HOW TO BETTER PREPARE FOR YOUR CASE

An information packet on Pre-Trial Mediation for Debt Claim Cases in Justice Courts

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GENERAL INFORMATION

This information is provided for general informational purposes only and is not intended as legal advice. The law may change from time to time, and there may be times when the information on this page is not current.

Resources regarding debt claim cases are also available from Texas Appleseed's Debt Collection Toolkit, Lone Star Legal Aid, and Texas Law Help. Rule 508 of the Texas Rules of Civil Procedure (T.R.C.P.) specifically deals with debt claim cases.

In addition to Rule 508, you may also refer to Rules 500-507 of T.R.C.P. for other rules relating to the Justice Court. These Rules of Civil Procedure may be found on the Tarrant County website listed below:
https://www.tarrantcountytx.gov/content/dam/main/justices-of-the-peace/Documents/New_Rules_with_Index_9-25-14.pdf.

None of this information is a substitute for advice from an attorney. The Justice Court Clerks are not allowed to give any legal advice. You are urged to review the applicable laws and to consult an attorney of your choice for further information or answers to specific legal questions.

Section 1 – Justice Court – What It Is, What It Can Award, Types of Cases It Handles, and Venue

What is a Justice Court?

Chapter 27 of the Texas Government Code defines that Justice Courts have jurisdiction over civil matters in which the amount in controversy is not more than $20,000, exclusive of statutory interest. A Justice Court can hear the following cases: Small Claims, Debt Claims, Landlord/Tenant Disputes, Repair & Remedy, and similar minor civil cases not exceeding $20,000, excluding statutory interest. If your Cause of Action or the damages you incurred exceeds $20,000, exclusive of statutory interest, you must consider filing suit in another court (County/District) with the assistance of an attorney. Most people who appear in Justice Courts do not have a lawyer and choose to represent themselves, i.e., *Pro Se Litigants*.

What does the Justice Court award?

Justice Courts have the power to only award monetary compensation. For example, if your car does not get repaired the way you were promised, the Justice Court can only award monetary damages you suffered because your car was not repaired the way it was promised. If you need injunctive relief, i.e., an order to make someone do something or to stop doing something, other courts are available for this type of relief.

What are some examples of cases heard in Justice Courts?

Some examples of common types of disputes in Justice Court are:

1. You moved from your apartment and satisfied all the conditions of your lease, and you provided your forwarding address in writing when you moved. Now, the landlord refuses to return your security deposit and will not provide you with an itemized statement of what was done with your deposit.
2. You have your car repaired. After the car is returned, you discover that you have been charged for repairs that were not made.
3. A credit card company has sued you to recover an unpaid debt on the credit account.

Now that we understand what the functions of the Justice Courts are, let us specifically look at Debt Claim Cases.

Section 2 – Debt Claim Cases – Typical Claims, Typical Defenses, Where These Cases Can Be Filed

In a Debt Claim case, the Creditor is the Plaintiff, and the Debtor is the Defendant! If you have been named as a defendant in a debt claim case, this does not mean that it has been proven that you owe the debt. You are technically the "alleged debtor"; but for the sake of simplicity, you will be referred to here as the "debtor." AT THIS POINT, YOUR LIABILITY FOR THE DEBT HAS NOT BEEN PROVEN, AND YOUR PRESENCE AT TRIAL OR MEDIATION IS NOT INTERPRETED AS YOU ADMITTING TO LIABILITY FOR THE DEBT.

What is a debt claim case?

A debt claim case is a special kind of lawsuit filed in a Justice Court to recover money that is owed. A debt claim case can be filed by:

1. A bank or other financial institution,
2. A debt collector or collection agency,
3. A person or company whose business is lending money at interest, or
4. A person or company who bought debt or an unpaid credit account from another person or company (assigned debt).

Usually, the case is filed because of a loan that has not been repaid or outstanding credit card debt. The person or company who files the case is called the "**Creditor**" and the person they file the case against is called the "**Debtor**". *Texas Rules of Civil Procedure (T.R.C.P.) Rule 508.1.*

What is the venue for Justice Court cases?

The location where the creditor filed the claim is called the venue; however, claims must be filed by the creditor in the correct venue. A debt claim suit should be filed in one of the following venues:

- the county and precinct where the debtor resides;
- the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;
- the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
- the county and precinct where the property is located, in a suit to recover personal property. **T.R.C.P. Rule 502.4**.

What are the typical causes of action for Debt Claim Cases?

A cause of action is the legal claim that allows a party to seek judicial relief. This gives the legal right to seek a remedy because of the act or omission, failure to perform duty, or breach of obligation of the defendant towards the plaintiff.

1. ***Breach of Contract:*** This refers to a violation of any of the agreed-upon terms and conditions of a binding contract. For instance, in a debt claim case, if one party fails to pay back a debt to the other as agreed, the other party can sue for failure to pay a debt. To prove the typical breach of contract claim, the following elements need to be satisfied:
    a) the creditor must show that a valid contract existed;
    b) the creditor lived up to their side of the agreement;
    c) the debtor breached the agreement; and
    d) the creditor experienced damages as a direct result.
2. ***Account Stated:*** An account stated has been defined as an agreement between two persons who have had previous transactions fixing the amount due in respect of such transactions and promising a payment. The following elements need to be satisfied: (1). Transactions between parties give rise to an indebtedness; (2). Expressly or impliedly agree upon a fixed amount; (3). The person to be charged makes a promise expressly or impliedly to pay the indebtedness.
3. ***Open Account:*** An open account is an arrangement between a business and a customer, where the customer can buy goods and services on a deferred payment basis. The customer then pays the business at a later date. The following elements need to be satisfied for an Open Account: (1). Transactions between the parties; (2). Creating debtor-creditor relationship through a general course of dealings; (3). with the account still open; and (4). with the expectation of further dealings. In this cause of action, the seller extends credit to the buyer to make purchases without a note or security and it is based on an evaluation of the buyer's credit.

What are the Defenses available to the Debtor in debt claim cases?

Every debt-related case is unique, and it is important that your defense strategy is tailored to your case, needs, goals, and rights. However, these are the most common defenses to debt lawsuits:

- ***Statute of Limitations:*** The creditor may file a lawsuit within 4 years from the date of your last payment; promise to pay on the debt, last action on the account; a charge off date; or any such last activity on your account. Even if you owe the debt, you can still challenge it if it is over 4 years from your last payment or promise to pay.
- ***Laches:*** If you believe that the creditor has waited an unreasonably long time to file this lawsuit, you can bring the defense of laches by stating that the delay has made it difficult for you to defend this lawsuit. The amount of delay

depends on the facts of each case. If the creditor has a good reason for the delay, this defense may not prevail.

- ***Mistaken Identity/Identity Theft:*** Mistaken identity happens when you are confused with someone else. Sometimes it is as simple as an incorrect name, address, or confused account number. Identity theft, on the other hand, happens when someone steals your personal and identifying information and uses it to open lines of credit or make purchases. In either case, the burden is on the creditor to prove that you (Debtor) authorized each transaction that caused you to incur the debt.
- ***Lack of Assignment:*** Some debt collection agencies are "debt buyers." In other words, they buy the right to pursue payment of your debt from your original creditors. If you are dealing with a lawsuit from a debt buyer, you can make them prove that they actually "own" your debt. If they can't do so, then their lawsuit may be dismissed.
- ***Bankruptcy:*** If you have been sued by a creditor or debt collector but have previously declared bankruptcy, then the debt you are being sued for may no longer be legally collectible. Once you file for bankruptcy, all debt collection activities against you may be stopped. Furthermore, if a debt was discharged during bankruptcy but you are being sued after-the-fact, you can use it as a defense against the lawsuit.
- ***Dispute the Amount of Debt:*** You have the right to this defense if you believe the amount of the debt claimed against you is incorrect. The creditor has the burden of proving that you owe the amount listed in the debt collection suit. The creditor needs to produce evidence that the stated amount is correct. This could include the original contract, bill of sale, etc. As a Debtor, please be prepared to bring in appropriate evidence to challenge this claim, which may include payment receipts, financial statements, and the original contract.
- ***Failure to Mitigate Damages:*** This is a form of defense usually raised to prevent an injured party from recovering damages that could have been avoided through reasonable efforts. For instance, in a debt claim case, the Debtor can claim that the creditor refused to accept a reasonable full settlement offered by the Debtor. This refusal of reasonable settlement has resulted in the Debtor incurring additional interest, attorney fees, and court costs unnecessarily. The Debtor may state that the creditor has failed to take reasonable steps to reduce or minimize the damages experienced.
- ***Lack of Privity/Authorized User:*** As a Debtor, you may state that there was never a contractual relationship or agreement in the first place between you and the creditor. For instance, if you were an authorized user on someone

else's credit card but never became a cosigner (in other words, never agreed to share financial liability for the card), then you may use that fact to your advantage when faced with a lawsuit from the credit card company. Only if you signed an agreement to share responsibility for the credit card can you be held liable for any debt incurred.

Section 3 – Debt Claim Cases – Procedural Nuts & Bolts

How does a debt claim case get filed?

The "**Plaintiff**" is the party that initiates the filing of the suit. In debt claim cases, the plaintiff is the Creditor. The creditor must state the nature of their claim on the petition. They must also provide the correct amount they intend to claim in monetary damages. The claim cannot be for more than $20,000 in damages, excluding statutory interest and court costs, but including attorney's fees, if any. The creditor must also provide a brief statement, explaining plainly the basis of their claim. Lastly, the creditor must provide the complete names and addresses of each person or business their claim is against. The debtor is known as the "**Defendant**".

To recover on a debt claim suit, the claim must be filed within four years of the cause of action. By law, lawsuits must be filed within a correct time period. This time period is called the statute of limitations. The statute of limitations for filing a debt claim suit is four years from the date the incident occurred. Typically, the statute of limitations starts ticking on the date of the last activity on your account. This can be the date the debtor last made a payment, but it can also be the date the account was last used, made a promise to pay, a payment was made, entered a payment agreement, the account was charged off by the original creditor, or even an acknowledgement of the debt.

In many courts, cases are filed electronically through the state's electronic filing system known as E-file. Texas has prioritized filing documents electronically, so all parties should get acquainted with using E-File Texas and provide updated e-mail addresses so that the Court and all parties are made aware of communication between them. Justice Court 1 has helpful information on E-File Texas on its Website at: https://www.tarrantcountytx.gov/en/justice-of-the-peace-courts/justice-1/e-filing.html?linklocation=FILE%20YOUR%20CASE%20ONLINE&linkname=%3C

What should the Creditor include in his petition?

To initiate a lawsuit, a petition must be filed with the court. A petition must contain:

1. the name of the creditor;
2. the name, address, telephone number, and fax number, if any, of the creditor and his attorney, if applicable
3. the name, address, and telephone number, if known, of the debtor;
4. the amount of money, if any, the creditor seeks;
5. a description and claimed value of any personal property the creditor seeks;
6. a description of any other relief requested;
7. the basis for the creditor's claim against the debtor; and

8. a statement consenting to email service and email contact information if the creditor consents to email service of the answer and any other motions or pleadings. **T.R.C.P. Rule 502.**

In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:

(1) **Credit Accounts.** In a claim based upon a credit card, revolving credit, or open account, the petition must state:

(A) the account or card name;
(B) the account number (which may be masked);
(C) the date of issue or origination of the account, if known;
(D) the date of charge-off or breach of the account, if known;
(E) the amount owed as of a certain date; and
(F) whether the creditor seeks ongoing interest.

(2) **Personal and Business Loans**. In a claim based upon a promissory note or other promise to pay a specific amount as of a certain date, the petition must state:

(A) the date and amount of the original loan;
(B) whether the repayment of the debt was accelerated, if known;
(C) the date final payment was due;
(D) the amount due as of the final payment date;
(E) the amount owed as of a certain date; and
(F) whether the creditor seeks ongoing interest.

(3) **Ongoing Interest**. If a creditor seeks ongoing interest, the petition must state:

(A) the effective interest rate claimed;
(B) whether the interest rate is based upon contract or statute; and
(C) the dollar amount of interest claimed as of a certain date.

(4) **Assigned Debt.** Assigned debt occurs when the original creditor transfers/sells a debt, and all the associated rights and obligations to a third party. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:

(A) that the debt claim has been transferred or assigned;
(B) the date of the transfer or assignment;
(C) the name of any prior holders of the debt; and
(D) the name or a description of the original creditor.

Who pays to file a debt claim lawsuit?
A creditor is required to pay the Court costs when they file their petition. If you are the Creditor and you are unable to afford to pay the court costs, you must file a **Statement of Inability to Afford Payment of Court Costs**. This Statement must either be sworn to before a notary or made under penalty of perjury. Please use the following link to access an Example Form: https://www.tarrantcountytx.gov/en/justice-of-the-peace-courts/justice-1/forms.html?linklocation=Inquire%20About...&linkname=Forms%3C/a

When you file your lawsuit, the debtor must be served with a citation and copy of your petition. A Citation is an official process by which a Debtor is notified in writing he is being sued. As a creditor, you must properly serve the debtor, so that he has proper notice of this suit. Please refer to **Rule 500.8(d) of T.R.C.P**.

What happens after the Creditor's suit has been filed?
When the case has been filed and the filing fee has been paid, the clerk will now issue a Citation and deliver it as directed by the creditor. A Citation is an official process by which a Debtor is notified in writing why he is being sued. The Citation is always accompanied by a copy of the petition where it is served upon the Debtor. *T.R.C.P. Rule 501.1.*

The Citation provides notice to the debtor(s) of an opportunity to: (1). Answer, (2). Appear, and (3). Defend the suit. When there are multiple debtors in the lawsuit, a citation must be issued for each debtor. Remember, you cannot recover anything unless a citation has been served upon the person or entity he is suing!

Once your case is accepted, you will receive a confirmation e-mail from E-File showing your case number. To periodically determine the progress of your case, refer to your case number. The Court will add the your e-mail address to their records. Please note that your e-mail address will be your main point of contact, and all correspondence from the Court will be sent there to keep in contact with the court and not miss out on any important information that is sent to you by the Court. It is advisable that you add the jp1court@tarrantcountytx.gov email to your contacts.

What happens when the Debtor gets served with a Citation?
The court, not the creditor, issues the citation. If you are the debtor, this tells you that you are being sued and your presence is required in Court. The petition was created by the creditor, and it will provide details of why you are being sued and how much money you are being sued for.

Once you are served with the citation, you have 14-days to file an ***Answer***, which is a response to the lawsuit filed by the creditor. This response can either be an agreement to the suit (which means that you agree to the amount requested by the creditor) or a denial

of the suit (which means you would like to proceed with pre-trial mediation and potentially, a trial). As the debtor, you must give your answer to the court and send a copy of your answer to the creditor.

You may also file a ***Counterclaim*** with the Court. A counterclaim is a lawsuit filed by the debtor against the creditor within the original case. You may file a petition stating a counterclaim against a creditor that is within the jurisdiction of the justice court, related to the claims in the creditor's petition. While filing a counterclaim petition, you must pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs. The court need not generate a citation for a counterclaim and no answer to the counterclaim needs to be filed. **T.R.C.P. Rule 502.6**.

If you do not file an answer within the fourteen-day period, then you are legally admitting the creditor's claim, and the court may issue a default judgment against you, upon the Plaintiff's testimony and supporting documents submitted as evidence, without any further notice. This means that you will owe money to the creditor, without having a day in court.

All debtors must file an answer before the deadline!

What is an Answer and how does the debtor file it?
An Answer is your first response to the lawsuit. As a debtor, your answer is a written response to the Court, which needs to be filed electronically through Email, E-File, or Fax. You can also bring it to the Court, where one of our Clerks can scan your Answer and assist in processing your Answer electronically. The Answer needs to be addressed to the court and state that you do or do not agree with the lawsuit. You are required to send a copy of the Answer you file to the person who signed the lawsuit against you and keep a copy for yourself. An answer must contain the following information:

1. your full name;
2. your contact information, which may include your physical address, telephone number, e-mail, or fax number; and
3. contact information of your attorney, if applicable

You may download a Default Answer Form and fill in your information by using the following link: https://www.tarrantcountytx.gov/content/dam/main/justices-of-the-peace/JP1/forms/Answer%20-%20SC,%20DC%20and%20Repair%20and%20Remedy.pdf.

An answer can either state the denial or acceptance of the petition raised by the creditor. If you **deny** the claim, you don't have to get specific as to the reasons you think you don't owe the creditor the amount of money they asked for in the petition. You can say something like

"I deny the claim and want to see proof at trial", or "I don't owe the creditor anything." If you **agree** you owe the creditor all of what they are asking for, they may get a judgment against you for that amount without having a trial. **T.R.C.P. Rule 502.5.**

What if the Debtor doesn't answer?

If you fail to file an answer within the legally required time period (14 days), then legally you are not denying the creditor's claim. If you fail to provide your answer, the creditor can now request a hearing to discuss evidence and facts. The Court, upon a hearing, and relying on the Plaintiff's testimony and supporting documents submitted as evidence, may issue a ***Default Judgment*** against you, without any further notice. A Default Judgment cannot be entered against you if you file an answer or otherwise appear in the case! **T.R.C.P. Rule 508.3**.

What happens after the Debtor files an Answer?

In most Courts, you shall receive a notice from the Court notifying you of a trial date. However, unlike other courts, in this Court, if you timely answer the suit, the Court, at its discretion, may set the case for an In-Court Pre-Trial/Mediation (PTM) hearing and will notify all the parties of the hearing date by e-mail. Both the creditor and the debtor have the right to be represented by an attorney; this does not mean an attorney will be appointed to you, nor does it mean that you are required to be represented by an attorney.

Section 4 – Pre-Trial Mediation – What It Is, Different Options for Settlement

What happens when you receive a Notice of Pre-Trial Mediation (PTM)?

After receiving your Answer, the Court will likely set the case for PTM. The Court believes that all parties would benefit from a Pre-Trial Mediation, which serves as their last chance to settle their case before Trial. The Pre-Trial Notice informs you to appear in person in the Justice Court.

If the creditor does not appear for Pre-Trial Mediation, his case may be **dismissed** by the Court. If you are the debtor and you do not appear at Pre-Trial Mediation, please understand that a default judgment may be entered against you, upon hearing Plaintiff's testimony and supporting documents submitted as evidence, without any further notice. Parties appearing at PTM must have the authority to negotiate and settle this case; otherwise, the case may be dismissed, or a default judgment may be rendered.

What happens in the Court before the Pre-Trial Mediation (PTM)?

You will take a seat in the courtroom before your PTM. All parties must be dressed appropriately and arrive at least 30 minutes before the proceeding is scheduled to begin. When you arrive, please have your case number ready to check in with the Court Clerk, and then take a seat in the courtroom. Once in the Courtroom, the Judge will explain to you why you have been called to appear in Court. The Judge shall provide you with an understanding of what mediation is and its intended outcomes. Usually, the court will go through a "docket call." Answer when your case is called. You will be required to approach the Bench, where the Judge will ask if you are willing to mediate your debt claim dispute in the presence of an attorney mediator. Please understand that Mediation is usually the last opportunity for both parties to settle their dispute without appearing for a Trial before the court.

What is Mediation?

Mediation is a process that provides parties to a suit an opportunity to reach their own settlement agreement: an agreement that is mutually acceptable to both parties. In this process, an attorney mediator works as a third-party neutral with both sides to guide the mediation process and to assist both sides to come to an agreement that is acceptable to all parties. It is the policy of this state to encourage the peaceable resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures. It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy. (**Tx. Civil Practice and Remedies Code, Ch. 154.002-003**).

The Mediator's function is to help the parties communicate effectively with each other, help the parties understand the options for resolving all issues in the case, and assist the parties to reach a settlement agreement on the entire case. Mediation allows both parties an

opportunity to reach their own agreement and the terms of how that agreement is to be worked out. For instance, if a debt is owed, both parties can reach a mutual agreement as to the amount of debt owed, and structure a payment plan that is agreeable to both sides through mediation; whereas, in a Trial, only a money judgment may be awarded without any possible payment plans.

Unlike the traditional courtroom trial or hearing before a Judge, where one party wins and the other loses, mediation allows both sides an opportunity to reach a mutual agreement and the terms of how that agreement is to be worked out. Moreover, it is important to remind yourselves that oftentimes in Trials, both parties may not be happy with the outcome, and each side leaves the Trial feeling like the loser. Unlike Trial, Mediation allows you the opportunity to settle your dispute on mutually agreeable terms.

What is the cost of Mediation?
As stated in the Pre-Trial Mediation letter that you receive, the cost of mediation is $60 per side, which is payable directly to the mediator. The payment can be done in the form of cash, money order, electronic payment, or any other means acceptable to the mediator for the mediation session. If you are facing financial hardship or any other difficulty that might make it difficult for you to pay the mediation fees, you can discuss this when you meet with the mediator.

How does the Mediation process work in general?
After you agree to mediate your case with the mediator, the bailiff shall assign your case to an attorney mediator. The mediator will help you to communicate with the other parties. Communication is the key to solving problems, and mediation works as the perfect opportunity for you to solve these problems with the help of a trained and experienced attorney mediator. The Mediator will hear from both sides and try to help them come to a middle ground by facilitating communication of your position to the other party.

How does the Mediation Process begin?
The Mediation process begins with the Mediator discussing with you the elements of the Pre-Trial Mediation Agreement. The parties to mediation are bound by the Rules of Mediation in Chapter 154 of the *Texas Civil Practice and Remedies Code*, which states the following:

- ***Confidentiality*** – Confidentiality is a legal term that refers to the duty of an individual to refrain from sharing confidential information with others without the express consent of the other party. All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to

do so. However, not everything shall be considered confidential during the mediation. Some exceptions to confidentiality include: (1). criminal conduct or threatening to commit a crime; (2). any matter disclosed in discovery; and (3). any matter relating to evidence of child or elderly abuse.

- ***Negotiation in Good Faith*** – The parties are requested to mediate in good faith by using their best efforts to settle this case and treating each other with courtesy and respect.
- ***Non-Binding Agreement*** – The mediation process does not become binding on the parties until the parties sign a Written Settlement Agreement, which may include a Judgment, Agreed Judgment, or Dismissal. Your Judgment/Agreed Judgment could likely include a Payment Plan or other agreed upon means.

Who will be the Mediator?

It is important to understand that the mediator neither knows the parties nor the facts of the case in advance. The mediator is assigned the case for mediation randomly after the Judge calls the cases one by one. The mediator is not a legal advisor and cannot provide any legal advice to the parties during the mediation. The mediator shall ask you for the $60 payment either at the beginning or end of the mediation.

What happens after the Mediator explains the process?

After the mediator has completed explaining the mediation process, he shall ask each party to provide a brief summary of their case and state their claims. Now, each party has the opportunity to let the mediator know about their dispute, so that the mediator has complete information about the case. You may discuss your case freely during mediation and you may share evidence. After both parties have had the opportunity to explain their claims, the mediator shall then choose to talk to the parties privately or jointly, depending on the case, to come to a resolution.

A private meeting with the mediator allows the disputing parties to take some time away from the joint session so that they might confer with their advisor and/or the mediator to clarify the issues, reflect on long-term and short-term goals, review options and proposals, gain new facts, develop new agreement/settlement offers, allow for emotional venting, and confirm decisions. The mediator can take your options and present them to the other party to see if they are willing to settle. The mediator shall continue to do this until both parties come to a middle ground, or otherwise reach a final resolution. Unlike a Trial, the parties can discuss the debtor's options for a settlement including a payment amount and a timeline for the payments in mediation. If relevant, the debtor can also raise defenses to the claim. These are arguments the debtor might have against the claim, whether there is an essential element missing from the claim, a mistake, or a procedural issue.

What happens if the parties reach an agreement in Mediation?
If you reach an agreement during mediation, the terms of the agreement shall be reduced to writing, and the mediator shall request the parties to sign the Settlement Agreement and a Form for Final Disposition. The Final Disposition makes it clear whether the parties have settled for an Agreed Judgment or Agreed Dismissal.

If the parties have settled for an Agreed Judgment, the Mediator shall also request the parties to sign a *Release of Judgment Form,* which states that the creditor agrees to submit and inform the Court once the terms of the Settlement Agreement have been met. Upon the Judge's signature, the terms of the Settlement Agreement will become binding as an Agreed Judgment. If one of the parties does not follow the terms of an Agreed Judgment, the other party can return to Court and ask the court to enforce the Judgment that was agreed upon.

Both parties will be given a copy of the above-signed documents by the Mediator.

What are the different ways to write up the agreements reached in mediation?
The following options are available after there is an agreement formed during the mediation:

1. *Agreed Judgment to Pay:* Here, the Debtor agrees to pay creditor the amount agreed upon during the mediation which may include the Court Costs and Interest compounded annually from the date of judgment as a full and final settlement.
2. *Agreed Judgment to Pay with an Optional Payment Plan Provision:* This option is similar to an Agreed Judgment to Pay. However, the only difference is that the parties agree that the Debtor will pay the amount as part of a payment plan (monthly/weekly) until the debt is paid in full. The parties decide the date by which the payments must be received by the creditor. Failure to comply with the Settlement Agreement Payment Plan Provisions will allow the creditor to seek any Post Judgment Remedies.
3. *Agreed Judgment to Pay with an Option to Perform:* Similar to an Agreed Judgment to Pay, the parties also get an additional option to perform an activity, if the payment does not work out. Although this option is rarely one that occurs, it is an option that could be discussed between the parties in the presence of the mediator.
4. *Agreed Dismissal:* The parties mutually agree to dismiss the case, including all claims, be it the original claim, counterclaim, or crossclaim made, or which could have been made in this case. The creditor must submit the settlement documents by a specific date and time to the court and parties should know that failure to do so will result in the dismissal of the case.

5. *Reset Mediation:* Here, the Mediation will be reset to another day and time due to various reasons. However, this will be allowed only if the parties provide a justifiable reason for the reset of mediation.

What happens if the parties do not reach an agreement in Mediation?

If you cannot come to a resolution during Mediation, the mediator shall notify the Court that the case was not settled and that the case be set for trial at the earliest available date.

What happens after the Mediation is over?

After the parties agree to settle, the mediator shall request the parties to sign the Settlement Agreement and a Form for Final Disposition. The Final Disposition makes it clear whether the parties have settled for an Agreed Judgment or Agreed Dismissal. The Mediator shall also request the parties to sign a *Release of Judgment Form*, which states that the creditor agrees to submit and inform the Court once the Terms of the Settlement Agreement have been met. Both parties will be given a copy of the above-signed documents by the mediator. If both parties sign a Settlement Agreement, the terms of that agreement will be binding.

The Court's interest in Pre-Trial Mediation

After the parties agree to a settlement and all documents are duly signed, the mediator will provide an evaluation survey consisting of a few questions regarding the mediation process. The survey helps the Court understand if you are satisfied with the mediation process or if there are any improvements to be made. It would be appreciated if you take the time to answer the questions.

Section 5 – How to Prepare for Mediation

How should the Creditor prepare for Mediation?

Items to bring:

- All evidence that proves the items required by the petition
- Bill of sale and related supporting documentation
- Affidavits of the Account
- All details pertaining to the credit account
- Checklist of assignment of the debt including all relevant dates and proof of debt transfer
- Evidence proving the amount of debt owed
- Documents outlining payments made on the account
- Documents to counter defenses potentially brought up by the debtor

How Should the Debtor prepare for Mediation?

Potential defenses (roughly in the order of most common to least common)

- Statute of limitations
- Lack of assignment
- Dispute the amount of debt
- Mistaken Identity/identity theft
- Lack of privity/Authorized user
- Fraud
- Laches
- Failure to mitigate damages
- Bankruptcy

Items to bring:

- Documents that could help you prove a defense (such as proof of identity theft)
- Documents that show payment history
- Documents that might call into question any part of the creditor's petition (such as proof of the most recent payment if there is evidence different from what is shown in the petition)
- Evidence of Financial Hardship and documents to support the reason for that hardship
- Proof that you have been in contact with the creditor and are already in settlement negotiations.