

Debt Claim Cases: Filing Through Judgment

Heather Montoya
Certified Master Clerk
Tarrant County

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Civil Deskbook

Charts &
Checklists Page

Rule 508, Texas
Rules of Civil
Procedure

Resources

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Filing the Case

The plaintiff **only** has a debt claim case if they are suing for debt **and** if they are one of the following:

- Debt collector or collection agency
- Assignee of a claim
- Financial institution
- Person or entity primarily engaged in the business of lending money at interest

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Scenario Discussion

- What if a person comes in and asks if they should file a small claims case or debt claim case?
- What if a person comes to the window and has a filled out debt claim petition, but their case is actually a small claims case?
- What if you receive a petition in the mail that is the wrong case type?

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Legal Advice vs. Legal Information

TJCTC has modified its petition to help prevent plaintiffs and courts from mis-labeling cases.

We also feel it is **not** legal advice to answer what type of case a plaintiff has or what type of petition they need.

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Discussion Question

- Jeff loans Bronson \$1,000 which Bronson promises to repay as soon as he gets back from Las Vegas. But what happens in Vegas stays in Vegas and so does Jeff's money. Jeff sues in justice court to get it back.
- Is Jeff's suit:
 - A debt claim case since Bronson owes a debt? Or:
 - A small claims case since Jeff is not a loan shark (or person in the business of lending money at interest etc.).

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The petition needs to comply with Rules 502.2 and 508.2

- This is reviewed on P. 18-20 of the Civil Deskbook and the Debt Claim Checklist handout.
- Note also that a Civil Case Information Sheet is **no longer required**, effective February 26, 2019.

The Petition

But what if a debt claim petition **doesn't** comply with the rules? Let's review!

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Petition (Rule 508.2)

- Petition must contain (in addition to the information in Rule 502.2):
- In a claim **based upon a credit card**, revolving credit, or open account, the petition must state:
 - (A) the account name or credit card name;
 - (B) the account number (which may be masked);
 - (C) the date of issue or origination of the account, if known;
 - (D) the date of charge-off or breach of the account, if known;
 - (E) the amount owed as of a date certain; and
 - (F) whether the plaintiff seeks ongoing interest.

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- In a claim based upon a **promissory note** or other promise to pay a specific amount as of a date certain, the petition must state:
 - (A) the date and amount of the original loan;
 - (B) whether the repayment of the debt was accelerated, if known;
 - (C) the date final payment was due;
 - (D) the amount due as of the final payment date;
 - (E) the amount owed as of a date certain; and
 - (F) whether plaintiff seeks ongoing interest.

Petition (Rule 508.2)

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Petition (Rule 508.2)

- If a plaintiff seeks ongoing interest, the petition must state:
 - (A) the effective interest rate claimed;
 - (B) whether the interest rate is based upon contract or statute; and
 - (C) the dollar amount of interest claimed as of a date certain.

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Petition (Rule 508.2)

- If the debt that is the subject of the claim has been assigned or transferred, the petition must state:
 - (A) that the debt claim has been transferred or assigned;
 - (B) the date of the transfer or assignment;
 - (C) the name of any prior holders of the debt; and
 - (D) the name or a description of the original creditor.

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Discussion Questions

- What is the purpose of these requirements in debt claim petitions?
- What should you do if the account number is entirely redacted?
- What if the original creditor isn't listed?

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The Rules are silent on petitions that are missing required items.

TJCTC Recommendation:

- Issue citations on all petitions filed, even if they are missing requirements
- If the defendant answers, proceed. They may file a motion to have the plaintiff amend or clarify if they want to get additional information. – TRCP 502.7
- If the defendant **doesn't** answer, we recommend **not** granting default judgments on petitions that don't comply with the Rules.

The Petition

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Scenario Discussions – Moving the Case Forward

What if you never receive a return of service?

What if you get a return and then nothing happens?

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Remember the
general rule in
debt claim cases:

- If the defendant does not file an answer or otherwise appear by the answer date, the judge should render a default judgment – **without a hearing** – upon plaintiff’s proof of the amount of damages.

This is **not** the
rule in most
small claim cases.

- See P. 51-60 of the Civil Deskbook for a full review of default judgment procedures

Default Judgment (Rule 508.3)

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Discussion
Questions –
Default
Judgment

What if the defendant appears at a default hearing?

What if there are concerns about service?

What if the defendant calls the court but doesn’t file a written answer?

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“Proof of Amount of Damages”

- The court should, in debt claim cases, grant a default judgment without requiring a hearing if:
 - A petition was filed that complies with the Rules discussed earlier;
 - The citation was properly served on the defendant;
 - The defendant doesn’t answer or otherwise appear by the answer date; **and**
 - **The plaintiff submits proof of the amount of damages.**

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What is “Proof of Amount of Damages”?

The plaintiff has to show, by testimony or by submitting documents:

- A. that the account or loan was issued to the defendant and the defendant is obligated to pay it;
- B. that the account has been closed or the defendant breached the terms of the account or loan agreement;
- C. what the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied is; and
- D. that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

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What
Documents Can
Be Considered?

At trial, the rules of evidence don't apply, so the judge can consider whatever they feel is credible and relevant.

For default judgment, only documents that are "proven up" by the plaintiff may be considered, which means there must be a sworn statement accompanying the document as required by Rule 508.3.

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Discussion
Scenarios -
Damages

What if documents are filed to support damages, without a prove-up affidavit? How is it different if we are at a default judgment situation vs. a trial?

What if documents supporting the damages amount conflict?

Describe the difference in a "regular" default judgment and a "post-answer" default.

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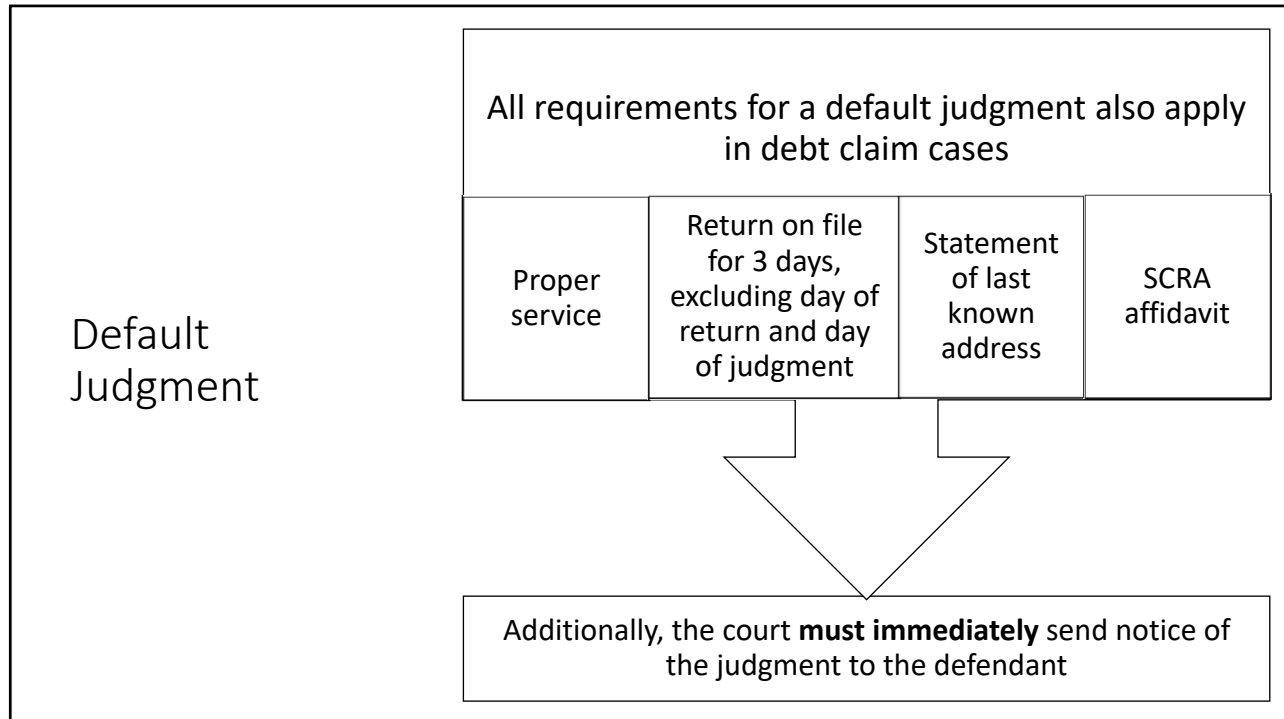
What if the Plaintiff Doesn't Submit Proper Proof of Damages?

- If the judge doesn't feel the proof is sufficient for a default judgment without a hearing, 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.
- Is Zoom okay?
- What if the plaintiff doesn't request a hearing?
- What if the plaintiff can't provide sufficient proof at the hearing?

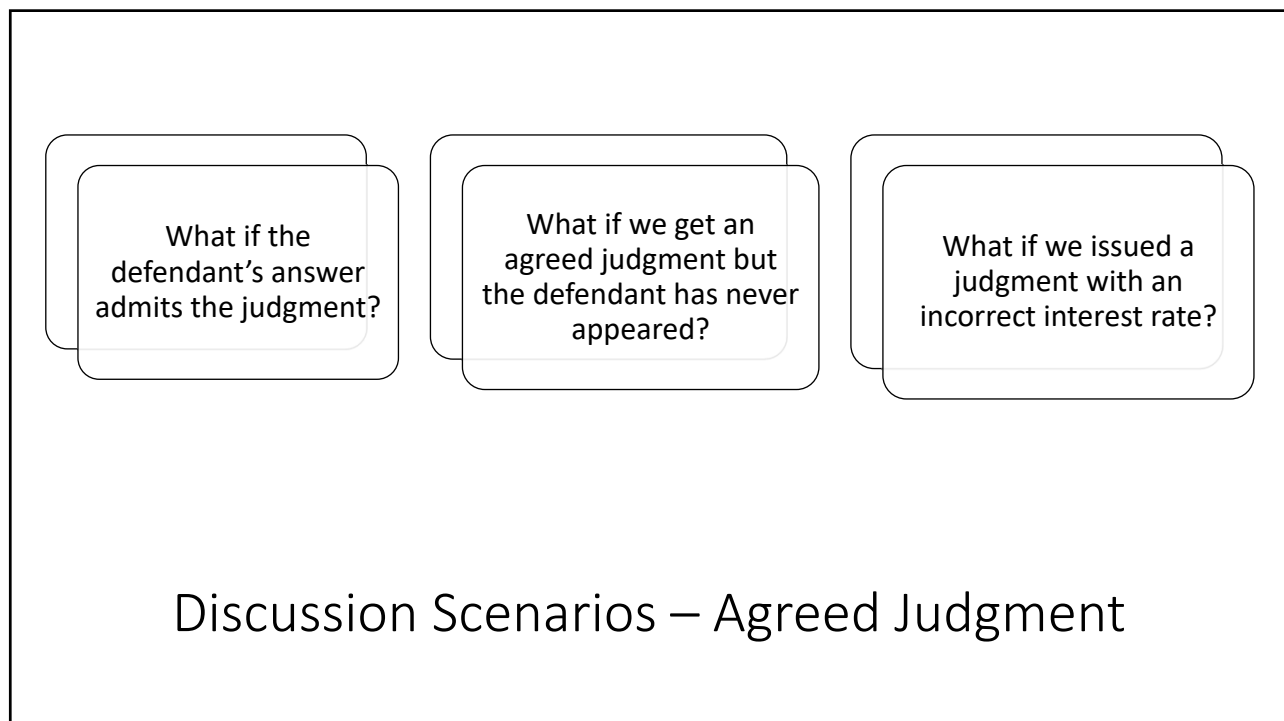
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What if You Get Lost in the Weeds?

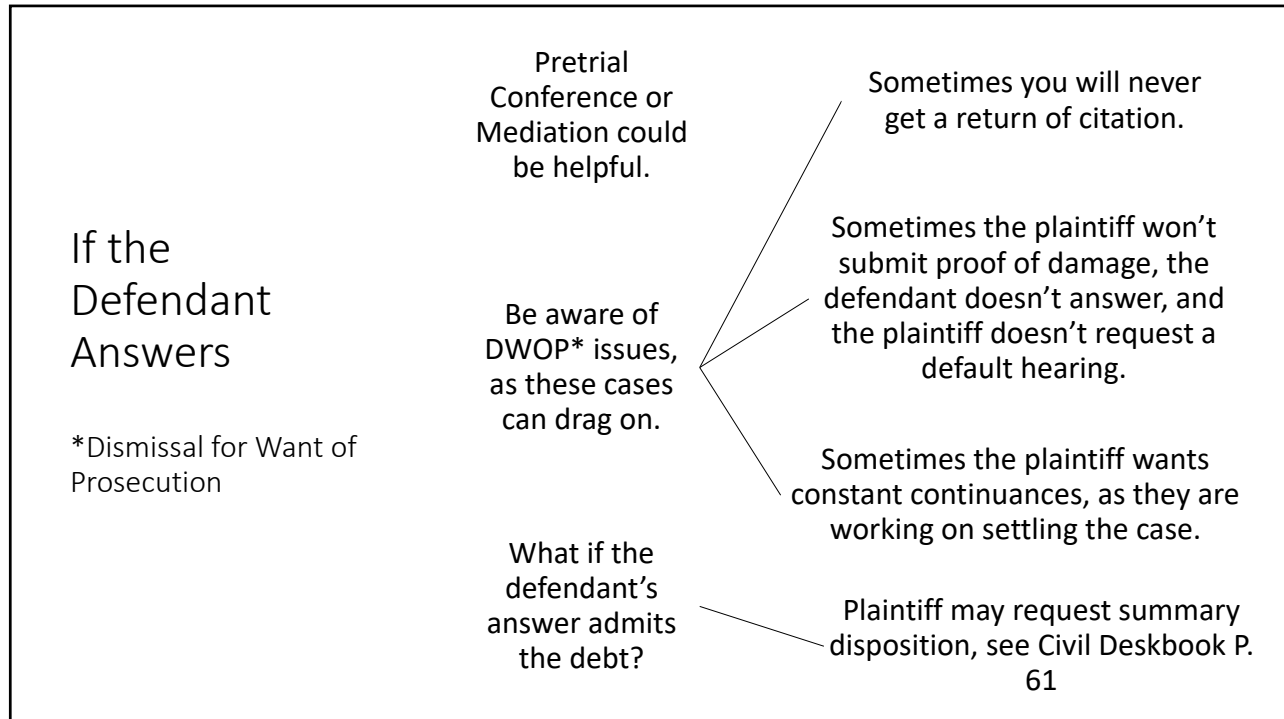
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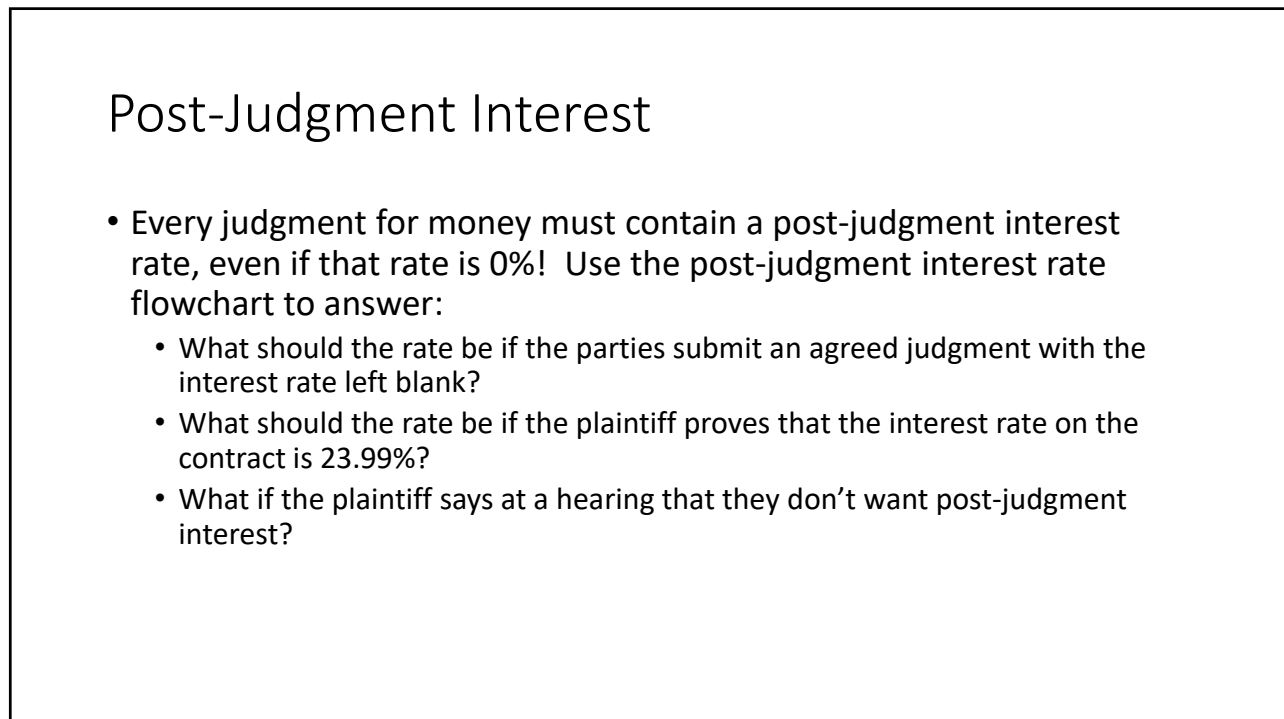
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Statute of Limitations – Debt Claim Cases

- The statute of limitations in a case for debt is four years.
- Current caselaw says you start the clock on the four years when “dealings between the parties” stop.
- Usually, that will mean from the last charge made or payment sent by the defendant.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn’t bring that up, and even if the defendant never appears.

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Discussion Scenario - Defenses

What if the defendant answers and says “I’ve never had an account with these people” or “This isn’t me”?

What if the case appears to be outside the statute of limitations but the defendant doesn’t appear? What if they appear but don’t challenge that?

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Use the Debt
Claims
Checklist
Handout to
Answer!

How many days must a return be on file before a default judgment may issue?

What happens if there is a default judgment hearing and the plaintiff's affidavit says they are unable to determine if the defendant is in the military?

What happens if the case is set for trial and neither party appears?

Can the plaintiff request a default judgment hearing orally?

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Questions?

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