



WRITS: ALL KINDS

Making sense of the many items know by the name “WRIT”
- in Criminal, Family, and Civil case types.

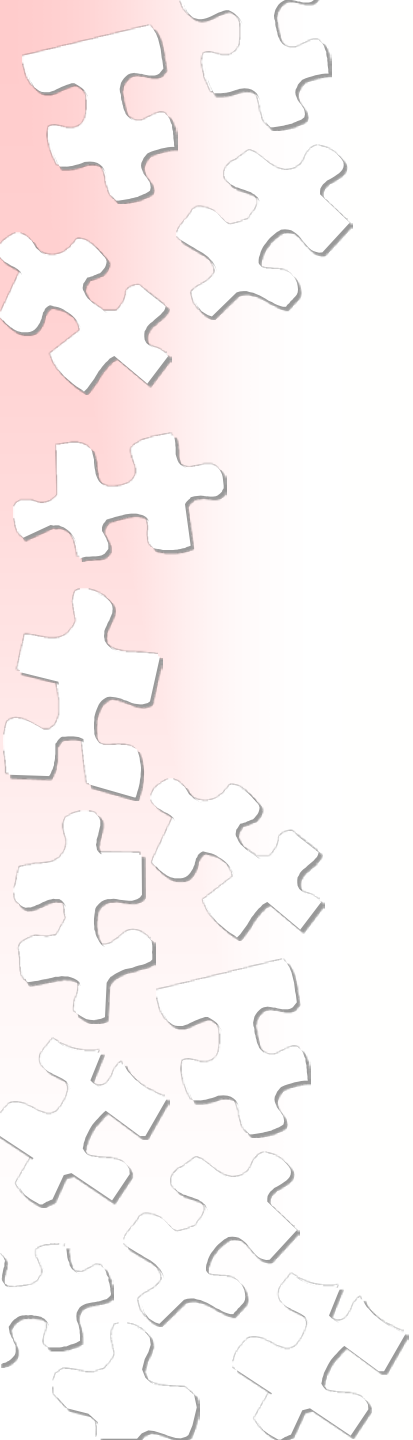
Hon. Clarissa Webster (Civil)

Hon. Jo Carter (Family)

Hon. Chris Daniel (Criminal)

Family Writs

- Family





Criminal Writs

- A **writ of habeas corpus** (which literally means to "produce the body") is a court order to a person or agency holding someone in custody (such as a warden) to deliver the imprisoned individual to the court issuing the order and to show a valid reason for that person's detention. These are heard by the court of record.



Criminal Writs

- Writ of Attachment
 - Reporting Requirements -
http://www.txcourts.gov/media/1438748/writs-of-attachment-report-instructions_08232017.pdf
- Writ of Habeas Corpus
 - Pre Conviction – related to a defendant’s liberty
 - Post Conviction – related to non-death and death convictions as well as community supervision convictions



Criminal Writs

- Writ of Habeas Corpus (pre conviction)
 - CCP 11.08 pertains to felony offenses
 - CCP 11.09 pertains to misdemeanor offenses
- Writ of Habeas Corpus (post conviction)
 - CCP 11.07 pertains to non-death convictions
 - CCP 11.071 pertains to death convictions
 - CCP 11.072 pertains to community supervision convictions



Criminal Writs

- Writ of Attachment
 - Statutory Authority
 - A = CCP Art. 24.011 Child Witness
 - B = CCP Art. 24.12 Resident Witness
 - C = CCP Art. 24.22 Out of County Witness
 - D = CCP Art. 24.014 Resident Witness Moving Out of County
 - E = CCP Art. 24.015 Grand Jury Witness Moving Out of County
 - Proceeding Types
 - T = Trial
 - G = Grand Jury
 - O = Other



Civil Writs

- **Definition of WRIT:**
 - A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.
Black's Law Dictionary



Civil Writs

- Definition of **WRIT**:
 - a form of written command in the name of a court or other legal authority to act, or abstain from acting, in some way.
Dictionary by Google



Civil Writs

- What the majority have in common:
 - Prompted by court order
 - A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including **authority to issue the writs** and orders necessary or proper in aid of its jurisdiction.
Gov't Code 21.001
 - A judge of a district court may, either in termtime or vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court's jurisdiction.
Gov't Code 24.011



Civil Writs

- What the majority have in common:
 - Fees – **Gov’t Code 51.317, 51.318**
 - \$8.00 - for almost everything
 - Format – **TRCP 15**
 - Styled: “The State of Texas”
 - Directed to the sheriff or any constable within the State of Texas
 - Returnable on the Monday next after expiration of 20 days from date of service (unless specifically stated otherwise)
 - Dated and attested by clerk with seal of the court
 - Date of issuance noted thereon



Civil Writs

- **Authorities**
 - Most Civil Writs can be found in:
 - Texas Rules of Civil Procedure (**TRCP**)
 - Texas Rules of Appellate Procedure (**TRAP**)
 - Texas Civil Practice & Remedies Code (**CPRC**)
 - Each available as a free PDF download
 - Statutes:
<https://statutes.capitol.texas.gov/Download.aspx>
 - Rules:
<http://txcourts.gov/rules-forms/rules-standards>



Civil Writs

- Writ of the “not so Scary Face” a/k/a **Writ of Scire Facias**
 - Plaintiff dies - **TRCP 151**
 - Defendant dies - **TRCP 152**
 - Judgment dies – **CPRC 31.006**
- Revives them all – (The suit will not die.)
 - Plaintiff’s heirs or estate are joined.
 - Defendant’s heirs or estate are joined.
 - Life of judgment is revived for an additional 10 years for collection and execution purposes.



Civil Writs

- Writ Affecting Persons
 - **Capias** – GC 21.001-21.002; CCP 23.01-23.02
 - Clerk's version of Judge's Warrant
 - Usually for Contempt of Court
 - **Commitment** – CCP Chp. 46B
 - Confined in mental hospital
 - After competency hearing
 - **Mandamus** –CPRC 11.102-11.103; 15.014; 15.0642
 - Public official not performing duties
 - Public official abusing their power



Civil Writs

- Writ Affecting Property (**No Bond**) and Executed by Sheriff
 - **Tax Warrant** – Tax Code 33.21-33.23
 - When property is about to escape or be sold
 - **Possession** – TRCP 310, 632, 804; Tax Code 33.51
 - Sheriff ensures purchaser is in possession of property following Order of Sale
 - More frequently issued by JP in landlord/tenant disputes
 - **Execution** – TRCP 621-656; CPRC Chp. 34
 - Requires detailed record keeping
 - Attaches to liquid, personal, and real assets



Civil Writs

- Writ Affecting Property (**Need Bond**) and Executed by Sheriff
 - **Distress Warrant** – TRCP 610-620
 - Issued by JP, but returnable to court with jurisdiction over the suit
 - **Attachment** – TRCP 592-609; CPRC Chp. 61
 - Any time from beginning to end of suit
 - **Sequestration** – TRCP 696-716; CPRC Chp. 62
 - Sheriff holds property until further order
 - Prevents spoliation
 - Ensures access and proper possession



Civil Writs

- Writ Affecting Persons Actions Related to Property (**Need Bond**)

TRCP 680-693; CPRC Chp. 65

- **Temporary Restraining Order**

- Issued ex parte
- Expires after 14 days from issuance

- **Temporary Injunction**

- Issued after hearing
- Expires at time of trial or as ordered

- **Permanent Injunction**

- Issued after final hearing/trial
- Does not expire



Civil Writs

- Writ to Compel ACTION
 - **Subpoena and Writ of Oral Commission – TRCP 201.2; CPRC 20.002**
 - Compel Witness Oral or Written Testimony
 - Effective in State and Across State Lines
 - **Turnover – CPRC 31.002, 31.010, 31.025**
 - Release custody of property, as ordered
 - Includes turnover of paychecks, and other liquid or tangible assets
 - **Charging Order – Business Organization Code 101.112; 152.308; 153.256**
 - Directs LLC or Partnership to pay to creditor any distributions of income or profit which would otherwise be paid to the member



Civil Writs

- **Writs of Appeal**
 - **Writ of Certiorari - TRCP 506.5; CPRC 51.002**
(don't worry, even the Supreme Court Justices don't agree on how to pronounce it)
 - Filed within 90 days after judgment
 - Issued by Clerk for service on the JP Court
 - Requires JP's Certified Record be filed
 - Bond Required
 - **Writ of Error *N/K/A* Restricted Appeal**
CPRC 6.001, 6.003, 27.008, 41.013(b), 51.011-51.016;
TRAP 30, 53.1
 - Based upon jurisdictional defect or on a written motion ruled on before trial
 - No bond required – **CPRC 6.003, 102.005, 104.006**



Civil Writs

- Other Ancillary Writs
 - **Garnishment** – TRCP 657-679; CPRC Chp. 63
 - Before or after Judgment
 - Filed as a new suit, it adds the Garnishee as a party, requiring service
 - Requires Bond
 - **Partition**
 - Real Property – Special Commissioners
TRCP 756-771
 - Personal Property – Sheriff
TRCP 772-778; Prop. Code 23.001



Civil Writs

- Writ to Reverse Previous Writ
 - **Supersedeas** – TRCP 634
 - Bond Required
 - Filed within 30 days of the judgment
 - Stays/Suspends any execution on judgment
 - **Trial of Right of Property** – TRCP 717-734; CPRC 34.075
 - Bond Required
 - Exclusive remedy for persons claiming an interest in property on which a writ has been levied



Civil Writs

- Writ That is Just Fun to Say
 - **Venditioni Exponas** – TRCP 647
 - Writ of Execution requiring a sale to be made
 - Order of Sale
 - Notice of Sale of Real Estate
 - Sounds like a Harry Potter magic spell

Questions?

