

**DEFAULT JUDGMENTS**

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**RESOURCES**

- Small Claim Cases – Rule 503.1
- Debt Claim Cases – Rule 508.3
- Eviction Cases – Rule 510.6(c)

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**SMALL CLAIM CASES**

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### DEFAULT JUDGMENT: STEPS

- 1. Defendant fails to timely answer
- 2. Court ensures defendant has been served
- 3. Court identifies whether the claim is based on a written document and proceeds accordingly.
- 4. Plaintiff provides certificate of last known address
- 5. Court examines SCRA affidavit and takes appropriate action
- 6. Post-judgment actions

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## STEP #1

Defendant Fails to Timely Answer

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### TIMELY ANSWER

- "Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition." -Rule 502.5(d), TRCP
- ...but...the Defendant has until the following business day to file an answer if:
  - The due date falls on a Saturday, Sunday, or legal holiday; or
  - The court closes before 5:00 pm on the due date.

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**RULES 501.2(F) AND 502.5(E), TRCP:  
SERVICE BY PUBLICATION**

- Rule 501.2(f): "In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court."
- Rule 502.5(e): "If a defendant is served by publication, the defendant's answer is due by the end of the 42nd day after the day the citation was issued..."
- ...but...the same extension rule applies if the due date falls on a Saturday, Sunday, legal holiday or a date on which the court closes before 5:00pm.

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**RULE 503.1(B), TRCP: DEFENDANT  
ANSWERS LATE**

- "If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3."

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**STEP #2**

Ensure The Defendant Has Been Served

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**RULE 503.1, TRCP: JUDGE MUST ENSURE PROPER SERVICE**

- "...[T]he judge *must* ensure that service was proper, and may hold a hearing for this purpose." (Emphasis added.)

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**CAN A DEFENDANT WAIVE SERVICE?**

- Yes, most often see this with a corporate or professional defendant. They already have an attorney because they've already been threatened with the suit and the attorney accepts service on behalf of the defendant.
- TRCP 119 authorizes it if in writing
- Also, can waive by responding to the suit (answering) after improper service, or no service at all
- TRCP 120; *Gonzalez v. Phoenix Frozen Foods, Inc.*, 884 SW2d 587 (Tex.App.-Corpus Christi 1994)

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**RESPONSIBILITY FOR SERVICE**

- **PLAINTIFF** is responsible
- NOT the Court
- NOT the Constable
- NOT the Sheriff
- NOT the Process Server

Ashley v Hawkins, 293 S.W.3d 175 (Tex.2009); Allen v Rushing, 129 S.W.3d 226 (Tex.App.-Texarkana 2004); Boyotto v Hinojosa, 18 S.W.3d 729 (Tex.App.-Dallas 2004)

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## STEP #3

Identify the Type of Case

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### TYPES OF CASES

- For purposes of determining whether a default judgment hearing is required prior to issuing a judgment, there are two categories of small claims cases.
  - 1. Claims based on a written document; and
  - 2. All other cases.

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### CHECKLIST: IS THE CASE "BASED ON A WRITTEN DOCUMENT?"

- 1. Is the document which forms the basis of the claim signed by the defendant?
- 2. Has a copy of the document been filed with the court and served on the defendant?
- 3. Has the plaintiff filed a sworn statement indicating that the document is a true and accurate copy of the document, the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for?

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CHECKLIST: IS THE CASE "BASED ON A WRITTEN DOCUMENT?"

- If the answer to all checklist questions is "yes," then "the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing.
- The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any." -Rule 503.1(a)(1), TRCP

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RULE 503.1(A)(2): RULE FOR "ALL OTHER CASES"

- "[Unless the claim is based on a written document], a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages.
- If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant."

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RULE 503.1(A)(2), TRCP: APPEARANCE BY PHONE OR OTHER ELECTRONIC MEANS

- "With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system."

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RULE 501.4(A), TRCP: SERVICE OF PAPERS OTHER THAN CITATION

- “[E]very notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways:
- (1) In person;
- (2) Mail or courier;
- (3) Fax;
- (4) Email; or
- (5) Any other manner directed by the court.”

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RULE 501.4(B), TRCP: SERVICE OF PAPERS OTHER THAN CITATION

• “If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. **Notice of any hearing requested by a party must be served on all other parties not less than 3 days before the time specified for the hearing.**”

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STEP #4

Certificate of Last Known Address

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RULE 503.1(D), TRCP: LAST KNOWN ADDRESS PROVIDED BY PLAINTIFF

- “The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed.”

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**STEP #5**

Servicemembers Civil Relief Act

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50 U.S.C. APP. § 511(5)

- “The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.”

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50 U.S.C. APP. § 521

- Plaintiff must file an affidavit stating:
  - Whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
  - That the defendant is unable to determine whether the defendant is in military service.

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50 U.S.C. APP. § 521

- If the plaintiff does not file an affidavit, the court may not grant a default judgment.
- If the plaintiff files an affidavit stating that the defendant is not in military service but fails to "show necessary facts to support the affidavit," the court may not grant a default judgment.

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50 U.S.C. APP. § 521

- If a proper affidavit is filed, there are three possibilities:
  - Defendant is not in military service: court may enter a default judgment
  - Court is unable to determine whether defendant is in military service or not: court may – but does not have to – require the plaintiff to post a bond to protect the defendant if it turns out that he is in military service
  - Defendant is in military service: court must appoint an attorney to represent the defendant

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50 U.S.C. APP. § 521(D)

- If the defendant has not appeared in the case, and the court determines that he is in military service and appoints counsel, the court **shall** grant a stay of proceedings for a minimum of 90 days upon request by counsel or on the court's own motion if the court determines:
  - There may be a defense to the action and it cannot be presented without the presence of the defendant; or
  - After due diligence counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists

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STEP #6

After Issuing the Judgment

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RULE 503.1(D), TRCP: COURT MUST MAIL NOTICE TO DEFENDANT

- "When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket.
- The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed."

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**RULE 503.1(C), TRCP: POST-ANSWER  
DEFAULT**

- "If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly."

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**50 U.S.C.APP. § 521 SERVICEMEMBER**

- If a default judgment is entered against a servicemember during his period of military service, or within 60 days after end of military service, the court shall re-open the judgment upon application by the servicemember if:
  - The servicemember was materially affected in making a defense by reason of military service; and
  - The servicemember has a meritorious or legal defense to the action or some part of it.
- Request by the servicemember must be made no later than 90 days after end of military service

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**RULE 505.3(B), TRCP: MOTION TO  
SET ASIDE DEFAULT JUDGMENT**

- "A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed.
- The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4.
- The court may set aside the judgment and set the case for trial for good cause shown."

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RULE 505.3(E), TRCP: POST-JUDGMENT  
MOTIONS DENIED AFTER 21 DAYS

- "If the judge has not ruled on a motion to set aside a default judgment, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed."

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DEBT CLAIM CASES

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DEFAULT JUDGMENT (RULE  
508.3)

- General rule = If the defendant does not file an answer or otherwise appear by the answer date, the judge must render a default judgment upon plaintiff's proof of the amount of damages.

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DEFAULT JUDGMENT (RULE 508.3) –  
PROOF OF AMOUNT OF DAMAGES

- Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date
- Evidence may be offered in a sworn statement or in live testimony and may include documentary evidence.

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DEFAULT JUDGMENT (RULE 508.3) –  
PROOF OF AMOUNT OF DAMAGES

- The amount of damages is established by evidence:
  - (A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;
  - (B) that the account was closed or the defendant breached the terms of the account or loan agreement;
  - (C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and
  - (D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

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DEFAULT JUDGMENT (RULE 508.3) –  
PROOF OF AMOUNT OF DAMAGES

- Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

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DEFAULT JUDGMENT (RULE 508.3) –  
PROOF OF AMOUNT OF DAMAGES

- (A) the documents were kept in the regular course of business;
- (B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;
- (C) the documents were created at or near the time or reasonably soon thereafter; **and**
- (D) the documents attached are the original or exact duplicates of the original.

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DEFAULT JUDGMENT (RULE 508.3) –  
PROOF OF DAMAGES

- A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness.
- But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

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DEFAULT JUDGMENT (RULE 508.3) –  
HEARING

- The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay.
- Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages.

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DEFAULT JUDGMENT (RULE 508.3) – HEARING

- If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven.
- If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

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DEFAULT JUDGMENT (RULE 508.3) – APPEARANCE BY DEFENDANT

- If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.
- If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

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EVICTON CASES

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DEFAULT JUDGMENTS

- If the defendant does not file an answer or appear, the plaintiff's sworn petition may be taken as true, and judgment granted accordingly
  - This likely means plaintiff will win, however, if their petition is defective, they may need to put on additional evidence to show they are entitled to judgment

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DEFAULT JUDGMENTS

- Do NOT grant the judgment if the defendant was not served at least six days before the trial date, even if they fail to appear
- Additionally, the plaintiff must comply with other default requirements:
  - SCRA affidavit
  - Proof of service on file

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DEFAULT JUDGMENTS

- If a default is granted, the clerk must immediately mail written notice of the judgment to the defendant at the premises, first class mail.
  - TRCP 510.6(c)

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