

# CIVIL SCENARIOS

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## Resources

- Tjctc.org
  - Civil Deskbook, Webinar Archives, Legal Question Board, Publications, Forms
- Texas Rules of Civil Procedure Part V & VI
  - <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-january-1-2018.pdf>

Find the mistakes!

Randy is a court clerk. Thea has filed a request for a writ of garnishment, and Randy files it in the case file of the judgment that Thea is trying to enforce. Randy lets Thea know that any wages that have been direct deposited into the defendant's bank account are exempt and so she won't be able to garnish those.

The court issues the writ of garnishment and Randy sends two copies to the constable—one to be served on the defendant and one to be served on the garnishee. The constable serves the defendant and then serves the garnishee.

The garnishee does not answer, but the defendant files an answer with the court stating that the garnishee is not in possession of any of their property. The judge enters an order discharging the garnishee and taxing the costs of the writ of garnishment against the defendant.

Darby is a court clerk. Bronson has filed a debt claim case and has filed proof of service with the court. The defendant has not answered and the answer deadline has passed. Bronson has now contacted the court and requested that the judge enter a default judgment in the case. Bronson has already filed proof of the amount of damages as required by Rule 508.3. Darby tells Bronson that he'll need to request a default hearing before the judge can enter a judgment. So Bronson requests the hearing and a hearing is set. Darby makes a note to send notice of the hearing to the defendant if the defendant files an answer.

At the hearing, the judge doesn't really think that Bronson has shown sufficient proof of his damages, but enters a default judgment against the defendant because the defendant was not present. After the judge has signed the judgment, Bronson offers to mail the judgment to the defendant since he's going to the post office anyways. Darby prepares the notice and gives it to Bronson.

Six months later, the defendant comes in and says she just found out that Bronson had a whole case against her and hid it from her. She claims she was never served, never lived at the address where it says she was served, and never got notice of a judgment. She files a motion to set aside default. The judge grants the motion and sets the case for trial.

# Use the Deskbook!

## Where Do You Look?

- You have a question about dormant judgments.
- Take a look at the Civil Deskbook Table of Contents.
- What chapter and section do you look in to find the info you need?

A judgment was issued for the plaintiff in September 2007. An abstract was issued in October 2007 and again in October 2016. Now the plaintiff is requesting a writ of execution. May the court issue one?

What does a person file if they want to request that a court revive a dormant judgment and what is the name of what the court issues if it grants the request?

Can a court grant a request to revive a dormant judgment if the defendant is not present at the hearing?

What are the three reasons that a court would not revive a dormant judgment?

# Answer the Legal board questions!

## Question #1

A small claims suit has been filed with me regarding a recently divorced couple, stating the defendant was directed to return personal property in a divorce decree, and has not done so. In a previous question, you gave the following answer for a case where someone filed a small claims case because they weren't getting the spousal support ordered in a divorce decree: "The case should be dismissed for lack of jurisdiction. This is not a small claims case, it is a situation where a party has failed to comply with a court order issued by a district court".

Would this answer apply to my situation as well?

## Question #2

We have a small claims case that is going to go dormant on 10-7-17. The Plaintiff has come in and filed an Abstract of Judgement and a Writ of Execution. My question is if the Writ of Execution comes back unable to locate the Defendant either before or after 10-7-17, is the case still revived or does it become dormant since the Writ was not executed? Please help clarify for me. Thank you

## Question #3

Can a plaintiff subpoena someone out of county on a small claims case and how is that accomplished?

## Question #4

WRIT OF EXECUTION - COLLECTION AGAINST COMPANIES We were advised by the Constable's office that a Writ of Execution cannot be collected against a Partnership, Limited Partnership, and/or a Limited Liability Company. Please advise if this statement is true. Appreciate your prompt response.

## Question #5

Our court received a small claims suit petition for encroachment (tree branches). The plaintiff's attorney filed a petition stating in 2nd paragraph subtitled: "DISCOVERY CONTROL PLAN" and then reads, "Plaintiff contends that the discovery in this matter should be conducted under the guidelines of Level I and she will seek discovery control plan pursuant to 190.4 TRCP." I've researched and researched this 190.4 TRCP and find nothing in the 500 Series of the TRCP. My question is: What role does the JP Court play in this Discovery Control Plan if there was not a Motion for Discovery submitted to the court? Is it something that will come up during the Trial?

## Question #6

We have a Debt claim where the defendant did not show so a default judgment was rendered in January 2017. The plaintiff filed for abstract and it was recorded in the County Clerks office days later. Now, in December of 2017 the plaintiff is requesting a dismissal for the default judgment due to the defendant's filing bankruptcy and the debt being discharged in November of 2017. Can we dismiss a default judgment and do we issue a release of judgment? Thank you.

## Question #7

Recently we have received some request for phone Civil Trials. Is this legal? What if the other party does not want a phone hearing? Is there a statute that I can read more on "Phone Trial". Thank you.

## Question #8

Debt Claim filed 11-23-15, Default Judgment 4-17-17, Application for Appointment of Receiver signed by Judge 8-1-17. Court received "Receiver's Report and Verified Motion to Disburse Funds" on 9-5-18 with an "Order to Disburse Funds" for the Judge to sign. What are the steps, besides notating the case and giving to the Judge, for this?

## Question #9

Case was set for trial on 08/15/17. On 08/15/17, Def. Atty filed a Motion for discovery and a Request for a Jury Trial. The judge ruled on the motion for discovery, re-set the trial for 10/9/17, and has not yet ruled on the request for a jury trial. Should the request be denied because it was not filed within 14 days of the original trial date of 08/15/17?

## Question #10

Once the Justice court receives a Satisfaction of Judgment in a civil case, should the release of lien be filed with the justice court or county court?