “from the beginning” so the party gets a do-over!

Rule 506.3

31

THE APPEAL

To send the case to county court the clerk sends:

- Certified copy of all docket entries.
- A certified copy of the bill of costs.
- The original papers in the case.

And you collect a transcript fee of \$10.00 (unless the party appealed by filing a Statement of Inability)

Rule 506.1(h), 506.2, 506.3, Govt. Code § 101.151(2)(A)

16

32

BUT THE CASE MIGHT BOUNCE BACK!

The party appealing the case must also **pay a filing fee in county court!** Unless they file a Statement of Inability.

If the party does not pay that filing fee, the county court will not consider the case to be **perfected** and will dismiss the case filed in county court and send it back to justice court.

If that happens, the judgment of the justice court is valid and it may be enforced just as if an appeal had not been filed.

Rule 506.1(h) and (i), Rule 143a

33

BRAIN BREAK FUN FACT:

A SNEEZE CAN TRAVEL UP TO 100MPH.

A study from the Massachusetts Institute of Technology noted that germs from one sneeze could travel from 19 to 26 feet. What's also unfortunate is how fast these germs travel: A sneeze can move **100 miles per hour**, which makes getting away from someone when they sneeze close to impossible.

34

17

ENFORCEMENT OF JUDGMENTS

35

WHAT ARE THE PARTIES CALLED AFTER A JUDGMENT?

If the plaintiff wins, they are now the
"**judgment creditor**"

The losing defendant is the "**judgment
debtor**"

18

36

WHAT IS THE COURT'S ROLE?

- The court does not pursue payment of the judgment by the losing party
- Instead, the court simply processes requests made by the winning party to enforce the judgment
- The court is **ONLY** involved in response to a request from the winning party to sign an order or writ (an order directed to a constable or sheriff)

37

HOW DO YOU ENFORCE A JUDGMENT?

- If the case is not appealed, the judgment remains in force, and the plaintiff may try to enforce the judgment (make the defendant pay) through the court.
- A justice court judgment can be enforced the same way that a county or district court judgment is enforced

Rule 505.2

19

38

WAYS TO ENFORCE A JUDGMENT?

Abstract of Judgment

Writ of Execution

Writ of Garnishment

Turnover Order

Appointment of a Receiver

Special Writ for Seizure and Delivery of Personal Property

ABSTRACT OF JUDGMENT

WHAT IS AN ABSTRACT OF JUDGMENT?

A summary of information about a judgment that creates a lien against the judgment debtor's real property once it is filed with the County Clerk

Lien: A hold put on the real property (land & fixtures) of the judgment debtor in the county.

- If the property is sold, the person with the lien gets paid first.
- Example: when you sell your house, the bank is paid first because they hold a lien – your mortgage!
- Or if you sell your car the bank gets paid first to pay off the loan; you get what's left!

41

TIMING AND COST OF ABSTRACT OF JUDGMENT?

When can a party get an abstract of judgment?

- Can be requested by judgment creditor as soon as the judgment is final.
- The abstract must be issued when requested.

There is a \$5 abstract fee per abstract

- The party can get multiple abstracts, since they will need to file one with the county clerk in each county where they want to create a lien on property of the judgment debtor.

21

42

HOW IS THE ABSTRACT PREPARED?

It is prepared by the court clerk.

The clerk fills it in with whatever information is provided to them.

The clerk **does not** research additional information.

Attorneys can create and file their own abstracts with the county clerk, without your court being involved.

43

WHAT INFORMATION IS IN THE ABSTRACT?

If Available

- The defendant's birth date
- The last 3 numbers of their driver's license and social security number
- The number of the lawsuit
- The date and amount of the judgment
- The balance due on the judgment
- The rate of interest in the judgment

Property Code §52.003

22

44

WRIT OF EXECUTION

45

WHAT IS WRIT OF EXECUTION?

It is an order from the court to a constable or sheriff directing them to take property from the judgment debtor (the person who lost) and sell it and give the money to the judgment creditor (the person who won) to satisfy the judgment!

Rules 505.2 and 621

23

46

HOW DOES THIS WORK?

The judgment creditor files an application with the court that issued the judgment for a writ of execution.

- Generally, this cannot be requested until 30 days after the judgment.
- There is a \$5 per page writ fee.

The writ is returnable to the court in 30, 60, or 90 days as requested by the judgment creditor (plaintiff).

- “Returnable” means that the writ has to be served and a return has to be filed with the court within that period of time.
- Whether it is 30, 60 or 90 days is up to the judgment creditor.
 - Rules 621, 622, 627 and Govt. Code § 101.151(a)(2)(c)

47

THEN WHAT?

If the court finds the requirements are met, the court issues the writ.



The clerk should attach a copy of the bill of costs (*a list of all the fees and cost the winning party had to pay*).



Now it goes to the constable's office for them to serve on the judgment debtor in order to obtain property to satisfy the judgment.

24

48

EXECUTION DOCKET RULE 507.3

The clerk must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.

EXECUTION DOCKET RULE 507.3

The clerk must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.

FOR MORE INFORMATION SEE: TEXAS CIVIL PROCESS FIELD GUIDE

POST JUDGMENT DISCOVERY

51

POST-JUDGMENT DISCOVERY

Post-Judgment Discovery Does Not Require the Court's Prior Approval.

Unlike pre-judgment discovery, which the court must approve in advance, post-judgment discovery may be conducted without the court's prior approval. The party requesting the discovery must give the responding party at least 30 days to respond to the discovery request. The responding party may file written objections with the court within 30 days of receiving the request. Rule 500.9(b).

26

52

POST-JUDGMENT DISCOVERY

If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely. Rule 500.9(b).

Sometimes a defendant upon whom a post-judgment discovery request has been served fails to respond at all to the request. In that case, the plaintiff may file a motion for sanctions with the court, including ultimately the possibility of holding the defendant in contempt for refusing to respond to the discovery requests. See Chapter 3 of the Officeholding Deskbook for more information on contempt.

ENFORCING JUDGMENT FOR PERSONAL PROPERTY

SPECIAL WRIT

When a judgment is for personal property, the court may award a **“Special Writ”** for the seizure and delivery of that property to the plaintiff.

Rule 505.2

What is a **special writ**?

Some courts use a form called *“writ of possession”* – confusing because of eviction cases!

Others just use a form called *“special writ for seizure and delivery of property.”*

Still others use a *“writ of execution for specific articles.”*

The title isn’t important as long as the writ directs the constable to do what **Rule 505.2** says.

55

HOW LONG CAN JUDGMENTS BE ENFORCED?

A judgment is good for **10 years** after it is issued.

If the 10-year clock gets down to zero without a writ of execution being issued, the judgment cannot be enforced, and is called a **dormant judgment**.

When a **writ of execution** is issued, it resets the clock, and the judgment is now good for 10 years from that date.

- This can happen over and over again!

28

56

HOW LONG CAN JUDGMENTS BE ENFORCED?

A dormant judgment can be revived within 2 years of going dormant.
The process to revive the dormant judgment is called a **scire facias**.

A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived. The court doesn't issue this on its own, only on request by the judgment creditor.

If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

57

GOOD CAUSE

A dormant judgment can be revived within 2 years of going dormant.
The process to revive the dormant judgment is called a **scire facias**.

A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived. The court doesn't issue this on its own, only on request by the judgment creditor.

If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

29

58

JUDGEMENT DEADLINE CALCULATION EXERCISE

A judgment is issued on October 29, 2015.

- If no writ of execution is ever issued, when would it go dormant?
- When would it die?

Now, say instead the judgment creditor gets a writ of execution on September 1, 2019, and an abstract of judgment on January 15, 2020.

- Assuming nothing else happens, when would it go dormant?
- When would it die?