

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Civil Justice Committee Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Civil Justice Committee was charged with studying the landscape of the Texas civil justice system and recommending any necessary reforms to improve access to justice in Texas courts; and

WHEREAS, the COVID-19 pandemic has reshaped the business of civil justice in the way of limited in-person proceedings and the widespread use of remote trials; and

WHEREAS, pre-pandemic court data reveal a civil justice system with year-over-year increases in case filings and backlogs, which will undoubtedly be exacerbated by the COVID-19 pandemic; and

WHEREAS, pre-pandemic court data also reveal debt cases comprise an increasing percentage of new civil case filings; and

WHEREAS, data presented to the Civil Justice Committee suggests that most debt cases are filed by only a handful of plaintiffs and law firms, that most debt claim defendant are unrepresented, and that with vast majority of judgments are for plaintiffs in the form of default judgments; and

WHEREAS, many post-judgment challenges await judgment debtors, who can be both unrepresented and unaware of the protections available to them; and

WHEREAS, data show that civil case filings continue to increase and that case clearance rates continue to fall short of 100% across courts; and

WHEREAS, online dispute resolution provides a cost-efficient, time-efficient, and convenient method of civil dispute resolution; and

WHEREAS, during the 86th Legislative Session the Legislature simplified and consolidated criminal court costs to lessen the local burden of administering the criminal court costs system and to remedy constitutional issues embedded in the system; and

WHEREAS, the civil filing fee system in Texas is complex, can be difficult to administer, and caselaw suggests that some current uses of civil filing fees might be unconstitutional; and

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges:

1. The Texas Supreme Court or the Texas Judicial Council to adopt rules that make the process of understanding and engaging in a debt claim lawsuit more accessible by requiring courts to send debt claim defendants a plain language post-service letter and answer packet that explains the legal process and provides a sample answer form with available defenses under the law.
2. The Texas Judicial Council to direct the Office of Court Administration to create a model plain language post-service letter packet that courts can use to send to debt claim defendants.
3. The Texas Supreme Court or the Texas Judicial Council to adopt rules that improve access to justice for unrepresented defendants by requiring a court, prior to issuing a default judgment in a debt claim case, to send a debt claim defendant a plain language notice explaining what a default judgment is and its implications. The notice should include a statement indicating when the default judgment will be entered and the need the answer the lawsuit to protect the defendant's rights, and include a general answer form with instructions.
4. The Texas Judicial Council to direct the Office of Court Administration to create a model plain language debt claim default judgment notice packet that courts can use to send to a debt claim defendant prior to issuing a default judgment in a debt claim case.
5. The Texas Supreme Court to adopt a rule requiring a debt claim plaintiff to submit documentary proof, and not merely sworn statements, to substantiate the debt, the amount owed, and the right to collect it.
6. The Texas Supreme Court to adopt a rule requiring a debt claim plaintiff to demonstrate compliance with Finance Code §392.307, which prohibits a debt buyer from suing to collect a time-barred debt, and Finance Code §392.101, which requires third-party debt collectors to be bonded.
7. The Texas Supreme Court to amend TRCP 663a to provide judgment debtors information on exemptions and the ability to file a notice of exemption or a motion to dissolve a writ of garnishment. The service timeline found in the first sentence of TRCP 663a should also be amended to replace "as soon as practicable following the service of the writ" with "within three days following the service of the writ."
8. The Texas Supreme Court to amend TRCP 664a to require modification of a writ of garnishment to exclude any funds found exempt after notice and a hearing. Rule 664a should also be amended to permit judgment debtors to file a notice of exemption or a motion to dissolve a writ of garnishment and continue to obtain a hearing within 10 days. Rule 664a should also be amended to treat an exemption claim as raising a rebuttable presumption that the exemption claims are valid. The rule should provide

- that, unless the judgment creditor requests a hearing within three days, the exemption claims are deemed valid. The rule should provide that if judgment creditor does request a hearing, the judgment debtor would have the burden of proving he or she was entitled to raise the exemption and what amount of the frozen funds were exempt. The Texas Supreme Court should also draft a simple notice of exemption claim form for use by unrepresented defendants.
9. The Texas Supreme Court to adopt rules governing the issuance of turnover orders, appointment of turnover receivers, and the mechanisms for challenging turnover receivers.
 10. The Legislature to modernize wage exemption language in statute to establish a minimum cash exemption to ensure that families can cover basic living expenditures while still allocating remaining funds to repay debt.
 11. The Texas Judicial Council to adopt a rule implementing the Texas Online Dispute Resolution Policy Framework to govern the use of court-sponsored online dispute resolution.
 12. The Office of Court Administration to implement a low-cost or free online dispute resolution platform throughout the state so that parties in civil matters may access the judicial system.
 13. The Legislature to simplify and consolidate the civil court filing fee system in a way that remedies potential constitutional issues in the current system. This reform should be revenue-neutral for both the state and local government to the extent it can be.



Honorable Nathan L. Hecht
Chair, Texas Judicial Council