

**Getting to Judgment
Without a Trial!**

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Harris County

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What We Will Cover

- What is a Judgment?
- Default Judgments
- Dismissal for Want of Prosecution
- Summary Disposition
- Confession of Judgment or "Nihil Dixit" (Say What?)
- Agreed Judgments
- Additional Resources

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The Judgment

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What is a Judgment?

- It's the document that states who won the case and how much, if anything, is owed by the side who lost.
- What is the purpose of a judgment?
 - To have formal proof (either written or electronic) of the outcome of a court proceeding.
 - To allow a party to enforce their right to recover money or property from the side that lost.

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What is a Judgment?

- How long is a judgment good for?
 - 10 years
 - But it can be extended another ten years every time a writ of execution is issued.

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What must be in the Judgment?

- Clearly state who won the case.
- Be signed by the judge.
- Be dated the date of the judge's signature.
- Must award costs allowed by law to the successful party.
- Include any post-judgment interest.
- If the case was about the right to a specific item, the judgment must order that the plaintiff recover the item and include the value of the item.
 - Rules 505.1(c) – (d)

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What Are the Ways a Party Might Obtain a Judgment?

- By a party not filing an answer after being served with the citation (a default judgment).
- If the plaintiff fails to show up, the case may be dismissed "for want of prosecution."
- After a summary disposition.
- By a confession of judgment (nihil dixit: the party "has nothing to say").
- As a result of an agreement between the parties (an agreed judgment).
- As a result of a trial.

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Poll:

- A judgment is entered on May 1, 2008. On April 30, 2018, the plaintiff requests a writ of execution which the court issues. Is the judgment still valid and enforceable today?
 - Yes
 - No

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Default Judgment

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What is a Default Judgment?

- In a small claims or debt claim case, after a defendant is served with the citation and a copy of the petition, they are required to file an ANSWER saying whether they deny the allegations in the petition.
- But sometimes defendants fail to file an answer.
 - What are some reasons why a defendant might fail to do that?
 - Type your answers in the chat box!

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What is a Default Judgment?

- A default judgment is an order granting a judgment to the plaintiff when the defendant fails to file an answer to the petition after being properly served with the citation.
 - So it means the plaintiff wins and the defendant loses even though the defendant never showed up.
 - If we didn't have default judgments a defendant could avoid losing a case by just ignoring it!

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How Does a Plaintiff Get a Default Judgment?

- A plaintiff has to request a default judgment.
 - Sometimes (especially in debt claim cases) the plaintiff will ask for a default judgment in their petition if the defendant fails to answer.

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How Does a Plaintiff Get a Default Judgment?

- If the defendant fails to answer but the plaintiff has not requested a default judgment, the court may set the case on a dismissal or DWOP docket (discussed below!) at which time the plaintiff might request a default judgment.

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What Must be on File before Proceeding with a Default Judgment?

- Proof that the defendant was served;
- A return of service on file for 3 days before a hearing;
- A statement of the defendant's last known address; and
- A Servicemember's Civil Relief Act affidavit (stating whether or not the defendant is in the military).

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What if You are Concerned About Service of the Citation on the Defendant?


- Before granting a default judgment, the court "must ensure that service was proper, and may hold a hearing for this purpose."
 - Rule 503.1(a)
 - So the court may set a hearing just on the issue of whether service really occurred and was proper.



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What if You are Concerned About Service of the Citation on the Defendant?

- The court may order a private process server to appear and answer any questions or concerns about service.
- If the court is not satisfied, then don't grant a default judgment.



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Examples Where Courts have had Concerns about Service

Numerous cases served all over the county by the same process server within a very short period of time.

A description of the person served that does not match the defendant.

Service on a person who had passed away!

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Service-member's Civil Relief Act Affidavit

- The court cannot grant a default judgment unless an SCRA affidavit has been filed stating that the defendant is not in the military.
- If the defendant is not in the military, the court may proceed with the default judgment.
 - If the defendant is in the military, or the affidavit states that the plaintiff doesn't know whether or not they are in the military, see the Civil Deskbook (2d ed. August 2020) at page 58.

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Poll

- Your court receives a return of service from a private process server. Under Rule 501.3(e), returns of service from anyone other than a sheriff, constable, or clerk of the court must be signed under penalty of perjury, but this private process server did not attach an affidavit to the return of service. The defendant does not appear.
- Can the court grant a default judgment?
 - Yes
 - No

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Must the Court Have a Hearing?

- Where are we:
 - The defendant failed to file an answer;
 - The plaintiff has requested a default judgment; and
 - All four requirements for a default judgment are satisfied.
- The next question is whether or not the court has to have a hearing.

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Must the Court Have a Hearing?

- In most cases the court must set a hearing and send notice of the hearing to BOTH the plaintiff and the defendant (even though they never filed an answer) so that the parties have at least three days' notice of the hearing.
- The plaintiff must appear (the court may allow them to appear by phone or Zoom).
 - If they fail to appear the court may dismiss the case.

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Must the Court Have a Hearing?

- The only purpose of the hearing is to determine the amount of damages the plaintiff should be awarded.
 - The defendant's liability is assumed because they did not show up.
- The plaintiff must present evidence of its damages (for examples, receipts or medical bills).
 - The court enters the amount of the default judgment based on the plaintiff's proof of damages.
 - If the plaintiff is unable to prove their damages, the court enters a judgment for the defendant.

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What if the Defendant Shows Up at the Hearing?

- If the defendant appears at the hearing, or files an answer (even though it is late), then the court may not enter a default judgment!
- The court either sets the case for trial (if they dispute the allegations of the petition and file an answer) or the defendant could admit they owe some or all of the amount the plaintiff is seeking and file a "confessed judgment" or an agreed judgment (discussed below).

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When is a Default Judgment Hearing Not Required?

- A hearing is not required and the court should go ahead and enter a default judgment if the case is:
 - a small claims case "based on a written document signed by the defendant" and the plaintiff proves their damages as required by Rule 503.1(a)(1); or
 - a debt claim case and the plaintiff proves their damages as required by Rule 508.3.

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Small Claims Case Based on a Written Document

- If a small claims case is:
 - based on a written document signed by the defendant; and
 - a copy of the document has been filed with the court and served on the defendant; and
 - the plaintiff files a sworn statement that the document is true and accurate and the relief sought is owed (taking into account all offsets and credits), then:
- The judge must render judgment for the plaintiff in the requested amount **without any necessity for a hearing.**
 - Rule 503.1(a)(1)

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Debt Claim Case

- In a debt claim case, the amount of damages is established by evidence:
 - that the account or loan was issued to the defendant and the defendant is obligated to pay it;
 - that the account was closed or the defendant breached the terms of the account or loan agreement;
 - of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and
 - that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

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Debt Claim Case

- Proof of plaintiff's damages must either be attached to the petition and served on the defendant or filed with the court after the defendant failed to answer.
- Proof of their damages may be offered in a sworn statement (an affidavit) or in live testimony and may include documentary evidence.

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Debt Claim Case

- If the plaintiff submits sufficient written evidence of its damages, then the judge may enter a default judgment without a hearing and should do so to avoid undue expense and delay.

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Debt Claim Case

- Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages.
- How do you let the plaintiff know the proof they submitted isn't good enough?
- Send a letter telling them the "no-hearing default" has been denied; they may then request a hearing to prove their damages.

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What if a Defendant Files an Answer but then Does not Show Up for Trial?

- This is a post-answer default judgment.
- The court hears the case just as it would in a normal trial.
- The plaintiff must put on evidence to establish both liability (that the defendant did something that makes them liable to the plaintiff) and the amount of damages.
- The court hears the evidence and renders judgment just as in any case.

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Poll:

- A small claims case is filed in your court for personal injuries the plaintiff claims he suffered when the defendant ran into him while driving an electric scooter. The defendant fails to file an answer to the petition. Do you have to have a hearing before granting a default judgment?
 - Yes
 - No

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Poll:


- A debt claim case is filed in your court and the plaintiff attaches documentation showing that the defendant had a credit card account, breached the terms of payment, the amount due on the account and that the plaintiff owns the account and how they acquired it. The defendant fails to file an answer to the petition. Do you have to have a hearing before granting a default judgment?
 - Yes
 - No

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Poll:

- The court sets a hearing on a default judgment and sends notice to both parties. Five minutes before the hearing you receive a phone call from the defendant saying they never even heard of this plaintiff and this is the first they've heard of this case. Should the court proceed with the default judgment hearing?
 - Yes
 - No

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Find the Answer!

Use the Civil Deskbook to find the answer to the question:

When may a default judgment be granted without a hearing in a small claims case?

When you find the answer, type the page number where it appears in the chat box.

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Dismissal for Want of Prosecution

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What is Dismissal for Want of Prosecution?

- The plaintiff has an obligation to “prosecute” the case.
 - This means the plaintiff may not just file a case and forget about it.
 - The plaintiff must take certain steps to have the case heard and decided.
- For example, the plaintiff must show up for trial!

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What is Dismissal for Want of Prosecution?

- If a plaintiff fails to show up for trial, the judge may either postpone the trial to another day or dismiss the case for want of prosecution.
 - For the court to dismiss the case, the plaintiff must have received notice of the trial date.
 - And the best practice is for the court to state in the notice that if the plaintiff fails to appear for trial, then the case may be dismissed.

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Dismissal Dockets

- Other situations in which a plaintiff may not pursue the case to trial include:
 - The plaintiff is not able to properly serve the defendant with the citation;
 - The parties come to an agreement but do not notify the court;
 - The plaintiff files a lot of cases and as an oversight fails to request a default judgment (primarily in debt claim cases); or
 - The plaintiff does not know that they have to ask for a default judgment hearing in a small claims case if the defendant fails to answer.

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Dismissal Dockets

- In these situations the court may put the case on a dismissal or DWOP (Dismissal for Want of Prosecution) docket.
- The court should send a notice to the parties stating that if the plaintiff does not show good cause within ___ days (for example, 30 days) as to why the case should not be dismissed, then it will be dismissed.

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Dismissal
Dockets

- If the court does not hear from the plaintiff within the time required, or if the plaintiff is not able to show good cause for not pursuing the case, then the case may be dismissed.
- This dismissal is normally “without prejudice,” meaning the plaintiff is free to file a new case provided the statute of limitations has not run out.

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How Long
Should the
Plaintiff
Have to
Serve the
Citation?


- There is no set amount of time by which the plaintiff must serve the citation on the defendant.
- Therefore, it is up to the court to decide how much time is reasonable before putting the case on a dismissal docket.
 - In federal court a plaintiff gets 90 days to serve the pleadings on the defendant.
 - So three to six months seems pretty reasonable in justice court.
 - But it is up to the judge to decide this.

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Poll

- On the day of trial the plaintiff contacts the court half an hour before the trial is scheduled to begin and says they have a family medical emergency and can't make it to court. The court resets the case for 30 days later. On the new trial date the plaintiff fails to show up or call in. The court should:
 - Dismiss the case for want of prosecution.
 - Reschedule the trial again.
 - Issue an order stating the case will be dismissed unless the plaintiff shows good cause why it should not be.

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Breakout Discussion
(four minutes)

- Cases have been pending on your court's docket for a year or more without any return of service showing the citation has been served on the defendant. What is the best way to handle these cases?

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Summary Disposition


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What is Summary Disposition?

- It's a way to decide a case without a trial!
- A motion for summary disposition says that there are no facts in dispute that would require a trial.

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What is Summary Disposition?

- For example, in a suit on a promissory note for \$1,000 everyone agrees that the defendant signed the note, that it is valid and that they have not paid it back.
- Therefore, there is no point in a trial and if the plaintiff files a motion for summary disposition, the court should render a judgment without having a trial.

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Who May File a Motion for Summary Disposition?

- Either side (the plaintiff or the defendant) may file a sworn motion for summary disposition.
- The motion may be directed to all or just part of a claim.
 - For example, in a car accident case, the plaintiff might move for summary disposition on liability because the defendant admits he ran a red light.
 - So the only issue for trial would be the amount of damages.
 - The plaintiff would ask the court to grant summary disposition that the defendant is liable but there would still be a trial on how much the defendant has to pay in damages.

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What Does the Motion Have to Show?

- A motion for summary disposition must set out all of the supporting facts and all documents on which the motion relies must be attached to the motion.
 - For example, here is the promissory note the defendant signed, or here is a statement the defendant gave to an officer admitting he ran a red light.

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What Happens Next?

- The party opposing the motion may file a sworn written response but is not required to do so.
- If the parties agree, the judge may decide the motion and response without a hearing.
- Otherwise, the court should set a hearing on the motion.
- The court must not consider the motion until it has been on file for at least 14 days.
 - Rule 503.2(b) and (c)

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How Does the Court Decide the Motion?

- At the hearing the court may consider evidence offered by the parties.
- The motion must be granted if it shows that:
 - There are no genuinely disputed facts that would prevent a judgment in favor of the party; or
 - There is no evidence of one or more essential elements of a claim of the plaintiff or a defense of a defendant.

-- Rule 503.2(a)

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How May the Court Rule?

- The judge may enter judgment as to the entire case.
- Or the judge may specify the facts that are established and direct further proceedings in the case on facts that need to be resolved at trial.
- Or the judge may deny the motion and order the case to proceed to trial on all the claims the parties have asserted in the case.
 - Rule 502.2(c) and (d)

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Breakout Discussion (5 minutes)

- Consider each of these scenarios:
 - Scenario A: Jim sues Bob claiming he loaned him \$1,000 and Bob signed a promissory note stating he would pay it all back by December 31. Bob admits he got the money and that he failed to pay it back; his only defense is that he needs a little more time.
 - Scenario B: Same facts but now Bob claims he sent Jim a text message on December 30 saying he needed a little more time to pay back the loan and Jim responded with a text saying "No problem. And happy new year."
- How should the court consider a motion for summary disposition in each situation?

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Confession of Judgment (Nihil Dixit!)

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What is a Confession of Judgment?

- It's a procedure in which a defendant may admit that the plaintiff's claim is valid and they are entitled to a judgment.
- Often the defendant (or their attorney) will file a pleading stating: "Nihil Dixit," which literally means "he has nothing to say."

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Are There Any Other Requirements?

- The plaintiff must file a sworn petition stating that the debt or cause of action is just.
- If an attorney confesses judgment, they must file a power of attorney and the contents must be recited in the judgment.

-- Rule 314

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Use of Confession of Judgment Prohibited by Lender

- A lender may not take a confession of judgment or a power of attorney authorizing the lender or a third party to confess judgment or to appear for a borrower in a judicial proceeding.
- Finance Code § 342.504

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Agreed Judgment

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What is an Agreed Judgment?

- An agreed judgment is a judgment agreed to by both parties to a case.
- A judge may generally sign an agreed judgment but should be careful not to allow the court to be placed in the middle of the parties' settlement.
 - The parties may have a separate settlement agreement.
 - If one of the parties fails to comply with that agreement, a new suit may be filed for breach of the settlement agreement.

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Additional Resources

- Civil Deskbook (2d ed. August 2020)
- Webinars:
 - Citations and Default Judgments
 - Agreed Judgments
 - A Motion for What?
 - Step by Step Civil Procedure: Filing Through Judgment
- Legal Board Questions & Answers
- New Revised Forms

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Questions?

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