



**Third Edition
October 2023**

**Published by the
Texas Justice Court Training Center**

**An educational endeavor of the
Justices of the Peace and Constables Association of Texas, Inc.**

**Funded by Grants from the Texas Court of Criminal Appeals and Texas Department of
Transportation**

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Notes

Acknowledgments

This guide was made possible by the contributions of the Justices of the Peace and Constables Association 2019-2020 Constable Education Committee. The Committee's expertise and dedication to the professionalization of civil process was integral in the development of this publication. This publication was developed in conjunction with the aforementioned Constable Education Committee and is updated by the Texas Justice Court Training Center.

User Notes

This Civil Process Field Guide (3rd ed. October 2023) represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information, and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc. We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

This field guide is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter in serving civil process. In an effort to provide the most accurate and up-to-date resources, forms provided from TJCTC can be found at <https://www.tjctc.org/tjctc-resources/forms.html>.

This field guide is not intended to replace original sources of authority, such as the Civil Practice and Remedies Code or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

Please note the following statute and rule abbreviations that are used in this guide:

- CCP: Code of Criminal Procedure
- CPRC: Civil Practice and Remedies Code
- FC: Family Code
- GC: Government Code
- LGC: Local Government Code
- PC: Property Code
- TC: Tax Code
- TRAP: Texas Rules of Appellate Procedure
- Rule: Texas Rules of Civil Procedure

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in *Civil Process Field Guide*.

Texas Justice Court Training Center
October 2023

Part 1: Civil Process Anyone Can Serve

The writs and process discussed in this part are papers anyone can serve.

A. Items Common to Civil Process That Anyone Can Serve

In addition to the items below, information specific to each type of process can be found in [Section B.](#)

1. **Requirements of Writs and Process:** [Rules 15, 99, 501.1(b)]
 - Styled “The State of Texas.”
 - Identify the person to whom process is directed.
 - Include the name and county of the court where the case is filed.
 - Include the cause number.
 - Identify all parties in the case.
 - Include the date of issuance of the writ or process.
 - Identify which court the writ or process is returnable to.
 - Signed by the clerk or judge.
 - Contain the court’s seal.

2. **Date and Time for Service:** [Rules 4-6, 500.5, 501.2(d), CPRC § 30.0035]
 - May be served Monday through Saturday, any time of day.
 - May not be served on a member of the Texas House or Senate during a legislative proceeding.
 - Computing time for service:
 - Exclude the day the process is issued.
 - Counting Saturdays, Sundays, and legal holidays:
 - *Justice court:* count every day, including Saturdays, Sundays, and legal holidays.
 - *District or county court:* If the time period to serve is five days or less, don’t include Saturdays, Sundays, or legal holidays.
 - If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
 - The court has the discretion to extend the time period for service.

3. Who May Serve: [Rules 103, 501.2(a)]

- May be served by:
 - any sheriff, constable, or their deputies;
 - any person authorized by law or by court order who is 18 years old or older;
 - or**
 - any process server certified under order of the Supreme Court.
- No person who is a party to, or interested in the outcome of a suit, may serve process in that suit.
- May be served anywhere in the state.

4. Method of Service:

- Personal service on the person identified in the process.

5. Expiration for Service: [Rule 105]

- Unless specifically indicated, process does not expire for purposes of serving.
- Service of process should be done as soon as possible, without delay.

6. Service Duties/Requirements of Officer: [Rules 17, 105, 106, 126]

- Enter the process or writ into the record keeping system.
- Write/stamp on the process the date and time when the officer received it.
- Serve on the person identified to receive service of process.
- Proceed without delay.
- Attempt service at all addresses provided.
 - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
- Keep copies of all documents in accordance with established record retention schedules.
- Fee Collection:
 - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.
 - If an officer is serving process for a case pending in another county, the officer may require payment before serving, unless a Statement of Inability to Afford Payment of Court Costs has been filed.

7. Return Duties/Requirements of Officer: [Rules 15, 16, 107, 501.3]

- Complete a return of service that can, but does not have to be, attached to the process.
- Return of service must include:
 - cause number,
 - case name,
 - name and county of the court where the case is filed,
 - date and time the process was received for service,
 - the name of the person or entity served,
 - the address served,
 - the date(s) and time(s) of service and/or attempted service,
 - manner of delivery of service and/or attempted service,
 - description of what was served,
 - name of the person(s) who served or attempted service,
 - if the person serving is a process server, his or her identification number and expiration date of his or her certification,
 - any other information required by rule or law,
 - any additional information specific to the service that should be noted in the file,
 - when service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
 - Signature must be sworn to and notarized if signed by someone who is not a constable, sheriff, their deputies, or the court clerk.
- File the return of service with the clerk.
 - Return may be in person, electronically, or by fax.
 - Unless otherwise stated, the return is to be filed by 10:00 a.m. on the Monday after the expiration of 20 days from the date of service.

B. Details for Specific Writs, Subpoenas, and Citations

1. Writ of Certiorari

Definition:

- A writ issued by an appellate court directing a lower court to deliver the record(s) in a case for review;
- Issued after a final judgment has been rendered and the losing party is claiming the trial court didn't have jurisdiction to hear the case, or the judgment caused an injustice to the losing party that was not caused by the losing party's negligence.

Issued by: [CPRC §§ 51.002, 51.011]

- Supreme court.
- Appellate court.
- District court.
- County court.

Additional Requirements of the Writ: [Rule 506.4(e)]

- Command the trial court to immediately make and certify copies of all records in the case.
- Command the trial court to immediately send all transcripts and records of the case to the court issuing the writ.

Comments: [Rule 506.4(f).]

- The officer does not take any records from the lower court to the higher court, just delivers the writ.
- The officer serving the writ may also be asked to serve the citation on the adversely affected party.

2. Citations

Definition:

- Official process by which a defendant is notified he or she is being sued.

- The citation provides notice to the defendant of the opportunity to answer, appear, and defend the suit.

Issued by:

- District court.
- County court.
- Justice court.

Additional Requirements of the Citation: [Rules 99, 501.1(b),(c)]

- Include the date the petition was filed.
- Include the name and address of the plaintiff's attorney, or address of the plaintiff.
- Include how long the defendant has to file a written answer with the clerk who issued the citation.
 - **District or county court:** answer must be filed on or before Monday at 10:00 am, after the expiration of 20 days from the date of service.
 - **Justice court:** answer must be filed by the end of the 14th day after the date of service. If that day is a Saturday, Sunday, or legal holiday then by the end of the next business day.
- Include the address of the clerk.
- Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to file an answer.
- Include the notice:
 - **District or county court:** "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."
 - **Justice court:** "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 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a



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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.”

Additional Dates and Times for Service: [Rules 6, 501.2(d)]

- A citation cannot be served on a Sunday **except** in attachment, garnishment, sequestration, or distress proceedings.
- Service by publication: a citation published on Sunday is valid.

Additional People Who May Serve: [Rules 103 and 501.2(a)(3)]

- Clerk of the court if the citation is served by publication, registered mail, or certified mail.

Additional Methods of Service: [Rules 106, 109, 109a, 116, 119, 501.2]

- *Primary Method:*
 - Personal service on the defendant (preferred method): give defendant a copy of the citation and petition in person.
 - Mailing, by registered or certified mail with return receipt requested, a copy of the citation and petition.
- *Alternative/Substituted service:*
 - Must be requested from and approved by the court after attempts to serve by personal service or mail are unsuccessful.
 - Plaintiff or anyone authorized to serve process can request alternative/substituted service.
 - Person requesting alternate service must submit a sworn affidavit explaining the attempts made to serve by way of personal service or mail, how they were not successful, and provide the location of defendant’s usual place of business, usual place of residence, or another place where the defendant can probably be found.
 - If alternate service is authorized, service is by:
 - Mailing a copy of the citation and petition by first class mail to defendant’s address, and leaving a copy of the citation and petition with

any person over the age of 16 at the location(s) specified in the affidavit,
or

- Mailing a copy of the citation and petition by first class mail to defendant's address, and by serving a copy in any manner the court determines will be reasonably effective in giving defendant notice of the suit.

Rule 106 states in district or county court, a judge may allow substitute service electronically by social media, email, or other technology (*justices courts may also choose to apply this rule under Rule 500.3(e)*).

- *Service by Publication:*
 - Allowed when plaintiff or plaintiff's attorney makes a sworn statement to the judge that defendant's address is unknown, defendant is transient and can't be located after diligent efforts, or defendant is absent from or a nonresident of Texas, and personal service of the defendant in his or her state of residence has been unsuccessful.
 - If allowed, the citation is published:
 - once a week for four consecutive weeks;
 - with the first publication done at least 28 days before the return day of the citation;
 - if the suit **does not** involve title to land or partition of real estate, publication is in:
 - ❖ the county where the case is pending if that county has a newspaper;
or
 - ❖ if the county does not have a newspaper, then in an adjoining county that has a newspaper.
 - if the suit **does** involve title to land or partition of real estate, publication is in:
 - ❖ the county where the land, or a portion of the land, is located if that county has a newspaper; **or**
 - ❖ if the county does not have a newspaper, then in an adjoining county that has a newspaper.
 - generally, in addition to newspaper publication, the citation must be published on the Public Information Internet Website:
<https://topics.txcourts.gov/>

- ❖ This is done by the court clerk.
- in some cases, publication in the newspaper may not be required, and publication will only be made on the Public Information Internet Website:
 - ❖ if the party requesting the citation files a Statement of Inability to Afford Payment of Court Costs;
 - ❖ if the total cost of the required publication exceeds \$200 each week or an amount set by the TX Supreme Court (whichever is greater); **or**
 - ❖ if the county in which the publication is required does not have any newspaper published, printed, or generally circulated in the county.
- Defendant may waive service if done so in writing, signed by the defendant or his attorney, sworn to, and after the case is filed. This waiver, once filed in the case, has the same force and effect as if the citation had been served.

Expiration for Service: [Rule 117a]

- Citations, unless for delinquent *ad valorem* taxes, do not expire.
- Citations for delinquent *ad valorem* taxes expire 90 days from the date of issuance.

Deliver to: [Rules 106, 109a, 501.2(e), CPRC §17.021]

- *Primary Method:* named defendant(s).
- *Alternative/Substituted Service:* any person over the age of 16.
- *If the person being sued is a business:* If the business owner can't be located, isn't a resident of the county, or isn't a resident of Texas, an agent or clerk of the business may be served.
 - CPRC Chapter 17 identifies specific people to serve when a business entity is the defendant.

Additional Service Duties/Requirements of Officer: [Rule 501.2]

- Write the date of delivery on the citation before giving it to the defendant.
- Generally, service of process needs to occur by handing the paperwork directly to the person being served. However, if the person refuses to accept service, they are held under Texas law to be personally served if:
 - the person being served is identified;

- they are informed of the nature of the process and that service is being attempted, and
- the papers are deposited in an appropriate place in their presence or near them where they are likely to find them. *Dosamentes v. Dosamentes*, 500 S.W.2d. 233; *Texas Industries, Inc. v. Sanchez*, 521 S.W.2d. 133.

Additional Return Duties/Requirements of Officer: [Rule 501.3, 117]

- If citation was served by registered or certified mail, the return must contain the return receipt with the addressee’s signature.
- If the citation was served by publication, the return must specify the dates of publication and include a printed copy of the publication.

Comments: [Rules 99, 501.1, 501.2]

- Plaintiff is responsible for obtaining service of the citation and petition on defendant. Plaintiff decides who is going to serve the citation.
- Multiple citations can be issued to the Plaintiff. If done at the district or county court level, copies are made at no additional charge. If done at the justice court level, the plaintiff can be charged a copying cost.
- The plaintiff must pay all fees for service unless they have filed a Statement of Inability to Afford Payment or Court Costs. If that statement is filed, a process server **cannot** serve the citation, only a sheriff, constable, their deputies, or court clerk can.

3. Writ of Habeas Corpus

Definition:

- Court order that commands anyone having a person in custody to produce the person at the time and place named in the writ, and to show why that person is being held in custody or under restraint.

Issued by: [CCP Art. 11.05, FC § 157.371]

- Court of Criminal Appeals.
- District court.
- County court.

Additional Requirements of the Writ: [CCP Art. 11.02, FC § 157.372]

- Addressed to the person having another under restraint or in his custody.
- Include the name of the person being detained.
- Include the date and location of the hearing.
- Instruct that the prisoner be brought before the judge on the hearing date.
- In a case involving the right to possession of a child, the writ may identify and order return of a child.
- May not be served on Sunday.

Additional People Who May Serve: [CCP Art. 11.26]

- Any person competent to testify.

Additional Methods of Service:

- If the person refuses to receive the writ, the officer can read the writ to the person.
- If the person refuses to open the door or hides from the officer serving the writ, the officer can post the writ in a conspicuous part of the house where the person lives or is hiding, or where the prisoner is being confined.

Expiration for Service:

- On the hearing date.

Deliver to: [CCP Art. 11.27]

- Person having command and/or control of the person whose release or return is sought.

Additional Return Duties/Requirements of Officer: [CCP Arts. 11.06, 11.28, 11.30]

- State whether the person detained is or isn't in the custody of the person the writ was served on.
- State by what authority or for what cause the person detained the prisoner.
- If the prisoner has been transferred to another's custody, state to whom, at what time, and for what reason, or by what authority the prisoner was transferred.
- Attach the writ or warrant.
- Where writ is returnable:

- If the writ is issued prior to indictment, the writ is returnable to any county.
- If the writ is issued after an indictment, the writ is returnable to the county where the offense was committed.
- If the writ is issued after a final conviction, the writ is returnable to the Court of Criminal Appeals.
- The writ is returnable at a time decided upon by the judge and stated in the writ.

4. Writ of Mandamus

Definition:

- A court order from a higher court to a lower court or to a government official or office commanding that person or entity to perform an act required by law which that entity has refused to do.

Issued by: [TRAP Rule 52.1, GC §§ 22.002, 22.221]

- Supreme court.
- Appellate court.

Additional Requirements of the Writ:

- Command the person to perform an act required by law as set out in the writ.

Additional Methods of Service: [Rule 21a]

- Mail.
- Commercial delivery service.
- Fax.
- Email.
- Any other manner the court directs.

Deliver to: [Rule 21a]

- The person named in the writ.
- The person's duly authorized agent or attorney of record.

5. Repair and Remedy Citations

Definition:

- Official process by which a landlord is notified he or she is being sued by a residential tenant to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of the tenant.

Issued by: [Rule 509.3]

- Justice court in the precinct where the rental property is located.

Additional Requirements of the Citation: [Rule 509.3]

- State the appearance date.
 - The appearance date can't be less than 10 days or more than 21 days after the petition is filed.
 - The appearance date is the trial date.

Expiration for Service:

- Expires on the hearing date.

Deliver to: [Rule 509.4]

- *Primary method*: landlord named in the citation.
- *Secondary method*: if the landlord's name and business address are not included in the petition, or if after making diligent efforts on at least two occasions, the landlord can't be served, the officer can serve:
 - Landlord's management company if the tenant has written notice of that information.
 - Landlord's authorized agent for service which can be the landlord's management company, on-premises manager, or the rent collector serving the property.
- *Alternative Service*:
 - If the primary and secondary methods of service are not successful, the officer must file a sworn statement stating:
 - The officer made diligent efforts to serve the citation on at least two occasions at all available business addresses of the landlord and, to the

extent applicable, the landlord's management company, on-premises manager, and rent collector serving the property, **and**

- The times, dates, and places of each attempted service.
- Then the judge can authorize service by:
 - Delivering a copy of the citation and petition to anyone over 16 years old at any business address listed in the petition, or if no one answers the door, putting it through a mail chute or under the door, or by attaching to the main entry door, **and**
 - Mailing a copy of the citation and petition to the landlord's business address by first class mail within 24 hours.

Additional Service Duties/Requirements of Officer: [Rule 509.4(1)]

- The citation must be delivered at least six days before the appearance date.
- If delivery is by alternative service, delivery and mailing must occur at least six days before the appearance date.

Additional Return Duties/Requirements of Officer: [Rule 509.4]

- If service is by alternative service, the officer must include in the return the date the petition was delivered and the date of the mailing.
- The return must be filed at least one day before the appearance date.

6. Writ of Scire Facias

Definition: [CPRC § 31.006, Rules 151, 152]

- A writ directing a party to appear and show why a dormant judgment against him should not be revived.
- A writ directing the heirs or the administrator of a deceased party's estate to appear and proceed with the case.

Issued by:

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [Rule 154]

- If the writ is for revival of a judgment:
 - Include the hearing date.
- If the writ is ordering parties to proceed with a case:
 - Include the date the petition was filed.
 - Include the name and address of the plaintiff's attorney or address of the plaintiff.
 - Include how long the defendant has to file a written answer with the clerk:
 - **District or county court:** answer must be filed on or before Monday at 10:00 am after the expiration of 20 days from the date of service.
 - **Justice court:** answer must be filed by the end of the 14th day after the date of service. If that day is a Saturday, Sunday, or legal holiday then by the end of the next business day.
 - Include the address of the clerk.
 - Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to file an answer.

Deliver to:

- Serve in the same manner as a citation to defendant(s) named on the writ.

Additional Service Duties/Requirements of Officer:

- Write date of delivery on the writ before giving it to defendant.

Additional Return Duties/Requirements of Officer:

- If the writ was served by registered or certified mail, the return must contain the return receipt with the addressee's signature.

7. Subpoenas

Definition:

- An order commanding a person to appear at a certain time and place to give testimony on a certain matter or to produce certain documents or other tangible items.
- Applies to both civil and criminal cases.

Issued by: [Rules 176.4, 500.8, CCP Art. 24.01]

- **Civil Cases:**
 - District court.
 - County court.
 - Justice court.
 - An attorney authorized to practice in Texas as an officer of the court.
 - An officer authorized to take depositions.
- **Criminal Cases:**
 - District court.
 - County court.
 - Justice court.

Additional Requirements of the Subpoena: [Rules 176.1, 500.8, CCP Arts. 24.01, 24.011, 24.02]

- State the time and place where the subpoenaed person needs to go to comply.
- Command the person to do either or both:
 - Attend and give testimony at a deposition, hearing, or trial.
 - Produce and permit inspection and copying of designated documents or tangible things in the possession, custody, or control of the person.
- **Civil subpoenas:**
 - Identify the party requesting the subpoena and the name of their attorney if there is one.
 - State that failure to comply with the subpoena may be deemed contempt of court and may be punished by fine, confinement, or both.
 - State whether the person must also provide records or other things to the court (*A previous rule regarding documents was entitled "Duces Tecum," but it was deleted, and its contents were moved to Rule 176*)
- **Criminal subpoenas:**
 - State whether the witness(s) is summoned for the State or for the defendant.
 - To subpoena a child younger than 18 years of age, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court.

- If a witness has in their possession any instrument of writing or other thing desired as evidence, the subpoena may be called a subpoena duces tecum and require the witness to bring the evidence to the court.

Expiration for Service:

- Expires on the hearing date.

Additional Methods of Service: [Rule 21a, CCP Art. 24.04]

- **Civil subpoenas:**
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.
- **Criminal subpoenas:**
 - Reading the subpoena in the hearing of the witness.
 - Emailing the subpoena to the witness, acknowledgment of receipt requested.
 - Faxing the subpoena to the witness, acknowledgment of receipt requested.
 - Mailing a copy of the subpoena by certified mail, return receipt requested, to the last known address of the witness unless:
 - The applicant requests in writing that the subpoena not be served by certified mail, **or**
 - The proceeding for which the witness is being subpoenaed is set to begin within seven business days after the day the subpoena would be mailed.

Deliver to: [Rules 176.5, 500.8, CCP Art. 24.01]

- Witness or witnesses named in the subpoena.
- **Civil subpoenas:** if the witness is a party to the case and represented by an attorney, the subpoena can be served on the attorney.

Additional Service Duties/Requirements of Officer: [Rules 176.5, 500.8, CPRC §§ 22.001, 22.004]

- **Civil subpoenas:** Give the witness any fee required by law if the fee is included with the subpoena.

Additional Return Duties/Requirements of Officer: [Rules 176.5, 500.8, CCP Art. 24.04]

- In place of a traditional return, the officer may file the witness's signed memorandum attached to the subpoena showing the witness accepted the subpoena.
- The officer should attach any return receipt to his return.
- In a criminal case, if a return is served electronically or by mail and it is not acknowledged by a return receipt or it is returned undelivered, the officer shall use due diligence to locate and serve the witness. If the witness cannot be found, the officer shall describe the diligence he used to find the witness and all information the officer has about the witness's whereabouts in the return.

Comments: [Rule 176.3, CCP Art. 24.11, CPRC § 22.011]

- Distance Limitations:
 - **Civil cases:** A person residing more than 150 miles from the court where the case is pending can't be forced to comply with the subpoena unless it's to compel the person's attendance at a deposition.
 - **Criminal cases:** There are no distance limitations on criminal subpoenas where confinement in jail is a permissible punishment.
- In a criminal case, if a person refuses to comply with a subpoena, a Writ of Attachment may be issued commanding a peace officer to bring the witness to court to testify.
- Subpoenas can be issued for multiple court dates in one subpoena. If the case doesn't get heard on the first date, the subpoena remains in effect until the next date on the subpoena. This continues until the case is heard or all dates on the subpoena have passed.
- In a civil case, a witness is privileged from arrest while attending, going to, and returning from court unless the arrest is for a felony, treason, or breach of the peace.
- The legislature may establish agencies or commissions that are granted subpoena power and are allowed to establish their own rules to govern issuance and return of their subpoenas. An officer should request a copy of the agency or commission subpoena procedures if they receive such a subpoena.

8. Turnover Order

Definition: [CPRC § 31.002]

- A Turnover Order is an order to a judgment debtor to “turn over” non-exempt property in the judgment debtor’s possession to a designated sheriff or constable for execution to satisfy a judgment.

Issued by:

- District court.
- County court.
- Justice court.

Additional Requirements of the Order: [CPRC § 31.002]

- Designate a sheriff or constable to whom the judgment debtor must turn over the non-exempt property.

Deliver to:

- The judgment debtor.

Property to be Turned Over

- The property to be turned over does not have to be specifically identified in the Turnover Order.
- The judgment debtor cannot be ordered to turn property over directly to the judgment creditor; they may only be ordered to turn the property over to the sheriff or constable or to a receiver appointed by the court.
- The judgment debtor may not be ordered to turn over current wages.

Additional Service Duties/Requirements of Officer: [CPRC § 31.002]

- Take possession of the non-exempt property the judgment debtor turns over.
- Inventory the non-exempt property the judgment debtor turns over.
- Sell the property if directed to do so in the order or by a separate order of sale.
- Pay proceeds of the sale to the judgment creditor to the extent required to satisfy the judgment.

Additional Return Duties/Requirements of Officer:

- Describe the actions taken regarding the non-exempt property that was turned over.
- Attach all correspondence, inventory, and property disposition.

Fee for Turnover Order

- The fee for a sheriff or constable in receiving property under a Turnover Order is set by the commissioners court and listed in the fee schedule for sheriffs and constables.

Comments: [CPRC § 31.002, LGC §86.021(d)]

- The Turnover Statute allows a court to “aid” a judgment creditor by either:
 - Ordering a judgment debtor to “turn over” non-exempt property to a sheriff or constable for execution to satisfy a judgment; **or**
 - Appointing a receiver with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.
- It is not clear whether a court may appoint a sheriff or constable as a receiver; instead of doing so the better practice would be for the court to order the judgment debtor to “turn over” non-exempt property to a sheriff or constable since the statute expressly permits that.
- But if a court does appoint a sheriff or constable as a receiver, the sheriff’s or constable’s authority will be determined by the court order. The only fee the sheriff or constable could accept as a receiver would be the fee, if any, set by the commissioners court for service as a receiver. If no fee has been set, then no fee is allowed.
- HB 3774 (87th Legislative Session 2021) created Government Code § 22.0042 requiring the Texas Supreme Court to adopt rules for a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver appointed under CPRC § 31.002. These rules must be adopted by May 1, 2022.



BEST
PRACTICE

9. Protective Order

Definition:

- An order directing a respondent to do or refrain from doing specified acts related to family violence.

Issued by:

- District court.
- County court.

Additional Requirements of the Order: [FC §§ 85.001, 83.001, 85.026]

- State the prohibited acts.
- Identify the protected parties and locations.
- Contain statutory warnings in bold-faced type, capital letters, or underlined that violation of the order is a criminal offense.
- Signed by the judge or court clerk as applicable.
- *Temporary ex parte order:*
 - State the date and time of the final hearing.
 - Contain the applicant's affidavit stating the grounds for the order.
 - Contain a finding by the judge that a clear and present danger of family violence exists.
- *Final protective order:*
 - Contains the applicable finding by the judge depending on if it is family violence, trafficking, sexual assault, stalking, etc..
 - Contain the expiration date of the order.

Additional Dates and Times for Service: [FC 82.041, 82.043]

- Service allowed on Sundays, except that service of the notice of application is not allowed on Sundays.

Additional Methods of Service: [FC 85.041, Rule 21a]

- In open court.
- Commercial delivery service.
- Fax.
- Email.

- Any other manner the court directs.

Expiration for Service:

- *Temporary ex parte protective order:*
 - On the hearing date.

Deliver to:

- Person named in the order as the respondent.

Additional Service Duties/Requirements of Officer:

- If applicable, inform respondent that he/she has been ordered to vacate the premises.

Comments: [FC §§ 83.002, 83.007]

- Expiration of the order:
 - *Temporary ex parte protective order:*
 - When the judge states, but no more than 20 days after issuance.
 - The order can be extended by the judge's own motion or on the applicant's request for additional 20-day periods.
 - There is no limit on the number of extensions.
 - *Final protective order:*
 - For the period stated in the order, not to exceed two years.
- Violation of a Protective Order is criminally enforceable under Penal Code § 25.07.
- A protected person can request that the address and phone number of their residence, place of employment, or a childcare facility or school be private. Only the court and law enforcement will have access to this information.
- Applicant may not be assessed a fee by a court or officer in connection with filing, serving, or entering a protective order.

Part II: Civil Process that Must be Served by Law Enforcement - Serve and Forget

The writs and process discussed in this part are papers that must be served by law enforcement. The officer must only serve the writ or process, **no further action is required**.

A. Requirements of Process Which Must be Served by Law Enforcement Where Nothing is Seized

In addition to the items below, information specific to each type of process can be found in [Section B](#).

1. Requirements of Writs and Process: [Rule 15]

- Styled “The State of Texas.”
- Identify the person to whom process is directed.
- Include the name and county of the court where the case is filed.
- Include the cause number.
- Identify all parties in the case.
- Include the date of issuance of the writ or process.
- Identify which court the writ or process is returnable to.
- Signed by the clerk or judge.
- Contain the court’s seal.

2. Date and Time for Service: [Rules 4-6, 500.5; CPRC § 30.0035]

- May be served Monday through Saturday, any time of day.
- May not be served on a member of the Texas House or Senate during a legislative proceeding.
- Computing time for service:
 - Exclude the day the process is issued.
 - Counting Saturdays, Sundays, and legal holidays:
 - **Justice court:** count every day, including Saturdays, Sundays, and legal holidays.
 - **District or county court:** If the time period to serve is five days or less, don’t include Saturdays, Sundays or legal holidays.

- If the last day is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
 - The court has discretion to extend the time period for service.
- 3. Who May Serve:** [Rules 103, 501.2(a)]
- May be served by any sheriff, constable, or their deputies.
 - May be served anywhere in the state.
- 4. Method of Service:** [Rule 105]
- Personal service on the person identified in the process.
- 5. Expiration for Service:**
- Unless specifically indicated, process does not expire for purposes of serving.
 - Service of process should be done as soon as possible, without delay.
- 6. Service Duties/Requirements of Officer:** [Rules 17, 126]
- Enter the process or writ into the record keeping system.
 - Write/stamp on the process the date and time when the officer received it.
 - Serve on the person identified to receive service of process.
 - Proceed without delay.
 - Attempt service at all addresses provided.
 - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
 - Keep copies of all documents in accordance with established record retention schedules.
 - Fee Collection:
 - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.
 - If an officer is serving process for a case that is pending in another county, the officer may require payment before serving, unless a Statement of Inability to Afford Payment of Court Costs has been filed.
- 7. Return Duties/Requirements of Officer:** [Rules 15, 16, 107, 501.3]
- Complete a return of service that can, but does not have to be, attached to the process.

- Return of service must include:
 - cause number,
 - case name,
 - name and county of the court where the case is filed,
 - date and time the process was received for service,
 - the name of the person or entity served,
 - the address served,
 - the date(s) and time(s) of service and/or attempted service,
 - manner of delivery of service and/or attempted service,
 - description of what was served,
 - name of the person(s) who served or attempted service,
 - any other information required by rule or law,
 - any additional information specific to the service that should be noted in the file.
 - when service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
- File the return of service with the clerk.
 - Return may be in person, electronically, or by fax.
 - Unless otherwise stated, the return is to be filed by 10:00 a.m. on the Monday after the expiration of 20 days from the date of service.

B. Details for Specific Writs, Subpoenas, and Citations

1. Eviction Citation

Definition:

- Official process by which a tenant (defendant) is notified he or she is being evicted.
- The citation provides notice to the defendant of the opportunity to appear and defend the suit.

Issued by: [PC § 24.004]

- Justice court in the precinct where the property is located.

Additional Requirements of the Citation: [Rule 510.4]

- Include the date the petition was filed.
- State the plaintiff's cause of action and relief sought.
- Include the name and address of the plaintiff's attorney or address of the plaintiff.
- State the date the defendant must appear for trial.
 - Not less than 10 days or more than 21 days after the petition is filed.
- Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to appear in person for trial.
- Inform defendant that, upon timely request and payment of a jury fee no later than three days before trial, the case will be heard by a jury.
- Contain all warnings required by Chapter 24 of the Texas Property Code.
- Include the statement: "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."

Additional People Who May Serve: [Rule 510.4(b)]

- Any person authorized by written court order.

Additional Methods of Service: [Rule 510.4]

- *Primary Method:*
 - Personal service on the defendant at least six days before trial (preferred method): give defendant a copy of the citation and petition.
 - Leave a copy of the citation and petition with any person, other than the plaintiff, 16 years or older at the defendant's usual place of residence at least six days before trial.
- *Alternative/Substituted service:*
 - Citation may be served by delivery to the premises if:
 - The serving officer is unsuccessful in serving the citation on the defendant or a person aged 16 or older at the defendant's residence,
 - The original petition filed by the plaintiff states all known home and work addresses of the defendant, states the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located, **and**

- The serving officer files a sworn statement that he has made diligent efforts to serve the citation on at least two occasions to all addresses of the defendant and include the times and places where service was attempted.
- If service to the premises is authorized, the serving officer:
 - at least six days before trial;
 - must deliver a copy of the citation and petition to the premises by placing it through a door mail chute or slipping it under the door and send by first class mail a copy of the citation and petition to the defendant at the premises;
 - if service through a mail chute or under the door is not possible, the serving officer may post the citation and petition to the front door or main entry to the premises and send by first class mail a copy of the citation and petition to the defendant at the premises.
- The plaintiff is not required to request alternative service. The serving officer can request it on their own.

Expiration for service: [Rule 510.4]

- Six days before trial.

Deliver to:

- Named defendant.
- Any person over the age of 16 at the defendant's residence.

Additional Service Duties/Requirements of Officer:

- Write date of delivery on the citation before giving it to defendant.

Additional Return Duties/Requirements of Officer: [Rule 510.4]

- Return must be filed at least one day before the trial date.
- If delivery was by alternative service, the return must include the date the citation was delivered to the premises and the date the citation was placed in the mail.

Comments:

- The defendant is the only person who can be served at a location other than the eviction address.
- Substitute service can only be done at the designated address for eviction.

2. Writ of Garnishment

Definition:

- Writ delivered to a third party (garnishee) who is in possession of the debtor's property or money.
- The writ directs the garnishee to give up the debtor's property or money so it can be applied to the judgment of the debtor.

Issued by: [CPRC § 63.002]

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [Rules 658, 659, CPRC § 63.003]

- Include findings of fact that support the need for the writ.
- Specify the maximum value of property that may be garnished.
- State the amount of bond required of defendant to replevy.
- Include the hearing date:
 - **District or county court:** 10:00 am on the Monday following the expiration of 20 days from the date of service.
 - **Justice court:** The Monday following the expiration of 10 days from the date of service.
- Order the garnishee to provide, under oath, information about whether the garnishee is indebted to the defendant, how much he is indebted to the defendant, if he was indebted to the defendant on the date of service, what property of defendant's he has in his possession, what property of defendant's he had in his possession when the writ was served, and the names of any other people he knows who are indebted to the defendant or have property of the defendant in their possession.



REQUIRED
LANGUAGE

- Order the garnishee not to pay any debt to the defendant or deliver to the defendant any of his personal property until further order of the court.
- On defendant's copy, the following statement in 10-point type: "You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

Additional Dates and Times for Service: [Rule 6]

- Service allowed on Sundays.

Additional Methods of Service: [Rule 663a]

- *Garnishee:*
 - Personal service.
- *Defendant:*
 - Personal service.
 - Mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

Expiration for service:

- On the hearing date.

Deliver to: [Rules 663, 663a]

- Garnishee.
- Defendant or defendant's authorized agent or attorney of record (as soon as practicable *after* service on the garnishee).

Additional Service Duties/Requirements of Officer:

- Serve the defendant with a copy of the writ after the garnishee is served.

- Sell defendant's property if sale is ordered and transfer the property to the purchaser.

Additional Return Duties/Requirements of Officer:

- If the garnishee fails or refuses to give the officer the defendant's property that is in his possession, the officer must include that in the return and immediately file the return.
- Document the sale of defendant's property.

3. Restraining Order/Injunction

Definition: [Rule 680, CPRC § 65.011]

- Court order commanding a person to stop or refrain from doing a specific act.
- Applicant is claiming that immediate and irreparable injury, loss, or damage will occur if the person isn't stopped from what they're doing.

Issued by: [CPRC § 65.021]

- District court.
- County court.

Additional Requirements of the Writ:

- *Temporary:*
 - Include the hour of issuance.
 - Define the injury, state why the injury is irreparable, and state why the order was granted without notice.
 - Include the hearing date.
 - Command the person to stop or refrain from doing a specific act until a hearing is held.
- *Final:*
 - Define the injury or the nature of the plaintiff's application.
 - Describe in detail the act or acts to be restrained.
 - Command the person to stop or refrain from doing a specific act, or to obey the order.

Additional Dates and Times for Service: [Rule 6]

- Service allowed on Sundays.

Deliver to:

- Person named in the order as the respondent.

Comments: [Rules 680, 686]

- When a petition for a temporary restraining order or temporary injunction is filed, the clerk will issue a citation to the defendant as in other civil cases, which will be served and returned in the same way as ordinary citations.
- Expiration of the temporary restraining order or injunction:
 - When the judge states, but no more than 14 days after issuance.
 - The writ can be extended by the judge for one additional 14-day period for good cause shown, or longer if the parties agree.
 - There is no limit on the number of extensions if both parties agree to the extensions.
- Service of a restraining order or injunction affecting property held by a financial institution in the name or on behalf of their customer is governed by Finance Code § 59.008

Part III: Civil Process That Must be Served by Law Enforcement – Service and Action

The writs and process discussed in this part are papers that must be served by law enforcement and require **additional action** on the officer's part.

A. Requirements of Process Which Must be Served by Law Enforcement Where Additional Action is Required.

In addition to the items below, information specific to each type of process can be found in [Section B.](#)

1. **Requirements of Writs and Process:** [Rule 15]
 - Styled "The State of Texas."
 - Directed to the sheriff or any constable in Texas.
 - Identify the person who is to receive service of process.
 - Include the name and county of the court where the case is filed.
 - Include the cause number.
 - Identify all parties in the case.
 - Include the date of issuance of the writ or process.
 - Identify which court the writ or process is returnable to.
 - Signed by the clerk or judge.
 - Contain the court's seal.

2. **Date and Time for Service:** [Rules 4-6, 500.5]
 - May be served Monday through Saturday, any time of day.
 - Computing time for service:
 - Exclude the day the process is issued.
 - Counting Saturdays, Sundays, and legal holidays:
 - **Justice court:** count every day, including Saturdays, Sundays, and legal holidays. If the court is closed before 5:00 p.m. on the last day of a period for a party to file an item with the court, the time period runs until the end of the next business day.

- **District or county court:** If the time period to serve is five days or less, don't include Saturdays, Sundays, or legal holidays.
 - If the last day is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
 - The court has discretion to extend the time period for service.
- 3. Who May Serve:** [Rules 103, 501.2(a)]
- May be served by any sheriff, constable, or their deputies.
 - May be served anywhere in the state.
- 4. Methods of Service:**
- Personal service on the person identified in the process.
- 5. Expiration for Service:** [Rules 105, 621]
- *Writ or order not enforcing a judgment:* Unless specifically indicated, process does not expire for purposes of serving.
 - *Writ or order enforcing a judgment:* unless stated otherwise, the writ or order shall expire in 30, 60, or 90 days as specified in the writ.
- 6. Service Duties/Requirements of Officer:** [Rules 17, 126]
- Enter the process or writ into the record keeping system.
 - Write/stamp on the process the date and time when the officer received it.
 - Serve on the person identified to receive service of process.
 - Proceed without delay.
 - Attempt service at all addresses provided.
 - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
 - Execute as directed in the writ or order.
 - Give defendant a copy of the inventory.
 - Keep copies of all documents in accordance with established record retention schedules.
 - Fee Collection:
 - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.

- If an officer is serving process for a case that is pending in another county, the officer may require payment before serving unless a Statement of Inability to Afford Payment of Court Costs has been filed.

7. Return Duties/Requirements of Officer: [Rules 15, 16, 107, 501.3]

- Complete a return of service that can, but does not have to be, attached to the process.
- Return of service must include:
 - cause number,
 - case name,
 - name and county of the court where the case is filed,
 - date and time the process was received for service,
 - the name of the person or entity served,
 - the address served,
 - the date(s) and time(s) of service and/or attempted service,
 - manner of delivery of service and/or attempted service,
 - description of what was served,
 - name of the person(s) who served or attempted service,
 - any other information required by rule or law,
 - any additional information specific to the service that should be noted in the file,
 - when service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
- File the return of service with the clerk.
 - Return may be in person, electronically, or by fax.
 - Unless otherwise stated, the return is to be filed by 10:00 a.m. on the Monday after the expiration of 20 days from the date of service.

B. Details for Specific Writs, Subpoenas, and Citations

1. Writ of Assistance for Repossession of Aircraft

Definition: [PC § 30.02]

- Writ issued to authorize a peace officer to assist and protect a repossession agent in gaining possession of an aircraft while the agent:
 - secures the aircraft on site, **or**
 - prepares the aircraft, which may include a mechanical inspection, for removal from the site by flight or otherwise to another location.

Issued by: [PC § 30.03]

- Justice court.

Expiration for Service: [PC § 30.02]

- Writ is valid for 30 days.

Comments: [PC § 30.02]

- A justice court has jurisdiction to issue this writ, regardless of the value of the aircraft.
- A justice court may grant unlimited extensions of this type of writ.

2. Writ of Attachment for Property

Definition: [CPRC §§ 61.001, 61.041]

- Writ issued while a case is pending that allows seizure of defendant's property because the plaintiff will probably lose his/her debt unless the writ is issued.

Issued by: [CPRC § 61.021]

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [Rule 592]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Specify the maximum value of property that may be attached.
- Specify the plaintiff's bond amount.
- Command that the attached property be kept safe and preserved subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On defendant's copy, the following statement in 10-point type: "You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."



REQUIRED
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Additional Dates and Times for Service: [Rule 6]

- Service allowed on Sundays.

Additional Methods of Service: [Rules 21a, 598a]

- Service of the writ on the defendant does not have to happen at the same time attachment of the property occurs.
- Defendant's copy:
 - Mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

Expiration for Service: [Rule 606]

- 10:00 a.m. on the Monday after the expiration of 15 days from the date of issuance.

Deliver to: [Rule 598a]

- Defendant named in the writ.
- Party's duly authorized agent or attorney of record.

Additional Service Duties/Requirements of Officer: [CPRC §§ 61.042, 61.043, Rules 600, 606]

- Levy on:
 - Specific property if such is designated and described in the writ, **or**
 - On non-exempt property in a quantity to cover the amount stated in the writ.
- Retain possession of the property until final judgment unless the property is replevied, sold, or claimed by a third party after a trial to right of property.
- Keep property safe and in the same condition as when it was seized.
 - Document property by video or camera, if possible, to prove the property was kept in the same condition as when it was seized.
- Notify the court immediately if seized property is perishable so it can be sold.
- To attach real property the officer must immediately file a copy of the writ and the applicable part of the return with the county clerk where the property is located.
- If property is replevied, deliver the replevy bond to the clerk of the court.

Additional Return Duties/Requirements of Officer: [Rule 606]

- Describe the property attached with sufficient certainty to identify it.
- State when the property was attached.
- State whether the officer still has possession of the property and if not, how the property was disposed of.
- If property was replevied, state when it was released, to whom, and the condition of property when it was replevied
 - If replevy occurs after the original return is filed, file an amended return.
- The return is to be filed by 10:00 a.m. on the Monday after the expiration of 15 days from the date of issuance.

Comments:

- A writ of attachment can only be for property that is subject to levy under a writ of execution.

- If specific property is identified in the writ to be levied on, it doesn't matter if the property is exempt or non-exempt.
- A writ of attachment for a person is handled like a capias where the person is taken immediately before the court that issued the writ or to some other place stated in the writ.

3. Capias/Arrest Warrant/Attachment of Persons

Definition: [CCP Art. 23.01]

- Capias – Writ commanding a peace officer to arrest a person accused of an offense and take them to that court immediately, or on a day stated in the writ.
- Similar to writ of attachment for person(s), issued commonly in civil cases to secure the presence of witnesses, secure the presence of parties at contempt hearings, etc.

Issued by: [CCP Arts. 23.03, 23.04, FC § 157.066, GC § 21.001, TRCP 692]

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [CCP Art. 23.01]

- Directed to any peace officer.
- Name the person whose arrest is ordered, or if unknown, describe him/her.
- Specify the offense the defendant is charged with.

Additional Dates and Times for Service:

- Service allowed on Sunday.

Expiration for Service:

- The capias does not expire unless recalled by the issuing court.

Additional Service Duties/Requirements of Officer:

- Arrest defendant.
- Take defendant immediately before the judge that issued the capias.

- If the judge that issued the capias is unavailable or the court date stated in the capias is on a date different than the date the defendant is arrested, place the defendant in county jail if directed to do so in the writ. If not directed to do so by the writ, seek guidance from the issuing court. TJCTC recommends discussing with the county attorney to develop a county/departamental policy for handling this situation.

Comments:

- A capias issued under Section 157.066 or 157.102 of the Family Code shall be treated as an arrest warrant and shall be entered into the computer records for outstanding warrants and disseminated by the TCIC and NCIC Crime Information Centers. The fee for serving a capias issued under this law is the same as the fee for service of a civil writ generally.
- A writ of attachment for a person is handled like a capias where the person is taken immediately before the court that issued the writ or to some other place stated in the writ. However, if the writ of attachment does not authorize taking the person to jail if the court is unavailable, TJCTC recommends getting guidance from the issuing court and/or the county attorney before taking the person to jail.

4. Distress Warrant

Definition:

- A writ authorizing seizure of a commercial or agricultural (non-residential) tenant's personal property because the tenant owes back rent.

Issued by: [Rule 610, PC § 54.006]

- Justice Court of the precinct where the real property is located.

Additional Requirements of the Warrant: [Rules 610, 613]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Specify the maximum value of property that may be seized.
- Specify the plaintiff's bond amount.

- Command that the seized property be kept safe and preserved subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On defendant's copy, the following statement in 10-point type: "You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:



REQUIRED
LANGUAGE

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT."

Additional Dates and Times for Service: [Rule 6]

- Service allowed on Sundays.

Expiration of the Warrant:

- Expires on the hearing date.

Additional Methods of Service: [Rule 613]

- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
 - Mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

Deliver to: [Rule 613]

- Defendant named in the writ.
- Party's duly authorized agent or attorney of record.

Additional Service Duties of Officer: [Rule 619]

- Levy on:

- Specific property if such is designated and described in the writ, **or**
- On non-exempt property in a quantity to cover the amount stated in the writ.
- Retain possession of the property until final judgment unless the property is replevied, sold, or claimed by a third party after a trial to right of property.
- Keep property safe and in the same condition as when it was seized.
 - Document property by video or camera, if possible, to prove the property was kept in the same condition as when it was seized.
- Notify the court immediately if seized property is perishable so it can be sold.
- To attach real property the officer must immediately file a copy of the writ and the applicable part of the return with the county clerk where the property is located.
- If property is replevied, deliver the replevy bond to the clerk of the court.
- Serve defendant with the citation that is issued at the same time the warrant is issued requiring the defendant to answer before the court that has jurisdiction of the case.

Additional Return Requirements: [Rule 610]

- Return of the writ is to the court that has jurisdiction of the lien foreclosure case even though the writ was issued by the justice court.
- Describe the property attached with sufficient certainty to identify it.
- State when the property was attached.
- State whether the officer still has possession of the property and if not, how the property was disposed of.
- If property was replevied, state when it was released, to whom, and the condition of property when it was replevied.
 - If reply occurs after the original return is filed, file an amended return.

5. Writ of Execution

Definition:

- A writ commanding an officer to levy upon the non-exempt property of a defendant in satisfaction of a previous judgment rendered by the issuing court.

Issued by: [Rule 621]

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [Rules 629-632]

- Require the officer to execute according to the terms of the writ.
- ***Writ for payment of money:*** the writ must specify the amount to be paid, the rate of interest, and require the officer to satisfy the judgment and costs out of the property of the debtor.
- ***Writ for sale of specific property:*** the writ must, particularly describe the property and direct the officer to sell the property.
- ***Writ for delivery of certain property:*** the writ must particularly describe the property, designate the party who is awarded possession, and require the officer to deliver the property to the designated person.
- ***Writ for recovery of personal property or its value:*** the writ must command the officer to levy and collect the value of the judgment from the debtor if the property can't be recovered.



BEST
PRACTICE

Additional Methods of Service:

- It is a best practice to serve a copy of the writ and attached documents on the defendant.
- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
 - Mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

Expiration for Service: [Rule 621]

- 30, 60, or 90 days as specified in the writ.

Make Demand to: [Rule 637]

- Named defendant if found, **or**
- If absent, defendant's agent or attorney within the county.

Additional Service Duties/Requirements of Officer: [Rules 629, 636, 647, 648, 649, 650]

- Execute according to the terms of the writ.
- If more than one execution against the same person is received, number them in the order received.
- Call upon defendant to pay judgment and costs or point out non-exempt property for levy.
- Levy on enough non-exempt property to satisfy judgment and all costs.
 - Make detailed inventory of property levied upon.
- Keep property safely stored until judgment paid or property sold.
- Give notice of and prepare for sale:
 - Send copy of sale notice by certified mail to defendant and plaintiff.
 - Post in three public places within the county including the courthouse door and where personal property is stored, if applicable.
 - *Real property:* publish sale notice in the newspaper once per week for three consecutive weeks prior to the first Tuesday of the month.
 - Length of time the notice must be posted:
 - *Personal property:* post for at least 10 days.
 - *Real property:* post for at least 20 days prior to the first Tuesday of the following month.
- Conduct auction-type sale:
 - *Personal property:* where the property was taken in execution, at the courthouse door, or at some other location where it is more convenient (*usually at location of storage*).
 - *Real property:* at the courthouse door.
 - The commissioners court of a county may authorize a public auction of real property using online bidding and sale. The commissioners court may adopt rules governing these online auctions, which go into effect 90 days after they are published in the real property records of the county. *Civil Practice and Remedies Code § 34.041(a-1)*.

- Note: Online bidding and sales may not be authorized for a sale under Property Code § 51.002 (power of sale conferred by a deed of trust or other contract lien). Civil Practice and Remedies Code § 34.041(a-2).
- Collect funds from sale.
- Prepare and deliver bill of sale (if personal property) or deed (if real property) to purchaser.
- Disburse funds.
 - Retain the constable's costs.
 - Pay the plaintiff the amount that satisfies the judgment.
 - Pay the defendant if any money is left over.

Additional Return Duties/Requirements: [Rule 654, CPRC § 34.072]

- Record date and time of levy.
 - The writ can be returned after one levy, or attempt to levy, if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempted levy.
 - If the officer is unable to locate property belonging to the defendant to levy on, the return is marked "nulla bona," indicating the writ is returned without execution.
- Record date and time of sale.
- Record how much money was collected and a copy of the disbursements to all parties.
- Attach all correspondence, inventory, sale notice, certified mail and bill of sale or deed.

Comments: [Rules 308, 634]

- Exempt property is defined in Texas Property Code §§ 41.001 - 42.004.
- A writ of supersedeas suspends all further proceedings under an execution previously issued. If this writ is received, **stop everything** and await further instruction from the court.
- A non-eviction writ of possession may be issued and used to seize personal property that has special value to the plaintiff. The writ commands the officer to return the specific property to the plaintiff instead of selling it.
- A single judgment can be enforced with a single writ of execution generally, even with multiple defendants. The plaintiff may choose to request multiple

writs for situations where property is located in multiple counties, etc., and the court should honor that request. Each writ would incur a writ fee and any service fees approved by the county serving the writ.

6. Order of Sale

Definition: [Rules 309, 310, 600, 616, 711, TC § 33.41]

- Writ ordering specific personal or real property be sold in the same manner as in an execution in satisfaction of a civil judgment.
- Writ ordering real property be sold in satisfaction of tax judgment(s) against the property.

Issued by: [TC § 33.92]

- *Civil judgment:*
 - District court.
 - County court.
 - Justice court.
- *Tax judgment:*
 - District court in the county where the real property is located.

Additional Requirements of the Writ:

- Include the total judgment amount.
- *Civil judgment:*
 - Require the officer to collect the judgment amount and costs associated with sale.
 - Specifically describe the property and order it to be sold.
- *Tax judgment:*
 - Include a description of the property.
 - Include the market value for the property.

Additional Methods of Service: [Rule 613, TC §§ 33.912, 34.01]

- Mail.
- Commercial delivery service.
- Fax.
- Email.

- Any other manner the court directs.

Expiration of the Order: [Rule 621, TC § 33.53]

- *Civil judgment:*
 - 30, 60, or 90 days as specified in the order.
- *Tax judgment:*
 - 180 days from the date of issuance.

Deliver to:

- Named defendant if found, **or**
- If absent, defendant's agent or attorney within the county.

Additional Service Duties/Requirements of Officer: [Rules 629, 636, TC §§ 34.01-34.03]

- Levy on specified property as listed in the order of sale.
 - Keep property safely stored until the property is sold.
- Calculate the total amount due including all taxes, penalties, interest, any other amount awarded by the judgment, court costs, and costs of the sale.
- Give notice of and prepare for sale:
 - Send a copy of the sale notice by certified mail to defendant and plaintiff.
 - Post in three public places within the county including the courthouse door and where personal property is stored, if applicable.
 - *Real property:* publish sale notice in the newspaper once per week for three consecutive weeks prior to the first Tuesday of the month.
 - Length of time the notice must be posted:
 - *Personal property:* post for at least 10 days.
 - *Real property:* post for at least 20 days prior to the first Tuesday of the following month.
- Conduct auction-type sale:
 - *Personal property:* at location of storage.
 - *Real property:* at the courthouse door.
 - *Tax judgment:* compare the judgment amount to the market value of the property. Start bidding for the lesser amount of the two.
- Collect funds from sale.
 - *Tax judgment:* if the property is not sold, strike-off from the sale list and deed the property to the taxing entity requesting sale.

- Prepare and deliver bill of sale (if personal property) or deed (if real property) to purchaser.
- Disburse funds.
 - Retain the constable's costs.
 - Pay the plaintiff the amount that satisfies the judgment.
 - Pay the defendant if any money is left over.

Additional Return Duties/Requirements of Officer: [Rule 654]

- Record date and time of levy.
- Record date and time of sale.
- Record how much money was collected and a copy of the disbursements to all parties.
- Attach all correspondence, inventory, sale notice, certified mail and bill of sale or deed.

Comments:

- Exempt property statutes do not apply to property listed in an order of sale.
- Tax judgment: sale of the property must be completed before expiration of the order.
- An officer can request tax statements from the taxing entity in order to compute the correct amounts due. The Tax Code gives officers immunity if statements are utilized.

7. Writ of Possession

Definition: [Rule 510]

- A writ that allows a landlord who prevails in an eviction suit to take possession of the premises that were in dispute.
- **Note:** A writ of possession may also issue after a tax foreclosure sale, and those writs are governed by Tax Code § 33.51.

Issued by: [Rules 510.8, 510.13, PC § 24.0061]

- Justice court in the precinct where the property is located.
- County or district court (on appeal from justice court or under the Tax Code).

Additional Requirements of the Writ: [PC § 24.0061]

- State the location of the property where the writ is to be executed.
- Commands the officer to post a written warning.
- Commands the officer to instruct the tenant to remove his or her personal property from the premises.
- Commands the officer to place the tenant's personal property outside the premises.
- Commands the officer to instruct the tenant to leave the premises immediately.
- Contain notice that the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

Expiration for Service: [Rule 510.8]

- 90 days from the date the judgment is signed.

Deliver to: [PC § 24.0061]

- Writ delivered to the tenant.
- Warning posted to the front door.

Additional Service Duties/Responsibilities of Officer: [Rule 510.5, PC § 24.0061]

- Post written warning, at least 8 ½" by 11" in size, on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and will be executed on or after a specific date and time stated in the warning.
 - *Immediate Possession Bond:* writ executed at least seven days after the date the tenant is served with notice of filing of the Immediate Possession Bond.
 - *Writ issued after final judgment:* writ executed at least 24 hours after the warning is posted.
- Coordinate with parties about the time of eviction.
- Enter premises and deliver possession to the landlord.
- Instruct the tenants to remove, or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision, to remove all personal property from the premises other than personal property claimed to be owned by the landlord.

- Place, or have an authorized person place, the removed personal property outside the premises at a nearby location but not blocking a public sidewalk, passageway, or street, and not while it is raining, sleeting, or snowing.
- Do an inventory for any items moved by the officer.
- If needed, engage the services of a bonded or insured warehouseman to remove and store part or all of the property at no cost to the landlord or the officer executing the writ.

Additional Return Duties/Requirements of Officer:

- Attach a copy of the inventory if one was done.
- Attach a copy of the written warning.

Comments: [PC § 24.0061]

- Reasonable force may be used in executing the writ.
- The officer that executes the writ is there to keep the peace and oversee the removal of the tenant's property. The actual removal of property is accomplished by the landlord or landlord's representatives.
- Items such as prescription drugs, hazardous materials, guns, etc., should be handled in accordance with office policy and should not be placed or left outside the property.
- A writ may not be executed while it is raining, sleeting, or snowing. If in the process of executing a writ and it begins to rain, simply stop until the rain ceases.

8. Writ of Re-Entry

Definition:

- Writ that allows a residential or commercial tenant to immediately, but temporarily, regain possession of leased premises after an unlawful lockout by the landlord, pending the outcome of a final hearing.

Issued by: [PC §§ 92.009, 93.003]

- Justice of the peace where the property is located.

Additional Requirements of the Writ:

- Include the address of the premises where lockout has occurred.
- Include the hearing date.

Expiration for Service:

- On the hearing date.

Deliver to:

- Landlord.
- Landlord's management company.
- Landlord's on-premises manager.
- Landlord's rent collector.

Additional Service Duties/Requirements of Officer: [PC §§ 92.009, 93.003]

- Enter premises and place tenant back into possession of the property.
- Instruct the landlord to release possession to the tenant.
- Explain the writ clearly to the landlord, emphasizing that the tenant has been placed back into the premises until there is a hearing before the court.
- Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement to jail, or both.

Additional Return Duties/Requirements of Officer:

- Give a detailed description of how the tenant was placed back in possession of the property.

Comments:

- Reasonable force may be used in executing the writ.
- A writ of possession supersedes a writ of re-entry.

9. Writ of Restoration

Definition:

- Writ that provides a residential tenant with immediate, but temporary, restoration of disconnected utility services that were unlawfully disconnected by a landlord pending a final hearing.

Issued by: [PC § 92.0091]

- Justice of the peace where the property is located.

Additional Requirements of the Writ: [PC § 92.0091]

- Include the address of the premises where utility services have been disconnected.
- Describe the utility services to be restored.
- Include the hearing date.

Expiration for Service:

- On the hearing date.

Deliver to:

- Landlord.
- Landlord's management company.
- Landlord's on-premises manager.
- Landlord's rent collector.

Additional Service Duties/Requirements of Officer: [PC § 92.0091]

- Instruct the landlord to resume the tenant's utility services.
- Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement to jail, or both.

Comment: [PC § 92.0091]

- A writ of possession supersedes a writ or restoration.

10. Writ of Retrieval

Definition: [PC § 24A.002]

- A writ authorizing entry and retrieval of necessary personal property for a person or their dependent because the current occupant is denying the person entry to their current or former residence.

Issued by: [PC § 24A.002]

- Justice of the Peace.
- District or County Court if a divorce or annulment case is pending or an order in such a case determines the right to possession of the property the applicant seeks.

Additional Requirements of the Writ: [PC §§ 24A.002, 24A.0021]

- Finding that the applicant is unable to enter the residence because the current occupant has denied the applicant access to retrieve the applicant's personal property or the personal property of the applicant's dependent.
- Finding that the applicant is not the subject of an active protective order or is not otherwise prohibited from entering the residence.
- Finding that there is a risk of personal harm to the applicant or applicant's dependent if the items are not retrieved promptly.
- Finding that the applicant is currently or was formerly authorized to occupy the residence.
- State the current occupant received notice of the application and was provided an opportunity to appear and contest the application.
 - The writ can be issued without providing notice to the occupant if the judge makes family violence findings.
- Authorize the applicant to enter the residence, accompanied by a peace officer, and retrieve the property listed in the application.
- Contain the list of property to be retrieved – limited to items listed in PC § 24A.002(b)(4)

Deliver to:

- Occupant of the residence.

Additional Service Duties/Requirements of Officer: [PC § 24A.003]

- Accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.
- If the current occupant of the residence is present at the time of the entry, provide the occupant with a copy of the court order authorizing the entry and property retrieval.
- Create an inventory of the property removed from the residence.
- Give a copy of the inventory to:
 - The applicant.
 - The current occupant.
 - If the current occupant is not present, leave the copy in a conspicuous place in the residence.

Additional Return Duties/Requirements of Officer: [PC § 24A.003]

- File the inventory.

Comments: [PC §§ 24A.003-24A.005]

- A peace officer may use reasonable force in executing the Writ of Retrieval.
- A peace officer who provides assistance in good faith and with reasonable diligence is not:
 - civilly liable for an act or omission of the officer that arises in connection with providing the assistance; **or**
 - civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.
- A person who interferes with the retrieval of personal property pursuant to a court order commits a Class B misdemeanor.

11. Writ of Sequestration

Definition: [CPRC Ch. 62]

- Writ that allows for the temporary seizure or setting aside of specific property while a case is pending to allow the parties to protect and preserve their property pending the outcome of the case.

Issued by: [CPRC § 62.021]

- District court.
- County court.
- Justice court.

Additional Requirements of the Writ: [Rules 696, 698, 699, 700a, 708]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Describe the property to be sequestered with enough detail that the property can be identified and distinguished from similar property.
- State the value of each article of property to be sequestered.
- State the location of each article of property to be sequestered.
- Specify the plaintiff's bond amount.
- Command that the sequestered property be kept subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On defendant's copy, the following statement in 10-point type: "You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:



REQUIRED
LANGUAGE

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

- If the defendant fails to exercise their replevy rights by filing the bond with the court within 10 days after service, the plaintiff has the right to post a replevy bond and maintain possession of the subject property until the court enters a final judgment. The plaintiff is not required to post a replevy bond if they included the TRCP 708 bond condition requirements in their initial bond when they filed their petition, and the court has not ordered them to post an additional replevy bond.

Additional Dates and Times for Service: [Rule 6]

- Service allowed on Sundays.

Additional Methods of Service: [Rule 700a]

- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
 - Mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

Deliver to:

- Named defendant(s).

Additional Service Duties/Requirements of Officer: [Rules 706, 710, CPRC § 62.061]

- Take possession of the property.
- Hold or dispose of the property as ordered by the court.
- Care for and manage the property in a prudent manner.

Additional Return Duties/Requirements of Officer: [Rules 706, 712]

- Description of the property that was sequestered.
- Description of how and where the property was stored or disposed.
- If the property is sold, return the order of sale within five days.

Legal Terms and Definitions

Abstract of Judgment – A post-judgment remedy that someone winning a civil lawsuit (judgment creditor) can obtain from the court. The effect of the abstract is to place a lien on the property of the judgment debtor, so that if they sell the property, the money goes to pay the judgment.

Acquittal – When a criminal defendant is found not guilty of the offense they are charged with.

Adjudication – A formal determination of a party's rights in a case. This results in a judgment.

Affiant – The person who swears to an affidavit or statement.

Affidavit – A written, or printed statement or declaration of facts made voluntarily and sworn to or affirmed by an affiant before a person having authority to administer an oath or affirmation, such as a judge, clerk, or notary.

Affirmative Defense – A claim by a defendant that raises facts and arguments that defeat the plaintiff's claim even if all of the allegations in the complaint or petition are true. In a criminal case this results in an acquittal. The defendant has the burden of proof regarding an affirmative defense.

Alias Citation – A citation issued after the original citation usually directed to the sheriff or constable of another county or directed to the defendant under another name.

Alias Execution – An order of execution issued after the first one was unsuccessful in satisfying the judgment, ordering the sheriff or constable to seize other property.

Amount in Controversy – In a civil suit the amount sued for, the actual dollar value of the plaintiff's claim.

Answer – A response by a party to a lawsuit. Generally filed by a defendant but can be filed by a plaintiff if the defendant files a counterclaim.

Appeal – A request to have a higher court take a case that has been adjudicated already. Most justice court appeals go to county court for a trial de novo.

Appeal Bond – A bond submitted by a person bringing an appeal which will:

- assure the person's appearance in the court to which appeal is made, **and**
- cover the opponent's costs if the court to which appeal is made determines that the appeal has no merit.

Appearance – Coming into court as a party to a suit, as defendant or plaintiff, by actual physical appearance or by filing a pleading; submitting to the court's jurisdiction.

Appellant – The party initiating the appeal; the party who makes an appeal from one court or jurisdiction to another.

Appellee – The party in a cause in which the other party has appealed; the party against whom appeal is taken.

Arraignment – The procedure in which the defendant is brought before the court, identified, informed of the charge, and required to enter a plea.

Arrest Warrant – A written order of the court, issued and signed by a magistrate, commanding a law enforcement officer to arrest a person and bring that person before the magistrate.

Attachment – The seizure of persons or property so that they will come under the custody and control of the court; the process occurs by virtue of a writ, summons or other judicial order. This can be used to secure a person's appearance in court, or in civil suits to keep a defendant from concealing assets to protect them from a pending civil judgment.

Bail – In a criminal case, security (money or property) presented to the court to ensure a defendant's appearance in court on the charge brought against the defendant.

Bail Bond – A surety bond or contract in which a third party guarantees that the defendant will appear in court at the designated times and that it will pay the amount of the bond if the defendant does not appear as directed.

Beyond a Reasonable Doubt – The standard of proof necessary in a criminal case or a truant conduct case; the factfinder must be convinced to a moral certainty. A court **may not** instruct a jury as to the meaning of “beyond a reasonable doubt.”

Bill of Review – A remedy which requests the court to reconsider a decision (usually a default judgment) after the time period for appeal or motion for a new trial has passed. A party has four years from the date of judgment to file a bill of review.

Bond – A written instrument requiring a party to pay a sum fixed as a penalty if the party does not perform actions specified in the document.

Bond Forfeiture – A suit, initiated in the name of the state, to recover a bond from a criminal defendant or sureties, because the criminal defendant violated conditions of the bond.

Burden of Proof – The duty of a specific party to prove facts in dispute between parties in a suit. Generally, the party bringing the suit has the burden of proof, so the plaintiff in civil cases and the State in criminal cases have the burden of proof. Defendants have the burden of proof for affirmative defenses. In civil cases, the standard is by a preponderance of the evidence, and in criminal cases it is beyond a reasonable doubt.

Capias – Similar to an arrest warrant; a judicial writ commanding a peace officer to take a person into custody and bring them before the court to answer specific charges.

Capias Pro Fine – An order for a peace officer to arrest someone convicted of a criminal offense who has not satisfied the fine and costs in the judgment. The person must be brought before the issuing court if available. If not, they may be taken to jail for no more than one business day. A court must then make a determination if the defendant is indigent, and order appropriate disposal of the fine and costs, which may include waiver, community service, payment plan, or issuance of a commitment, ordering the defendant to lay out the judgment in jail.

Cash Bond – A type of bond in which the defendant deposits money with the court to guarantee appearance or prosecution of an appeal rather than having other parties (sureties) sign a bond.

Cause of Action – The facts that give a person the right to judicial relief; the basis of a law suit.

Challenge for Cause – A challenge to a juror during voir dire examination (jury selection) raising a matter which disqualifies the person from serving as a juror in a particular case.

Change of Venue – The transfer of a case to another precinct within the same county or to another county.

Citation – An order or summons commanding the person named in the order to appear in court on a date named in the order. In criminal cases, this is the “ticket” which originally charges the offense in some cases. In civil cases, the court issues a citation which must then be served on the defendant to notify them of the lawsuit.

Commissioners Court – A county’s governing officers, elected by precinct, charged with a variety of executive duties. The county judge presides over the commissioners court.

Complaint – An affidavit or sworn statement made before the court which charges the commission of an offense within the jurisdiction of the court.

Contempt (Constructive) – A willful disregard or disobedience of the court occurring outside the court's presence, (such as disobeying a court order); notice and hearing are required before person is held in constructive contempt.

Contempt (Direct) – A willful disregard or disobedience of the court committed in the immediate view and presence of the court, or so near the presence of the court as to interrupt the orderly course of proceedings.

Continuance – The adjournment or postponement of an action pending in court, to a later date, usually done upon motion of a party to the action.

Conversion – The unauthorized act of appropriating personal property of another for the person’s own beneficial use and enjoyment.

Conviction – The result of a criminal trial which ends in a judgment that the person is guilty as charged.

Counterclaim – A claim presented by a defendant against a plaintiff in the same action.

County Court – The court to which justice court judgments are generally appealed. Every county has a county court, called the constitutional county court. Some counties additionally have statutory county courts, also called county courts-at-law.

Court Costs – Fees and charges required by law to be paid to the courts or some of the court’s officers, the amount of court costs is fixed by law.

Cross Claim – A claim filed by a defendant in a lawsuit against another defendant in the same suit. John sues Steve and Diana. If Diana also sues Steve in the same suit, that is a cross-claim. This is sometimes also called a “cross-action.”

Damages – Compensation in money for injury, loss, or damage to person, property, or rights through the unlawful act, omission, or negligence of another.

Default Judgment – A judgment entered by the court upon the failure of a party to answer or appear at the appointed time. A default judgment may not be rendered against a criminal defendant. In most civil cases, a hearing must be held where the plaintiff proves their damages before a default judgment can be rendered.

Defendant – The party against whom a civil or criminal case has been filed.

Deferred Disposition – An option in criminal cases where the defendant is given conditions to comply with by the court. If the defendant complies, the case is dismissed. If they fail to comply, the court convicts the defendant following a show cause hearing.

Discovery – The process through which parties obtain information from each other in order to prepare for trial or enforce a judgment.

Discretion – Power or privilege of the court to act according to the judge’s judgment, in an area not limited by legal rule.

Dismissal – An order or judgment disposing of a case by sending it out of court, without holding a trial on the issue. A dismissal can be without prejudice, meaning the plaintiff can refile the case, or with prejudice, meaning the merits of the case have been decided and it cannot be refiled. Most dismissals are without prejudice.

Docket – A formal record of the courts in which all the acts done in court in the conduct of each case are entered in a concise form, from its beginning to its conclusion.

Dormant – Inactive; idle; applies to a judgment that can no longer be enforced. Judgments go dormant 10 years from the date of the judgment, or the date of the last writ of execution, whichever is later.

Due Process – An exercise of the powers of government in an orderly manner so that a person’s individual rights are protected, and laws are applied fairly.

Elements – The factors or things that must be proven to establish a person’s criminal culpability or civil liability. Each offense or cause of action has different elements.

Equitable – Just, fair, and right.

Eviction – The process of depriving a person of possession of land or rental property which the person has held or leased but no longer has the right to possess.

Evidence – Testimony, writings, objects, or other things offered to prove the existence or non-existence of a fact.

Examining Trial – An examination conducted by a magistrate for the purpose of inquiring into a criminal accusation against a defendant to determine whether there is sufficient evidence of guilt to justify further proceedings against the accused.

Exchanging Benches – The hearing of a matter by a judge in a court, other than the judge’s own; often due to the disqualification or recusal of the judge of the court where the matter is filed.

Execution – A writ used to enforce civil judgments, where the constable or sheriff seizes exempt property of the judgment debtor and sells it to satisfy the judgment.

Exempt Property – Property specified by statute which may not be seized or sold to satisfy an execution or attachment.

Ex Parte – On one side only; done for, in behalf of, or on the application of, one party only; to discuss or transact business with one party in the absence of the opposite party to a case. Generally, ex parte conversations are not allowed.

Expunction – The act of erasing or eliminating for the record; to expunge. Some criminal cases may be expunged from court records if the defendant complies with certain requirements.

Fine – A monetary penalty; to sentence a person convicted of an offense to pay a penalty in money.

Forcible Detainer, Forcible Entry and Detainer – Specific causes of action that lead to an eviction case. It is now proper to refer to both types of cases simply as Eviction Cases.

Foreclosure – The statutory method of enforcing payment of a debt secured by a mortgage or lien on property, by taking and selling the property.

Forfeiture of Bond – A judgment ordering payment of an obligation covered in a bond due to failure of the person named in the bond (principal) to perform the conditions of the bond.

Garnishee – Person or entity possessing assets of the judgment debtor, named by a judgment creditor in a garnishment claim.

Garnishment – Method of enforcing a civil judgment where a third party who possesses assets belonging to the judgment debtor, or owes a debt to the judgment debtor, is ordered instead to give those assets, or pay that debt to the judgment creditor.

Good Faith – Honesty of intention; sincerity.

Guardian Ad Litem – A person appointed by the court to represent a minor, an incompetent person or any other person entitled to such protection by law.

Guilty – A plea by which a defendant confesses to the crime with which the defendant is charged, or a verdict by which a defendant is convicted of a crime.

Hearsay – Evidence given in court of an out of court statement, attempting to prove the truth of the out of court statement. Written materials may also be hearsay if offered in court by a witness who did not write or otherwise create the instrument.

Hung Jury – A jury so irreconcilably divided in opinion that they cannot agree upon a verdict.

Indigent – Being unable to afford to retain an attorney to represent the individual, or to be unable to afford to pay fines and court costs, filing fees, or appeal bonds.

Injunction – A court order prohibiting someone from doing some specific action or requiring that a person take action to undo some wrong. Generally, justice courts cannot issue injunctions without specific legal authority to do so.

Inquest – An investigation conducted by a judge or medical examiner to determine the cause and manner of death and whether anyone is responsible for the death of another.

Interlocutory – Provisional, temporary, not final.

Interpleader – A procedure to determine the rights of parties to property held by another party who has no interest in the property, frequently escrowed money.

Interrogatories – Written questions propounded by one party and served on the adversary, who must serve written answers to the questions under oath.

Invoking “The Rule” – On motion from either party or the court, witnesses on both sides are placed under oath, and are removed from the courtroom to a place where they cannot hear the testimony of any other witness. This ensures that their testimony is not affected by the other witnesses.

Judgment – The final decision of the court resolving a dispute and determining the rights and obligations of the parties to the dispute; the official decision of the court. The judgment must be reduced to writing and entered in the court record.

Judgment Creditor – One who has obtained a money judgment against another party.

Judgment Debtor – One who owes a money judgment to another party.

Judgment Nisi – Nisi means unless; a judgment which will be made final unless cause is shown to prohibit it. Used in bond forfeiture cases.

Judgment N.O.V. – Judgment notwithstanding the verdict; a judgment of the court that is opposite to the verdict reached by the jury because there was insufficient evidence to support the jury’s decision, as a matter of law.

Judicial Notice – The official recognition of certain facts which a judge may properly take and act upon without hearing evidence because the facts are generally known in the territorial jurisdiction of the court or capable of accurate determination through reliable sources.

Jurisdiction – The power of the court to hear and decide the case.

Jurisdictional Amount – The money amount involved in the particular case or dispute by which the jurisdiction of the court to determine the case is measured; part of “subject matter” jurisdiction. Justices of the peace currently have a \$10,000 cap on jurisdictional amounts in civil cases.

Jury – A certain number of individuals, selected according to law, and sworn to declare the truth upon evidence laid before them.

Jury Charge – The instructions given to a jury regarding the applicable law in a case which the jurors must apply to the facts of the case, as they determine them, in order to reach a verdict. Justices of the peace do not “charge the jury” in civil cases, but they do in criminal.

Jury Panel – A group of prospective jurors who are summoned to appear on a stated day and from which a jury is chosen. Also called the **venire**.

Juvenile – A person who has not reached the age at which the person is treated as an adult for the purposes of criminal law. In most cases in Texas, this is any person under 17 years of age and over the age of 10.

Lessee – A person to whom a lease is given.

Lessor – A person who gives a lease.

Levy – To assess; raise; execute; exact; collect; gather; as a tax.

Liable – Obligated by law or equity.

Liability – Being responsible for actual or possible loss.

Magistrate – A civil public officer invested with powers and functions which may be judicial, executive, or legislative in nature; a justice of the peace is a magistrate, as are most judges.

Magistrate’s Warning – A warning given by the magistrate to an accused informing the accused of the accused’s legal rights.

Mechanic’s Lien – A claim created by law for the purpose of securing priority of payment of the value of work performed and materials furnished in erecting or repairing buildings or improvements on land, or certain mechanical repairs.

Mens Rea – A guilty mind; a criminal intent; culpable mental state. Most criminal offenses require a culpable mental state.

Motion for New Trial – A request that the trial judge set aside the judgment and order a new trial because the trial was improper or unfair due to specific prejudicial errors. This is different from an appeal because an appeal goes to another court, where a motion for new trial requests another trial in the same court.

Next Friend – One acting for the benefit of a minor or any other person not able to act on one's own behalf, without being regularly appointed as a guardian.

Nolo Contendere – A plea in criminal cases in which the defendant does not contest the charge against the defendant; also called "no contest", this plea has the same legal effect in the criminal court as a guilty plea but can't be used against the defendant in a separate civil suit.

Not Guilty – A plea in which the defendant denies guilt, or a verdict in which the defendant is acquitted of a criminal offense.

Notary Public – A public officer whose function is to administer oaths, certify documents, take affidavits, and attest to the authenticity of signatures; a justice of the peace is an *ex officio* (by virtue of the office) notary public.

Nulla Bona – Latin term meaning no goods. Written on the writ of execution return signifying the officer made a diligent search but was unable to find any property of the defendant to levy on to satisfy the judgment.

Nunc Pro Tunc – Latin phrase meaning now for then. A judgment nunc pro tunc is issued to correct a clerical error in a court's judgment. The judgment is treated as though it had always been issued correctly.

Officer of the Court – A term generally used to refer to any person connected with the operation of the court, including bailiffs, clerks, and attorneys.

Open Court – A court to which the public has a right to be admitted. A hearing at which the judge is present, held in a place designated for holding court.

Party – A person or entity involved in the case, either suing or being sued.

Peace Bond – A type of bond that must be provided by someone who has threatened to breach the peace. It is conditioned that the person will not act on their threat.

Peremptory Challenge – The right to challenge and remove a prospective juror without stating the reason. Parties get three peremptory challenges (also sometimes called “strikes”) and may use them for any reason other than race or gender.

Personal Bond – The defendant's word or promise to appear in court to answer criminal charges; recognizance bond. Can also be a promise to pay a certain amount if they fail to appear.

Petition – A formal written application stating a party’s claims and requesting relief from the court.

Plaintiff – A party who files a claim, including a defendant filing a counterclaim (often called a counter-plaintiff).

Plea – The answer which the defendant in a criminal proceeding makes to the complaint alleging the offense.

Pleadings – Oral or written statements made to the court presenting the claims and defenses of the parties.

Postponement – A continuance; a delay in proceedings.

Power of Attorney – An instrument authorizing another to act as one's agent. It does not grant someone the authority to take actions only allowable by attorneys, such as representing a party in a non-eviction suit.

Preponderance of the Evidence – The greater weight of the evidence; more likely than not; the standard of proof in civil cases.

Presumption – An inference or conclusion in favor of a particular fact; often a statutory presumption, which may be rebuttable.

Presumption of Innocence – Constitutional protection stating that in a criminal case a defendant should be acquitted unless the defendant's guilt is established by evidence beyond a reasonable doubt.

Probable Cause – A reasonable ground of suspicion supported by facts or circumstance sufficiently strong in themselves to cause a reasonably cautious person to believe that the accused is guilty of the offense with which the accused is charged.

Pro Se – For self, on one's own behalf; one who does not retain a lawyer but, instead, appears on one's own behalf in court.

Quash – To vacate; to annul; to make void. For example, a defendant may make a motion to quash a complaint.

Remedy – The means by which a right is enforced, or the violation of a right is prevented, redressed, or compensated.

Render – To pronounce, state, declare, or announce in open court the judgment of the court in a given case.

Replevy Bond – A bond posted to allow a party to take back or hold property that would otherwise be sequestered, garnished, or attached.

Request for Admission – A formal method of discovery whereby written statements of fact are served on the opposing party, which they must then admit or deny.

Res Judicata – The concept of law stating that once the merits of a claim have been decided by a court, they can't be re-litigated (other than legally allowed new trials or appeals).

Return – The instrument given to the court by a sheriff or constable upon a writ or notice, stating what the officer has done under it and the time and mode of service.

Scire Facias – An order from the court, used in two different ways. One, to substitute parties when a party to a pending case dies. Also, used to revive a judgment which has gone dormant.

Search Warrant – A written order issued by a magistrate and directed to a peace officer commanding the officer to search for specified property at a specified place and to seize it and bring it before the magistrate.

Sentence – The judgment formally pronounced by the court or judge upon the defendant after conviction in a criminal prosecution, awarding the punishment to be imposed, and ordering that it be carried out.

Sequestration – A writ used to order a thing which is the subject of a controversy in a lawsuit to be held by the constable until the judge can rule on its disposition.

Service – The delivery of a writ, notice, injunction, etc., by an authorized person, to a person who is thereby officially notified of some proceeding concerning that person.

Shall – As used in statutes, this word is generally imperative or mandatory, meaning must.

Statute – A law enacted by the legislature.

Statute of Limitations – A statute declaring that no suit shall be maintained on certain causes of action unless brought within a specified period after the right accrued.

Stipulation – The name given to any agreement made by the attorneys or parties on opposite sides of a cause.

Sua Sponte – Of its own will or notion; voluntarily. Used to describe a motion made or order issued by the court without request from a party.

Subpoena – Process initiated by a party commanding a witness to appear and give testimony, at a specified place and time to testify for the party.

Subpoena Duces Tecum – A subpoena that directs a witness to bring to court and produce certain documents or other things desired as evidence in a judicial proceeding.

Summons – An order to a person to appear in court on a specific date to answer a case filed against the person.

Supersedeas Bond – A bond posted which requires a court to stay the proceedings, suspend a judgment, or execution. Sometimes an appeal bond is referred to as a supersedeas bond.

Surety – One who promises to answer for the debt or default of another.

Surety Bond – A bond taken out by a surety who agrees to pay a sum of money in the event that the principal fails to perform an act.

Sworn – Signed in front of someone authorized to take oaths or signed under penalty of perjury.

Third Party Claim – Claim brought by a party being sued against another person or entity who is not yet a party to the case.

Tort – A wrong, an injury, or a violation of a duty imposed by law which results in damage or injury to a person or property.

Transcript – A copy of the court records in a case.

Trial – Proceedings in open court during which the ultimate issues in a case are determined, by a factfinder (judge or a jury).

Trial De Novo – A new trial or retrial held in an appellate court in which the whole case is heard as if no trial had ever been held in the trial court originally hearing the case. An appeal from the justice court to a county or district court results in a trial *de novo*.

Venire Facias – A judicial writ, commanding a sheriff or other officer to bring before the court a specific number of individuals to serve on the jury.

Venue – The place where a case is tried.

Verdict – The formal and definitive answer by a jury impaneled and sworn for a trial of the case and reported to the court, upon the matters or issues submitted to the jury during trial.

Void – Having no legal force or binding effect, as a void judgment.

Voidable – That which may be declared void; not void in itself but which requires some action to determine the absence of any legal force or binding effect.

Voir Dire – The preliminary examination of a witness or juror, where the individual's competency, interest, etc., may be questioned.

Waiver – The intentional or voluntary relinquishment of a known right.

Writ – A court order.

Writ of Execution – A writ authorizing an officer to levy on and to sell certain items of the judgment debtor to satisfy a judgment.

Writ of Garnishment – A writ directed to one who has possession of money or property belonging to the defendant, ordering the third person not to deliver or pay it to the defendant but to deliver or hold it for the plaintiff.

Writ of Habeas Corpus – A writ which orders that a person be brought before the court in order to test the legality of the person's detention by the person to whom the writ is directed.

Writ of Mandamus – A writ issued from a court of competent jurisdiction to another court to command performance of a specific duty which a person is entitled to have performed.

Writ of Possession – The writ of execution employed to enforce a judgment to recover possession of land. It commands the sheriff or constable to enter the land and give possession of it to the person entitled under the judgment.

Notes

