

Small Claims Citation & Default Checklist

Civil Deskbook Chapter 4, Sections C & M; TRCP 501, 502.5, 503.1, 503.6



CITATION (*Must check all boxes*)

- Issue Citation Promptly When Petition is Filed and Filing Fee is Paid/Statement of Inability is Filed**
 - Required contents of citation – See DB Chapter 4, Section (C)(1)
 - Upon request, separate/additional citations must be issued
 - Must keep a copy in the court file

- Deliver Citation for Service as Directed by the Plaintiff – Choose one:**
 - Service by sheriff/constable – service fee set by the commissioners court or Statement of Inability.
 - Service by court clerk (by mail) – actual cost of mailing the documents or Statement of Inability.
 - Service by private process server – no fee is charged by the court/county.

DEFAULT JUDGMENT (*Pick option that applies, then must check all boxes under that option*)

Option 1 – Defendant **HAS NOT** Filed an Answer or Otherwise Appeared

- Answer Deadline Has Passed – End of the 14th day after service (or 42nd day if service by publication)**

Note: If last day is weekend, holiday or day where court closes before 5, deadline is next business day.

- Proper Service (may hold a hearing to determine this even if a hearing is not otherwise required)**
 - Citation and copy of petition/all documents filed with petition has been served on defendant.
 - Plaintiff must provide enough copies to be served on each defendant if more than one. If not, clerk may make copies and charge plaintiff copying cost.
 - Proof of service has been on file for at least 3 days, not counting day of filing or day of judgment.
 - The Return of Service must meet certain requirements, including describing who was served and the date & manner of service – See DB Chapter 4, Section (C)(4).
 - Citation was served by one of the following:
 - Sheriff/constable, certified private process server, court clerk (if served by registered or certified mail), or a person 18 or older authorized by the court.

Note: No one who is a party or interested in the outcome of the suit may serve the citation.
 - Citation was served in one of the following ways:
 - Primary Method
 - In person delivery; OR
 - Registered/certified mail, restricted delivery, return receipt/electronic return receipt requested
 - Alternative Service
 - 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- See DB Chapter 4, Section (C)(3)(e) for details on this option.

Last Known Address of Defendant Filed – before or at time of judgment

Military Affidavit Filed – Choose one:

- If not in military – may proceed.
- If unable to determine – may require plaintiff to post a bond.
- If in the military – default may not be entered until certain procedures are followed – see DB Chapter 4, Section (M)(3).

Plaintiff Has Provided Proof of Damages (liability does not have to be proven) – choose one:

- Once answer deadline has passed, judge must render judgment for plaintiff for their amount of damages **without a hearing** (unless need a hearing to determine if service is proper) 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)

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

- If above option does not apply:
 - Plaintiff must request **hearing** (orally or in writing).
 - Plaintiff must appear and provide evidence of its damages (may appear electronically or by phone with court's permission).
 - If plaintiff proves its damages, judge must render judgment for plaintiff for amount proven.

Note: If plaintiff does not prove its damages, judgment must be rendered for defendant even if they are not present.

Option 2 – Defendant **HAS** Filed an Answer or Appeared (even if was **AFTER** answer deadline)

Trial Was Set with 45 Days Notice and Defendant Did Not Appear

Court Heard Evidence on Liability AND Damages and Found That Plaintiff Proved Their Case

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- Court could also choose to postpone case instead of proceeding.
- If plaintiff fails to appear for trial, judge may either postpone or dismiss the suit.

NOTICE TO DEFENDANT OF DEFAULT JUDGMENT (Must check all boxes)

Immediately Mail Written Notice of Judgment to Defendant – Choose one:

- If defendant hasn't answered – send to the last known address filed by the plaintiff.
- If defendant has answered – send to best available address (could be where defendant was served or an address provided in defendant's answer).

Note in Docket That Notice of Judgment Was Sent and Where It Was Sent To

Debt Claims Citation & Default Checklist

Civil Deskbook Chapter 4, Sections C & M; TRCP 501, 502.5, 503.1, 503.6, 508



CITATION (*Must check all boxes*)

- Issue Citation Promptly When a Petition is Filed and Filing Fee is Paid/Statement of Inability is Filed**
 - Required contents of citation – See DB Chapter 4, Section (C)(1)
 - Upon request, separate/additional citations must be issued
 - Must keep a copy in the court file
- Deliver Citation for Service as Directed by the Plaintiff – Choose one:**
 - Service by sheriff/constable – service fee set by the commissioners court or Statement of Inability.
 - Service by court clerk (by mail) – actual cost of mailing the documents or Statement of Inability.
 - Service by private process server – no fee is charged by the court/county.

DEFAULT JUDGMENT (*Pick option that applies, then must check all boxes under that option*)

Option 1 – Defendant **HAS NOT** Filed an Answer or Otherwise Appeared

- All Information Required by TRCP 508.2 is in Petition** – see DB Chapter 4, Section (A)(2)
- Answer Deadline Has Passed – End of the 14th day after service (or 42nd day if service by publication)**
Note: If last day is weekend, holiday or day where court closes before 5, deadline is next business day.
- Proper Service (may hold a hearing to determine this even if a hearing is not otherwise required)**
 - Citation and copy of petition/all documents filed with petition has been served on defendant.
 - Plaintiff must provide enough copies to be served on each defendant if more than one. If not, clerk may make copies and charge plaintiff copying cost.
 - Proof of service has been on file for at least 3 days, not counting day of filing or day of judgment.
 - The Return of Service must meet certain requirements, including describing who was served and the date & manner of service – See DB Chapter 4, Section (C)(4).
 - Citation was served by one of the following:
 - Sheriff/constable, certified private process server, court clerk (if served by registered or certified mail), or a person 18 or older authorized by the court.
Note: No one who is a party or interested in the outcome of the suit may serve the citation.
 - Citation was served in one of the following ways:
 - Primary Method
 - In person delivery; OR
 - Registered/certified mail, restricted delivery, return receipt/electronic return receipt requested
 - Alternative Service
 - 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- See DB Chapter 4, Section (C)(3)(e) for details on this option.

- Last Known Address of Defendant Filed – before or at time of judgment**

Military Affidavit Filed – Choose one:

- If not in military – may proceed.
- If unable to determine – may require plaintiff to post a bond.
- If in the military – default may not be entered until certain procedures are followed – see DB Chapter 4, Section (M)(3).

Plaintiff Has Provided Proof of Damages (liability does not have to be proven) – choose one:

- Once answer deadline has passed, judge must promptly render judgment for plaintiff upon proof of damages & should do so **without a hearing** (unless need one to determine if service is proper) 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 defendant fails to answer by 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).
 - 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

- If above option does not apply:
 - Plaintiff must request **hearing** (orally or in writing).
 - Plaintiff must appear and provide evidence of its damages (may appear electronically or by phone with court's permission).
 - If plaintiff proves its damages, judge must render judgment for plaintiff for amount proven.

Note: If plaintiff does not prove its damages, judgment must be rendered for defendant even if they are not present.

Option 2 – Defendant HAS Filed an Answer or Appeared (even if was AFTER answer deadline)

Trial Was Set with 45 Days Notice and Defendant Did Not Appear

Court Heard Evidence on Liability AND Damages and Found That Plaintiff Proved Their Case

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- Court could also choose to postpone case instead of proceeding.
- If plaintiff fails to appear for trial, judge may either postpone or dismiss the suit.

NOTICE TO DEFENDANT OF DEFAULT JUDGMENT (Must check all boxes)

Immediately Mail Written Notice of Judgment to Defendant – Choose one:

- If defendant hasn't answered – send to the last known address filed by the plaintiff.
- If defendant has answered – send to best available address (could be where defendant was served or an address provided in defendant's answer).

Note in Docket That Notice of Judgment Was Sent and Where It Was Sent To

Evictions Citation & Default Checklist

Evictions Deskbook Chapter 4, Sections A & C; TRCP 510.3, 510.4, 510.6



CITATION (*Must check all boxes*)

- Issue Citation Immediately When Petition is Filed & Filing Fee is Paid/Statement of Inability is Filed**
 - Must tell defendant to appear for trial at a time set by the court (btwn 10 and 21 days after the petition was filed). Defendant may but is not required to file an answer.
 - Required contents of citation – See DB Chapter 4, Section (A)(4)(a)
 - Upon request, separate/additional citations must be issued
 - Must keep a copy in the court file

- Deliver Citation for Service to sheriff/constable or other person authorized by written court order**
 - Plaintiff must pay service fee set by the commissioners court or file a Statement of Inability.

DEFAULT JUDGMENT (*Pick option that applies, then must check all boxes under that option*)

Option 1 – Defendant **HAS NOT** Filed an Answer or Otherwise Appeared

- Case is filed in the precinct where the premises are located (if not, dismiss for lack of jurisdiction)**

- Proper Service**
 - Citation and copy of petition/all documents filed with petition has been timely served on defendant.
 - Defendant must be served at least 6 days before the trial date.
 - Plaintiff must provide enough copies to be served on each defendant if more than one. If not, clerk may make copies and charge plaintiff copying cost.
 - Proof of service was filed at least 1 day before the trial date.
 - The Return of Service must meet certain requirements, including describing who was served and the date & manner of service – See *Civil* DB Chapter 4, Section (C)(4).
 - Citation was served by one of the following:
 - Sheriff/constable or someone authorized by written court order.
 - Citation was served in one of the following ways:
 - Primary Method
 - 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.
 - Alternative Service (plaintiff does not have to request this)
 - 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;
 - Mailing a copy to the defendant at the premises by first class mail; AND
 - Noting on the return of service the date of delivery and the date of mailing (which must be at least 6 days before the trial date).

Military Affidavit Filed – Choose one:

- If not in military – may proceed.
- If unable to determine – may require plaintiff to post a bond.
- If in the military – default may not be entered until certain procedures are followed – see DB Chapter 4, Section (C)(2).

Plaintiff Proved Their Case at Trial – Choose one:

- Proved 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.
- Proved 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.

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- If plaintiff fails to appear for trial, the judge may postpone or dismiss the case.

Option 2 – Defendant **HAS** Filed an Answer or Otherwise Appeared

Case is filed in the precinct where the premises are located (if not, dismiss for lack of jurisdiction)

Plaintiff Proved Their Case at Trial

- If defendant fails to appear, judge may proceed to hear evidence. If plaintiff proves their case, judge must render judgment for plaintiff.

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- If plaintiff fails to appear for trial, the judge may postpone or dismiss the case.

NOTICE TO DEFENDANT OF DEFAULT JUDGMENT (Must check all boxes)

Immediately Mail Written Notice of Judgment to Defendant

- Send by first class mail to the defendant at the address of the premises.
- If you know defendant is not staying at the premises and you have a different address for them, it is a best practice to send the judgment to that address as well.
 - Ex: When a defendant is currently in jail.

Note in Docket That Notice of Judgment Was Sent



Repair and Remedy Citation & Default Checklist

Civil Deskbook Chapter 4, Section C; Evictions Deskbook Chapter 10, Section (D)(3);
TRCP 501, 509.2-509.6

[This handout only applies to Repair & Remedy cases brought under Prop. Code Ch. 92. For info on Repair & Remedy cases brought under Ch. 94 (Manufactured Home Tenancies), see Eviction Deskbook Chapter 10, Section E]

CITATION *(Must check all boxes)*

- Issue Citation Immediately When Petition is Filed & Filing Fee is Paid/Statement of Inability is Filed**
 - 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).
 - Required contents of citation – See Evictions DB Chapter 4, Section (A)(4)(a) (as applicable)
 - Upon request, separate/additional citations must be issued
 - Must keep a copy in the court file

- Deliver Citation for Service as Directed by the Plaintiff – Choose one:**
 - Service by sheriff/constable – service fee set by the commissioners court or Statement of Inability.
 - Service by court clerk (by mail) – actual cost of mailing the documents or Statement of Inability.
 - Service by private process server – no fee is charged by the court/county.

DEFAULT JUDGMENT *(Pick option that applies, then must check all boxes under that option)*

Option 1 – Defendant **HAS NOT** Filed an Answer or Otherwise Appeared

- Proper Service**
 - Citation and copy of petition/all documents filed with petition has been timely served on defendant.
 - Landlord must be served at least 6 days before the trial date.
 - Plaintiff must provide copies to be served on the landlord. If not, clerk may make copies and charge plaintiff copying cost.
 - Proof of service was filed at least 1 day before the trial date.
 - The Return of Service must meet certain requirements, including describing who was served and the date & manner of service – See Civil DB Chapter 4, Section (C)(4).
 - Citation was served by one of the following:
 - Sheriff/constable, certified private process server, court clerk (if served by registered or certified mail), or a person 18 or older authorized by the court.
Note: No one who is a party or interested in the outcome of the suit may serve the citation.
 - Citation was served in one of the following ways:
 - Primary Method
 - In person delivery; OR
 - Registered/certified mail, restricted delivery, return receipt/electronic return receipt requested
 - First Alternative Service Method (tenant does not have to request this)
 - 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 person 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).

- Second Alternative Service Method (tenant does not have to request this)
 - If person serving is unsuccessful under first alternative service method after making diligent efforts on at least two occasions, then he must file a sworn statement:
 - Stating that he made diligent efforts to serve the citation 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 the person to serve the citation 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;
 - Within 24 hours of delivery to the premises, mailing a copy to the landlord at the landlord's business street address by first class mail; AND
 - Noting on the return of service the date of delivery and the date of mailing (which must be at least 6 days before the trial date).

Military Affidavit Filed – Choose one:

- If not in military – may proceed.
- If unable to determine – may require plaintiff to post a bond.
- If in the military – default may not be entered until certain procedures are followed – see Civil DB Chapter 4, Section (M)(3).

Plaintiff Established at Trial that They are Entitled to Recover

- 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.

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- If plaintiff fails to appear for trial, the judge may postpone or dismiss the case.

Option 2 – Defendant HAS Filed an Answer or Otherwise Appeared

Plaintiff Established at Trial that They are Entitled to Recover

- 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.

Note:

- If plaintiff does not prove their case, judgment must be rendered in favor of defendant even if they are not present.
- If plaintiff fails to appear for trial, the judge may postpone or dismiss the case.

NOTICE TO DEFENDANT OF DEFAULT JUDGMENT

Immediately Serve Defendant with Notice of Judgment

- Notice of judgment may be served on the landlord 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.
- Unless the court serves the landlord, the sheriff/constable or other authorized person who serves the landlord must promptly file a return of service in the justice court.

Note in Docket That Judgment Was Served and When/Where/How It Was Served