TRAVIS COUNTY COURTS AT LAW (CIVIL) QUICK REFERENCE GUIDE

Judge Todd T. Wong

County Court at Law No. 1
Travis County, Texas

Staff:

Catherine Jones, Court Operations Officer
512-854-9241
Holli Siler, Judicial Aide
512-854-9645
Cathy Mata, Court Reporter
512-854-9251
Lea Downey Gallatin, Staff Attorney
512-854-4919

Judge Eric M. Shepperd

County Court at Law No. 2
Travis County, Texas

Staff:

Priscela Valladares, Court Operations Officer
512-854-9249
Chantell Abou-Hamdan, Judicial Aide
512-854-9242
Amanda Anderson, Court Reporter
512-854-9250
Lea Downey Gallatin, Staff Attorney
512-854-4919

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INTRODUCTION

The following Guide is a quick overview of how to set cases in the Travis County Docket System. If there are any questions about this Guide, or if there is a need for more information, please consult the Local Rules.

1. THE DOCKET SYSTEM

The County Court at Law No. 1 and The County Court at Law No. 2 operate on a Central Docket System. This means that all civil cases are scheduled for hearings from one master calendar maintained by the Courts; regardless what court the case was filed. The Central Docket System will hereinafter be referred to as the Central Docket.

2. OBTAINING A SETTING ON THE CENTRAL DOCKET

A setting may be obtained on the Central Docket by contacting Court No.1 or Court No. 2 either in person or by telephone. The court's procedure is for the attorney or the pro se individual requesting a hearing or trial to comply with Local Rule 2.3, "No case should be set without consultation among counsel for all sides in accordance with the Texas Lawyers Creed." This creed can be found at http://www.txbf.org/creed. We expect you to call the other side as a matter of courtesy.

3. NOTICE OF SETTING

The attorney or individual obtaining a setting is responsible for giving notice to all attorneys or parties in the matter within the time limit provided by Local Rule 2.3 and the Texas Rules of Civil Procedure. Local Rule 2.9 requires an estimate of time to be included in the notice.

4. SCHEDULE OF JURY AND NON-JURY WEEKS

The weeks of the year are divided into jury and non-jury weeks. A schedule of jury and non-jury weeks may be obtained in the Court Operations Officer's Office or at www.traviscountycourts.org. These schedules are normally released in May for the following year.

5. JURY SETTINGS

Jury cases are set on Monday at 9:00 a.m. on weeks designated "jury weeks." Cases are called by the Judge assigned to calling the jury docket.

6. NON-JURY SETTINGS

Hearings requiring more than three hours are scheduled Monday through Friday at 9:00 a.m. on weeks designated "non-jury weeks".

Hearings requiring less than three hours are scheduled Monday through Thursday at 9:00 a.m. or 2:00 p.m. daily and 9:00 a.m. only on Friday on weeks designated "non-jury weeks".

7. UNCONTESTED DOCKET

Monday - Friday between 8:30 a.m. – 9:00 a.m. and 1:30 p.m. – 2:00 p.m. there will be a Judge available to hear uncontested matters and sign uncontested orders. A court reporter will be available for the each session upon request.

There is no need to obtain a setting on the uncontested docket. The location of today's uncontested docket is posted on our bulletin board by the elevators on the second floor.

8. CUTOFF POINT FOR OBTAINING A SETTING

A cutoff point for obtaining a setting is established in order that everyone affected by the setting has a fair opportunity to react with any last minute pretrial matters or an opportunity to timely present a Motion for Continuance. Consult TRCP 4 and 5 for time requirements and TRCP 21 and 21a for notice requirements. All settings must be obtained by 5:00 p.m. the Friday before the docket call period begins for that setting. The only exceptions are as follows:

1. Any matter that is governed by a statute requiring it to be heard within a certain time frame;
2. Any matter that is added to a docket by agreement.

9. PREFERENTIAL SETTINGS

No more than two preferential jury cases and no more than four preferential non-jury cases can be set on their respective weeks.

Preferential settings may be obtained only from the judge in the presence of all attorneys and will be granted only if the circumstances or law of the case compel it.

A preferential setting is not necessarily a setting before a particular judge.

10. HEARINGS BY TELEPHONE

Settings must be confirmed with the Court and announced at Docket Call. See Local Rule 2.10 for requirements for telephonic hearings.

11. DOCKET CALL

Any case set on the Central Docket is subject to the docket call announcement procedure as set out in Chapter 2 of the Local Rules. Any case, <u>including preferential settings</u>, will be dropped to the bottom of the docket at the time it is set if no announcement is received by the Court Office during the docket call period.

12. MOTIONS FOR CONTINUANCE

Motions for continuance will be heard at 8:30 a.m. on the Thursday of the week before a given setting. The moving party is expected to give the opposing side at least three days notice of their intent to present the motion. No motion will be heard after the designated Thursday unless it can be shown that the circumstance has arisen after the normal hearing time.

Hearings for continuance may be set earlier than the Thursday preceding the hearing date by contacting the Court and setting it as any other non-jury hearing.

13. EMERGENCY HEARINGS

Emergency hearings can be set outside the normal docket but must be approved by one of the two County Court Judges. To obtain permission contact the Court Operations Officer.

14. FAX AND EMAIL COMMUNICATIONS WITH THE COURT

Neither the Court nor the Court Operations Officer accepts fax or email communications from parties or counsel unless permission is given ahead of time.

15. AUDIO/VISUAL EQUIPMENT

The Court provides its own easel, Elmo, overhead projector, video equipment or other presentation equipment. Arrangements can be made to become familiar with the equipment before trial or hearing by calling the Court Operations Officer of the Court.

16. LOCAL RULES OF CIVIL PROCEDURE AND RULES OF DECORUM

You may obtain a copy of the Local Rules of Civil Procedure and Rules of Decorum are available on the Travis County website at http://www.co.travis.tx.us/courts/files/documents_forms/rules_CivilCriminalCounty.pdf or, if you do not have internet access, free of charge in the Court Offices, Room 206 and Room 211 of the Heman Marion Sweatt Courthouse.

17. E-FILING PROCEDURES IN COUNTY COURTS AT LAW (CIVIL)

Please refer to the Travis County Local Rules of the County Court concerning the Electronic Filing of Court Documents found at:
http://www.co.travis.tx.us/courts/files/documents_forms/civil/forms_civilCounty/efiling_LocalRules_CCL.pdf

18. MUNICIPAL COURT OF RECORD APPEALS

All Municipal Court record appeals are currently assigned to Court 1. All briefs and motions should be filed with the criminal section of the County Clerk's office.

19. DEMAND FOR JURY OF TWEVLE

A party filing a written request for a 12-member jury pursuant to Government Code §25.2292(d) shall give a written copy of the request to the Court Operations Officer of the court in which the case is filed not later than the 30th day before trial to assure the summoning of a panel of adequate size to seat a 12 member jury.

20. APPEALS FROM JUSTICE COURT AND SMALL CLAIMS COURT

If you appeal your case from the Justice of the Peace (JP) or the Small Claims court, your appeal will be heard in the County Courts. Please note that the procedures in the County Courts are different than those in JP or Small Claims court. The County Courts at Law do not automatically set your case for you. **If you want a setting, do not wait to receive a setting request in the mail. Please call or write to get a setting as explained in Local Rule 2.3.**

Appeals are *de novo*; meaning that everything done at the JP or Small Claims court is set aside and the case is retried at the County Court level. The original plaintiff is still called the plaintiff (not the appellant or the appellee). The style (also called the name of the case) is the same as what it was in JP or Small Claims court.

Rules of Evidence and Procedure-

- In appeals from JP court, the rules of evidence and procedure apply.
- In appeals from the Small Claims court, the rules of evidence and procedure apply but are somewhat relaxed as directed by Rule **101(b)** of the Texas Rules of Evidence and **§§28.033**, **28.034** and **28.053** of the Texas Government Code.
- While some discovery is permitted, both in Small Claims court and on appeal in County Court, that discovery is limited to that **"considered appropriate and permitted by the judge."**

There are a few common types of appeals that the County Courts hear. There are some rules you should be aware of for these types of appeals:

Appeals of Eviction Cases-

- Are given preference and are set expeditiously on request.
- These cases may be set at any time after the case has been on file in County Court for eight days and are not subject to the **45**-day notice requirement of Rule **245**, Texas Rules of Civil Procedure.

Appeals of FED-nonpayment of rent cases-

- These are cases where the reason for eviction is based on the nonpayment of rent.
- If the tenant appeals with an Affidavit of Inability to Pay Costs or Bond (also called a Pauper's Affidavit) the tenant still must pay rent while the case is pending an appeal.
- Within **5** days of the date that the tenant files a Pauper's Affidavit, he/she must pay into the Justice Court registry one rental period's rent.
- While the case is on appeal, rent must be paid to the County Clerk as it becomes due.
- See Rule **749b**, TRCP.
- Remember, just because the case is on appeal does not mean the tenant does not have to pay any rent until the case is resolved.
- **If rent is not paid to the Justice Court registry or County Clerk, the landlord may follow the procedures set out in §24.0054 of the Texas Property Code to get a writ of possession (this will give the landlord possession of the property).**
- **A writ of possession REQUIRES: a sworn motion, NOTICE TO THE TENANT, a hearing, and A CONTINUED FAILURE TO PAY RENT.**
- The tenant has until the date of the hearing to pay rent and the landlord's reasonable attorney's fees to the County Clerk.
- A writ of possession granted after a hearing under **§24.0054** of the Texas Property Code is not a final judgment, meaning the case being appealed has not been resolved (the writ of possession granted after a hearing is only temporary until the case has been decided on appeal).
- To get a final judgment for all past due rent AND a permanent writ of possession, the case must be set for trial on the merits.

21. DEFAULT JUDGMENT FOR FAILURE TO ANSWER PETITION

When a plaintiff files the first set of papers to initiate a lawsuit (called a petition), the defendant has only a few days to file a response to the petition (called an answer). If the defendant does not file an answer, a default judgment may be granted by the County Courts, thus resolving the case in favor of the plaintiff. A Motion for Default Judgment must be filed with the County Courts in order for a default judgment to be granted. All of the following must be met in order for a default judgment to be properly granted:

- There is a citation on file with the County Clerk and that citation has been on file for AT LEAST 10 DAYS. A citation is the documentation that says that the defendant was served with the lawsuit.
- EACH defendant named in the lawsuit was personally served. In other words if 5 people were named as defendants in the lawsuit, all 5 of them must be served.
- If a private process server service was used to serve the defendant, that private service must provide a signed/verified documentation that service was given.
- There must not be any form of an answer made by the defendant on file with the County Clerk.
- In the Motion for Default Judgment there MUST be:
    - A Certificate of Last Known Address
    - An Affidavit stating that the defendant is not on active duty in the military (this is not needed if the defendant is a corporation)
    - If attorney's fees are being requested, there must be oral evidence or an affidavit establishing the amount of attorney's fees.
    - Damages that are not liquidated, i.e., not proved by an instrument in writing, must be shown by competent evidence (see TRCP 243).

22. SEQUESTRATION

In order for an application for a writ of sequestration to be granted, the application must be supported by affidavit. The affidavit must include:

- The description of the property to be sequestered, so that it can be properly identified and distinguished from other similar types of property
- The value of the property to be sequestered
- The county where the property is located
- And specific facts that can lead to a reasonable conclusion that there is immediate danger that the defendant or the party in possession of the property will conceal, dispose of, ill-treat, waste, destroy the property, or remove it from the county during suit.

It is important to note that affidavits that include conclusory statements that the property is in immediate danger of being concealed, disposed of, ill-treated, destroyed, or removed from the county are improper. The affidavit should state specific facts. It is the job of the Court to determine if the facts can lead to a reasonable conclusion, thus conclusory statements should not be made in the affidavit. Doing so will make the affidavit defective and the Court will deny the application.

23. OCCUPATIONAL LICENSE

The courts will examine applications for occupational driver's license at the uncontested docket. While each case is different, in general you should be ready to show:

1. Verified (sworn) application (petition).
2. Certified driving record from DPS
3. Current proof of insurance
4. Proof of necessity to drive (letter from employer, for example)

If the license is suspended because of a criminal conviction (DWI related), the application must be presented to the judge in the court of conviction, not in the civil courts.

24. MATTERS PRELIMINARY TO TRIAL ON THE MERITS

Except for motions for continuance based on new circumstances, all motions in limine, exceptions and all pre-trial motions and pleas in every case shall be presented and heard not later than Friday of the week preceding trial.

All such exceptions, motions, and pleas not presented and heard within the time provided by this Rule will be deemed waived, except upon a showing of good cause for failure to comply with this Rule.

This Rule does not relieve a movant of the burden of delivering a copy of the motion in the manner and within the time provided by the Texas Rules of Civil Procedure.