

# CITATIONS & DEFAULT JUDGMENTS

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## Resources

### Deskbooks: Civil & Evictions

- <https://www.tjctc.org/tjctc-resources/Deskbooks.html>

### “500 Rules” – Texas Rules of Civil Procedure

- <https://www.txcourts.gov/rules-forms/rules-standards/>

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## Agenda

Compare rules regarding issuance of citation, service, and default judgments for the four types of civil cases:

Small Claims

Debt Claims

Evictions

Repair &  
Remedy

Answer some scenario questions

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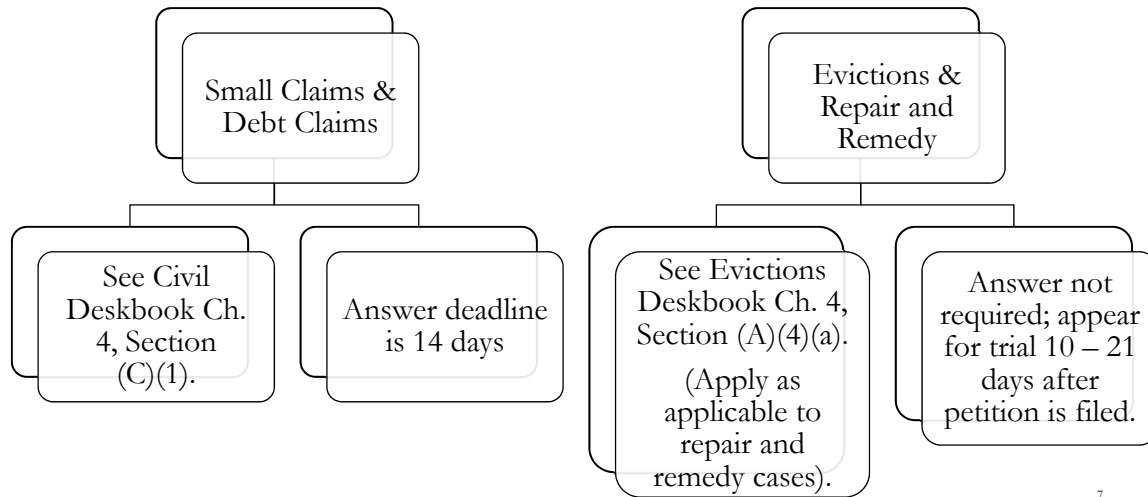
<p><b>Small Claims Citation &amp; Default Checklist</b> Civil Deskbook Chapter 4, Sections C &amp; M; TRCP 501, 502.5, 503.1, 503.6</p> <p><b>CITATION</b></p> <p>When a Citation Promptly When Petition is Filed and Filing Fee is Paid/Statement of Inability is Filed</p> <ul style="list-style-type: none"> <li>o Contents of citation- DB Chapter 4, Section (C)(1)</li> <li>o Upon request, separate/additional citations must be issued in the court file</li> <li>o Must keep a copy in the court file</li> </ul> <p><b>Proper Service (may hold a hearing)</b></p> <ul style="list-style-type: none"> <li>o Citation and copy of petition/all documents</li> <li>o Plaintiff must provide copies to be charged plaintiff copying cost.</li> <li>o Proof of service has been filed at least 1 day before the return of service must meet</li> <li>o The Return of Service must meet</li> <li>o Citation was served by registered or certified mail, or</li> <li>o Citation was served in person</li> </ul> <p><b>DEFENDANT</b></p> <p>Defendant HAS NOT Filed an Answer</p> <p>Answer Deadline Has Passed</p> <ul style="list-style-type: none"> <li>o End of the 14<sup>th</sup> day after the citation was served</li> <li>o If last day is weekend, holiday or court is closed, then the next business day</li> </ul> <p><b>CAN DEFAULT JUDGMENT BE ENTERED AGAINST DEFENDANT?</b></p> <p>---If Defendant HAS NOT Filed an Answer---</p>	<p><b>Debt Claims Citation &amp; Default Checklist</b> Civil Deskbook Chapter 4, Sections C &amp; M; TRCP 501, 502.5, 503.1, 503.6, 508</p> <p><b>CITATION</b></p> <p>When a Petition is Filed and Filing Fee is Paid/Statement of Inability is Filed</p> <ul style="list-style-type: none"> <li>o DB Chapter 4, Section (C)(1)</li> <li>o Separate/additional citations must be issued in the court file</li> </ul> <p><b>Proper Service as Directed by the Plaintiff</b></p> <ul style="list-style-type: none"> <li>o Sheriff/constable – service fee set by the commissioners court or Statement of Inability.</li> <li>o Clerk (by mail) – actual cost of mailing the documents or Statement of Inability.</li> <li>o Private process server – no fee is charged by the court/county.</li> </ul> <p><b>CAN DEFAULT JUDGMENT BE ENTERED AGAINST DEFENDANT?</b></p> <p>---If Defendant HAS NOT Filed an Answer---</p>
<p><b>Repair and Remedy Citation &amp; Default Checklist</b> Civil Deskbook Chapter 4, Section C; Evictions Deskbook Chapter 10, Section (D)(3); TRCP 501, 509.2-509.6</p> <p><i>[This handout only applies to Repair &amp; Remedy cases brought under Prop. Code Ch. 92. For info on Repair &amp; Remedy cases brought under Ch. 94 (Manufactured Home Tenancies), see Eviction Deskbook Chapter 10, Section E]</i></p> <p><b>CITATION</b></p> <p>Issue Citation Immediately When Petition is Filed &amp; Filing Fee is Paid/Statement of Inability is Filed</p> <ul style="list-style-type: none"> <li>o Must command landlord to appear before the court for trial at a time set by the court (between 10-21 days after the petition was filed).</li> <li>o Contents of citation- See Evictions DB Chapter 4, Section (A)(4)(a)</li> <li>o Except defendant is not required to appear</li> <li>o Upon request, separate/additional citations must be issued in the court file</li> </ul> <p><b>Proper Service</b></p> <ul style="list-style-type: none"> <li>o Citation and copy of petition/all documents</li> <li>o Landlord must be served at least 6 days before the return of service must meet</li> <li>o Plaintiff must provide copies to be charged plaintiff copying cost.</li> <li>o Proof of service was filed at least 1 day before the return of service must meet</li> </ul> <p><b>CAN DEFAULT JUDGMENT BE ENTERED AGAINST DEFENDANT?</b></p> <p>---If Defendant HAS NOT Filed an Answer---</p>	<p><b>Evictions Citation &amp; Default Checklist</b> Evictions Deskbook Chapter 4, Sections A &amp; C; TRCP 510.3, 510.4, 510.6</p> <p><b>CITATION</b></p> <p>Issue Citation Immediately When Petition is Filed &amp; Filing Fee is Paid/Statement of Inability is Filed</p> <ul style="list-style-type: none"> <li>o Must tell defendant to appear for trial at a time set by the court (between 10 and 21 days after the petition was filed). Defendant may but is not required to file an answer.</li> <li>o Contents of citation- DB Chapter 4, Section (A)(4)(a)</li> <li>o Upon request, separate/additional citations must be issued in the court file</li> </ul> <p><b>Proper Service</b></p> <ul style="list-style-type: none"> <li>o Citation and copy of petition/all documents</li> <li>o Plaintiff must pay service fee set by the commissioners court or file a Statement of Inability.</li> </ul> <p><b>CAN DEFAULT JUDGMENT BE ENTERED AGAINST DEFENDANT?</b></p> <p>---If Defendant HAS NOT Filed an Answer---</p>

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<p style="text-align: center; font-size: 2em;"><b>When Do You Issue Citation?</b></p>	<ul style="list-style-type: none"> <li>o Same for all case types:</li> <li>o Immediately when petition is filed and filing fee is paid/statement of inability is filed.</li> <li>o Upon request, separate/additional citations must be issued.</li> <li>o Must keep a copy in the court file.</li> </ul> <p style="text-align: right;">6</p>
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## What Goes In the Citation?



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## Checklist for a Default Judgment

(where defendant **has not** filed an answer or otherwise appeared)

- Answer deadline has passed (*small claim & debt claim only*)
- Case was filed in precinct where premises are located (*eviction only*)
  - If not – dismiss for lack of jurisdiction.
- Info required by TRCP 508.2 is in petition (*debt claim only*)
- Last known address of defendant filed (*small claim & debt claim only*)
- Proper service on all defendants
- Military service affidavit filed
- Required proof provided

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## Proper Service – Who Can Serve

### Small Claims, Debt Claims, & Repair and Remedy:

- Sheriff/constable (fee set by the commissioners court or Statement of Inability)
- Court clerk by mail (actual cost or Statement of Inability)
- Private process server (no fee charged by the court/county)
- Person 18 or older authorized by the court – may not be a party or anyone interested in the outcome of the suit

### Evictions:

- Sheriff/constable or other person authorized by written court order (fee set by the commissioners court or Statement of Inability)

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## Proper Service – Method

### Small claims, debt claims, and repair and remedy:

- In person delivery; OR
- Registered/certified mail, restricted delivery, return receipt/electronic return receipt requested

### Evictions:

- In person delivery; OR
- By leaving a copy with some person (other than the plaintiff) over the age of 16, at the defendant's usual place of residence.

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## Proper Service – Alternative Service for Small Claims and Debt Claims

- May be requested by plaintiff/person serving if primary methods don't work.
  - Request must include sworn statement describing methods attempted and stating defendant's usual place of business or residence, or other place where they can probably be found.
- If court allows alternative service, defendant must be served by first class mail to the defendant at a specified address and also either:
  - by leaving a copy at defendant's residence/other place they can probably be found with any person who is at least 16 years old; or
  - by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.
- Service by Publication – very rare.
  - See DB Chapter 4, Section (C)(3)(e) for details on this option.

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## Proper Service – Alternative Service for Eviction Cases

- May be requested by sheriff/constable if primary methods don't work.
  - Petition must list all home/work addresses for defendant known to plaintiff and state that plaintiff knows of no others in the county where the premises are located; AND
  - Sheriff/constable must file sworn statement that they have made diligent efforts to serve citation on at least **two** occasions at all of defendant's addresses in the county (and must state the times/places of attempted service).
- Judge must promptly consider sworn statement and may authorize service by:
  - Delivery to the premises by placing it through a door mail chute or slipping it under the front door; OR if neither is possible, by securely affixing to the front door or main entry; AND
  - Mailing a copy to the defendant at the premises by first class mail.

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## Proper Service – Alternative Service for Repair & Remedy Cases

- If petition does not include landlord's name and business street address, or if person serving is unable to serve it successfully by delivering to the landlord after making diligent efforts on at least two occasions, then they must serve it by delivery to:
  - Landlord's management company if tenant has received written notice of its name and business street address; OR
  - Landlord's authorized agent for service of process (which may be the landlord's management company, on-premises manager or rent collector serving the residential property).
- NOTE: plaintiff does not have to request this, and no court authorization is required.

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## Proper Service – Alternative Service for Repair & Remedy Cases

- If service under previous slide is unsuccessful after making diligent efforts on at least two occasions, then person serving must file a sworn statement:
  - Stating that he made diligent efforts on at least two occasions at all available business street addresses of the landlord and on the landlord's management company, on premises manager, and rent collector; AND
  - Providing the times, dates and places of each attempted service.
- The judge may then authorize service by:
  - Delivering to someone over the age of 16 at any business street address listed in the petition, OR if no one answers the door:
    - placing docs through a door mail chute or under the front door; or
    - affixing them to the front door or main entry; AND
  - Within 24 hours of delivery, mailing a copy to the landlord at the landlord's business street address by first class mail.

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## Proper Service – Timelines & Return

### Small claims and debt claims:

- Proof of service must be on file for at least 3 days, not counting day of filing or day of judgment.

### Evictions and repair and remedy:

- Defendant must be served/alternative service completed at least 6 days before the trial date.
- Proof of service must be on file at least 1 day before trial date.

### All cases:

- Return of service must meet certain requirements, including describing who was served and the date/manner of service.
- See Civil DB Ch. 4, Section (C)(4) for more <sup>15</sup> details.

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## Military Affidavit

### ◦ Options depending on what affidavit says:

- If defendant is not in military service – may proceed.
- If unable to determine if defendant is in military service – may require plaintiff to post a bond.
- If defendant is in military service – default may not be entered until certain procedures are followed.
  - See Civil DB Ch. 4, Section (M)(3) & Evictions DB Ch. 4, Section (C)(2).
  - Additional info is also available in Evictions DB Ch. 7.

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## Required Proof – Small Claims & Debt Claims

- Plaintiff must only provide proof of damages (not liability).
- Generally, plaintiff must request a hearing orally or in writing.
  - Court should not set this on its own!
- Plaintiff must appear and provide evidence of its damages (may appear electronically or by phone with the court's permission).
  - If plaintiff proves its damages, judge must render judgment for plaintiff for amount proven.
  - If plaintiff does not prove its damages, judgment must be rendered for defendant even if they are not present.
- However, default judgment should sometimes be entered **WITHOUT A HEARING**. (See the following slides)

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## Required Proof – Small Claims (No Hearing Required)

- Once answer deadline has passed, judge must render judgment for plaintiff for their amount of damages **without a hearing** if:
  - Claim is based on a written document signed by the defendant; and
  - A copy of the document along with a sworn statement from the plaintiff that it is a true and accurate copy of the document and that the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for has been filed with the court and served on defendant (can be done at same time as filing/service of petition or later).
- The court **MAY** hold a hearing if it needs additional information to determine whether service is proper or if there are any questions about what has been filed with the court and whether a default is proper.

**Note:** Plaintiff's attorney (if any) may also submit affidavits supporting an award of attorney fees.

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## Required Proof – Debt Claims (No Hearing Required)

- Once the answer deadline has passed, the judge must promptly render judgment for plaintiff upon proof of damages & should do so **without a hearing** if:
  - A proper sworn statement with evidence of the damages is attached to the petition and served on defendant or submitted to the court after the defendant fails to answer by the answer date; and
  - The evidence shows:
    - That the account/loan was issued to the defendant and they are obligated to pay it;
    - That the account was closed or the defendant breached the terms of the agreement;
    - The amount due as of a date certain after all credits/offsets have been applied;
    - That plaintiff owns the account/loan; AND
    - How plaintiff acquired the account (if applicable).

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## Required Proof – Debt Claims (No Hearing Required)

- If documentary evidence is included, it must be attached to a sworn statement made by plaintiff, prior holder of debt, original creditor, or representative of any of these, and must swear to the following:
  - Documents were kept in the regular course of business;
  - 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;
  - The documents were created at or near the time or reasonably soon thereafter; AND
  - The documents attached are the original or exact duplicates of the original
- The court MAY still hold a hearing if it needs additional information to determine whether service is proper or if there are any questions about what has been filed with the court and whether a default is proper.

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## Required Proof – Eviction Cases

- Plaintiff proves case based on petition alone:
  - If defendant fails to appear at trial and fails to file an answer before the case is called for trial, the allegations in the petition must be taken as true. If the information in the petition proves plaintiff's case, judgment should be rendered in favor of the plaintiff based on the petition alone. The petition must be sworn to by the plaintiff and must contain:
    - a description, including address, if any, of the premises that plaintiff seeks possession of;
    - a description of the grounds for eviction (which must be proper grounds);
    - a description of when and how a proper notice to vacate was delivered;
    - the total amount of rent due and unpaid at the time of filing, if any; and
    - a statement that attorney fees are being sought, if applicable.
- Plaintiff proves case based on combination of petition and/or testimony:
  - If the information in the petition does not prove plaintiff's case, the plaintiff can testify about additional evidence under oath.
- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.

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## Required Proof – Repair & Remedy Cases

- If landlord fails to appear, judge may proceed to hear evidence.
- If tenant establishes that they are entitled to recover, judge must render judgment against the landlord.
- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.

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## Checklist for a Default Judgment

(where defendant **has** filed an answer or otherwise appeared but **does not** appear for trial)

- Trial was set with 45 days notice and defendant did not appear.  
*(small claim & debt claim only)*
  - Note: Court could also choose to postpone instead.
- Case was filed in precinct where premises are located.  
*(eviction only)*
  - If not – dismiss for lack of jurisdiction.
- Required proof provided.

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## Required Proof – Small Claims and Debt Claims



Plaintiff must present evidence on liability AND damages and prove that they are entitled to recover.



If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.

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## Required Proof – Evictions and Repair & Remedy Cases



Plaintiff must present evidence and prove that they are entitled to recover what they are asking for.



If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.

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## Notice to Defendant of Default Judgment

- Court must immediately provide defendant with notice of the judgement.
- **Small Claims & Debt Claims:**
  - No answer: mail to last known address filed by the plaintiff.
  - Answer: mail to best available address (provided in answer or where served).
- **Evictions:**
  - Send by first class mail to the premises.
  - If you know defendant is not staying at the premises and you have a different address for them, best practice is to send to that address as well. (Ex: When a defendant is in jail).
- **Repair & Remedy:**
  - Serve defendant by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or an address the landlord furnishes to the court in writing. (If served by someone other than the court, the return must be promptly filed).
- Mailing/service of notice should be noted in docket.

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## What if Plaintiff Doesn't Show / Request Default Hearing / Submit Proof?

- If plaintiff does not appear for trial:

⇒ Court may postpone or dismiss the case.

- ***Small claim & debt claim cases only:*** If defendant has not answered, a reasonable amount of time has passed since the answer deadline, and the plaintiff has not requested a default hearing or submitted proper proof for a default judgment:

⇒ Court should set the case on a dismissal docket.

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### SCENARIO: Small Claims

Citation issued 4-4-18, served 4-13-18 and returned to court 4-15-18. Plaintiff comes in office on 5-10-18 and requests a Default Hearing. Court sets case for Default Judgment Hearing for 6-23-18. Plaintiff comes to court, case is called and Defendant shows up while court is in session. Bailiff advises Judge that the Defendant is here for court and Judge has not yet rendered judgment. Can a Default Judgment still be rendered now?

Why or why not?

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## SCENARIO: Small Claims

Defendant was served, proof of proper service has been on file for three weeks, answer deadline has passed, and defendant has not answered. Plaintiff has filed the defendant's last known address and a military service affidavit and has now requested a default hearing.

What needs to happen before a default judgment can be signed?

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## SCENARIO: Debt Claims

Private process server has been unable to serve defendant and is requesting alternative service. In the affidavit, they state that the defendant's mom told the process server that the defendant has been staying at her house and is trying to avoid being served. They are asking to be able to mail the citation to the mother's house and leave a copy with the mother.

Should the court allow this?

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## SCENARIO: Debt Claims

Answer deadline has passed and defendant has not answered.  
Plaintiff has submitted a bunch of documents and a sworn statement.

Where can you look in the Debt Claims Checklist to see what the submitted evidence must show?

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## SCENARIO: Evictions

The defendant was properly served and the trial is set for next week. The plaintiff has informed the court that the defendant was just arrested.

Can the court still hold the trial and enter a default judgment if the defendant does not appear?  
If so, where does the clerk send the notice of judgment?

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## SCENARIO: Evictions

A constable has requested alternative service. He tried serving the defendant once and was informed that the defendant was hiding and instructing anyone at his usual place of residence not to answer the door for anyone.

Can the constable request alternative service at this point?

What if it were a small claims case?

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## SCENARIO: Repair & Remedy

A repair and remedy case is filed.

When do you issue the citation and when should the trial date be scheduled by?

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SCENARIO:  
Repair &  
Remedy

Defendant answers and case is set for trial. Defendant does not appear for the trial. Plaintiff puts on their case, but doesn't prove everything they need to in order to show that they should win. The judge dismisses the case.

Is this the correct thing to do?

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