

Default Judgment Information

This brochure explains what you need to do to get a Final Judgment when the Respondent will not answer the law suit or appear in court. This judgment is called a Default Judgment. Before you can understand the Default Judgment process, you will need to learn about the basic steps in every lawsuit.

There are three basic steps to any civil lawsuit: 1) Filing the petition, 2) Giving legal notice to the other party, and 3) Finalizing the matter in court.

Filing a Petition

The *petition*, which is filed by the Petitioner, is the Petitioner's opportunity to tell the other party, and the Court, what the Petitioner wants the Court to order.

The *Petitioner* is the person who started the lawsuit by filing the Petition, and who is asking the Court to do something.

There is usually a fee to file the petition. In some cases, the fee may be waived by the clerk's office. To have the fee waived, the Petitioner must file an *Affidavit of Inability to Pay Costs*. This is a sworn statement that says the Petitioner cannot pay the filing fees. If the Respondent disagrees, s/he can file a written contest, disputing the Petitioner's Inability to Pay the court costs and filing fees.

Giving Legal Notice

The Petitioner must give *legal notice* to the other party. The other party is called the *Respondent*. There are two general ways to give legal notice:

- 1) Have the Respondent *waive* his or her right to service by signing a *Waiver of Citation* in front of a notary. OR
- 2) Have the Respondent *served* with a copy of the Petition by some one who is authorized by the Court to give the Respondent the petition. This person is called a *Process Server*. It may be a private process server or a sheriff or constable. *The Petitioner is not authorized by the Court to serve the petition on the Respondent.*

There are four authorized *methods of service* or ways that a process server may deliver the petition to the Respondent: personal service, service by certified mail, substituted service, and publication.

- a) *Personal service* is the best choice for service. This means the process server hand delivers the petition to the Respondent. The Court knows for sure that the Respondent actually received notice of the lawsuit when personal service is accomplished.

- b) **Service by certified mail** may be used if you ask the clerk to issue citation and mail the petition to the Respondent instead of having the process server personally deliver it. Service by certified mail is only valid if the *Respondent's* signature appears on the return receipt that is returned. If someone else has signed for the letter (including a mail clerk), the Respondent was not actually served. The Court will require the Petitioner to serve the Respondent again, and the Petitioner may have to pay additional fees for service.
- c) Sometimes, a court may allow **substituted or alternative service**. If the Petitioner files a sworn statement (affidavit) and motion convincing a court that a substitute or alternative method of service would be reasonably effective to give the Respondent notice, the court may allow a method of service other than personal service or certified mail.
- d) If a Respondent cannot be located, a Petitioner is still required to give him or her legal notice. The method used in these cases is called **publication**. With service by publication, the notice runs in a newspaper or other publication. In cases where service by publication is required, the court must appoint an attorney to represent the Respondent. The Petitioner usually has to pay the attorney's fees in such cases. The attorney's role is to conduct a diligent search, and show the court that the Respondent really cannot be located. In a divorce proceeding, if the Petitioner cannot locate Respondent, and the parties have no children and limited property, the court may allow the legal notice to be posted at the courthouse. This is called service by **posting**.

Once the Respondent has been served with a copy of the petition, the process server must complete a **Return of Citation**. The **return** lets the judge know how and when the Respondent was served. The Return of Citation must be filed in the clerk's office with the rest of the court papers. It has to be on file for at least ten days (not counting the day it is filed or the day the Petitioner appears before the judge) in order for the court to grant a Default Judgment.

Responding to the Petition

After the process server serves the Respondent with legal notice, the Respondent may or may not respond. If the Respondent does not respond, the Petitioner may finalize the case by default as explained on page 3. If the Respondent does respond the Petitioner must send the Respondent written notice of the date and time of any court hearings in the case or obtain Respondent's agreement to finalize the divorce as explained on page 4.

The Respondent responds to the Petition by filing an **Answer** or a **General Denial**. The Respondent files an answer or a general denial in the clerk's office. Simply filing a letter that says the Respondent does not agree with the Petitioner is considered an answer or a general denial. There is no fee to file an answer or a general denial.

A Respondent may also choose to file a **Counter-Petition**. Filing a Counter-Petition would rename the Respondent a **Counter-Petitioner**. Filing a counter-petition gives the Respondent (Counter-Petitioner) an opportunity to ask the court to order the things that s/he wants. There is usually a fee to file a Counter-Petition.

A Respondent should send a copy of any filed response to the Petitioner.

The Respondent must file the response within the **Answer period**. The answer period begins to run at the time the Respondent was served, and goes for 20 days, plus the following Monday until 10 am. (When counting the answer period, count all calendar days, including weekends and holidays.) The Petitioner may take a judgment after the answer period has passed, as long as all other statutory waiting periods have also passed. However, if the Respondent files a response any time before the court announces judgment, even if the answer period has already passed, the court cannot sign a default judgment. The Petitioner will have to set the case for a hearing, and notify the Respondent of any hearings or obtain the Respondent's agreement to finalize the divorce. Respondent shows his or her agreement by signing the Final Decree.

Finalizing the Case Getting a Judgement Entered by Default when the Respondent has Failed to Respond

If the Respondent has never appeared in court in the case, and has not ever filed any kind of response, then the Petitioner can try to get a **Default Judgment**. A default judgment happens when the court awards a judgment to the Petitioner because the Respondent does not appear in court at the hearing. Sometimes, this occurs when the Respondent has not filed any response after being served with the petition. Default Judgments almost always favor the Petitioner; so the legislature requires a little more paperwork from the Petitioner in order to get a default judgment.

To get a default judgment, the Petitioner must file a sworn statement telling about the Respondent's military status. This is called the **Servicemember's Affidavit**. In the Servicemember's Affidavit, the Petitioner states facts showing the court either:

1. The Respondent does not serve in the military, or
2. The Respondent serves in the military, or
3. The Petitioner cannot determine whether or not the Respondent serves in the military.

The court can grant a default judgment if the Respondent does not serve in the military. If the Respondent does serve in the military, the court must appoint an attorney to represent the Respondent. If the court cannot determine whether or not the Respondent serves in the military, that court may require the Petitioner to file a bond. The bond is money which would be used by the Respondent, if it is later determined that the Respondent was serving in the military and that s/he suffered a loss because of the default judgment.

A service member may ask the court to cancel a default judgment that was announced while s/he was in the military or one that was announced within 60 days of his or her discharge from the military. The service member has 90 days from the time of his or her discharge from military service to ask the court to cancel the default judgment entered during those time periods.

When asking the court to grant a default judgment, the Petitioner must also file a *Certificate of Last Known Address*. This is a signed statement that tells the clerk the Respondent's last known address. The clerk will send the Respondent a notice that the default judgment was entered.

The Petitioner will also need to prepare the *Order* for the judge to sign (in a divorce, this is called the Decree of Divorce). In some cases, when service was accomplished by posting or publication, the Petitioner also needs to prepare a *Statement of the Evidence* for the judge to sign.

When seeking a default judgment, the Petitioner should always ask the *court reporter* to make a record of the testimony given. In some court rooms, a court reporter is not always available, so the Petitioner should make arrangements ahead of time to make sure that a court reporter will be available to make the record. If a default judgment is awarded, and a record of testimony is not made, the Respondent may be granted a new trial, if s/he requests a new trial within 30 days from the day the judgment or order is signed.

Getting a Judgment Entered after Respondent has Filed a Response

If the Respondent filed an answer or a general denial, or has come to any court proceeding in the case the Petitioner may not get a judgment entered unless:

- 1) the Respondent agrees to and signs the judgment OR
- 2) a final hearing is held after the Petitioner sends the Respondent legal notice of the final hearing. At the final hearing, each side would have an opportunity to tell his or her side of the case. The judge would make a decision and sign an order prepared by the parties.

When the Respondent files a response and will not agree to sign the Final Decree, your case is *contested*. It is very difficult to represent yourself in a contested case. If your case is contested, you should seek the advice and assistance of an attorney. Many times, you may be surprised by an attorney's willingness to help you. Many attorneys provide low cost services to clients. Some may be able to refer you to resources for pro bono or free legal services. Contact a lawyer referral service in your area if you need assistance to locate an attorney to represent you in a contested case.

A Word of Caution

Getting the judge to sign a default judgment is never guaranteed. There may be additional rules of civil procedure or family law that apply specifically to your case, which may prevent the judge from signing your default judgment. If you choose to represent yourself in your legal matter, you must have patience with the legal system. The rules are meant to protect all parties in a lawsuit. If you feel yourself running into roadblocks, you may need to seek help from an attorney.

To make sure you have completed all of the steps needed for a Default Judgment, complete the *Default Judgment Check List*.

Servicemember's Affidavit Instructions

- What?** A *Servicemembers' Affidavit* tells the Court that the Respondent is not currently serving in the military.
- Who?** The Petitioner completes the Servicemembers' Affidavit, and signs it in front of a notary. The Petitioner promises to tell the truth in the statement. If the Petitioner lies in the affidavit, s/he could be held criminally responsible.
- When?** The Petitioner files a Servicemembers' Affidavit or presents one to the Court, if the Petitioner is asking the Court to sign an order, and the Respondent was served with citation, but failed to file an answer or appear in the case. This is called a *Default Judgment*.
- Where?** The Servicemembers' Affidavit may be prepared and filed in the case prior to the hearing, or presented to the judge at the time of the hearing.
- How?** The Petitioner must include facts that support the court's conclusion that the Respondent is either a) not serving in the military, b) is serving in the military, or c) that it can not be determined whether or not the Respondent is serving in the military.
- If you have the Respondent's social security number, you can request a report from the Department of Defense to determine whether or not Respondent is serving in the military. Go to <https://www.dmdc.osd.mil/scra/owa/scra.home>
- If the Respondent is not in the military, the Court is authorized to sign the order, and enter a judgment against the Respondent.
- If the Respondent is serving in the military, the Court must appoint a lawyer to represent the Respondent. (Usually, the Petitioner must pay for the lawyer.)
- If it cannot be determined whether or not the Respondent is serving in the military, the Court may order the Petitioner to file a bond. A *bond* is money that would be available to help the Respondent if it turns out that the Respondent is serving in the military, and is actually harmed by a judgment taken against him or her.
- Why?** If the Court signs a judgment against the Respondent (and fails to appoint an attorney to represent Respondent), and it turns out that the Respondent was in the military, the Respondent has 90 days from his or her discharge to have the judgment set aside.

Case No: _____

(Print court information, exactly as it appears on your Petition)

_____ In the (check one):
 District County Justice Court of:

_____ County, Texas

Service Member's Affidavit
Declaración jurada de miembro de las Fuerzas Armadas

Print your answers – Escriba sus respuestas en letra de molde

State of Texas
County of _____
(Print the name of county where this statement is notarized)

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

1. "My name is: _____
Mi nombre es: *First - Primer nombre* *Middle - Segundo nombre* *Last - Apellido*
2. "The Respondent's name is: _____
El nombre del Respondedor es: *First - Primer nombre* *Middle - Segundo nombre* *Last - Apellido*

3. "I am the Petitioner in this case. I am an adult and of sound mind. I have personal knowledge of the facts stated in this affidavit.

"The facts stated in this affidavit are true and correct.

Certifico que soy el Solicitante en este caso. Soy mayor de edad y en mi sano juicio, y me represento a mí mismo en este caso. Entiendo que se pueden levantar cargos penales en mi contra si miento en esta declaración.

Esta declaración es veraz y tengo conocimiento personal de estos hechos.

Check all boxes that describe your situation.
*Marque **todas** las casillas que describen su situación.*

"I know that the Respondent is **not** in the military because I asked the U.S. Department of Defense to check their DMDC database. DMDC notified me that the Respondent is not on active duty in any of the armed forces. I attached a true copy of the DMDC verification.
Sé que el Respondedor no está en las fuerzas armadas porque solicité al Departamento de Defensa de EE UU que averiguaran por medio de su base de datos DDMDS. He recibido confirmación por parte del DDMDS que el Respondedor en la actualidad no está en servicio activo en ninguna de las Fuerzas Armadas.

(If you check this box, you **must** attach a copy of the DMDC verification.)
(Si marcó esta casilla, **tiene que** adjuntar una copia de la verificación.)

- “I know that the Respondent is **not** now in the military because
(List facts that you know would make your spouse ineligible for military service, such as being in prison, being an illegal alien, or having a serious disability, etc.)

Sé que el Respondedor no está en las fuerzas armadas porque:

(Describe los hechos que conoce que harían que el Respondedor no sería elegible para servir en la Fuerzas Armadas, como por ejemplo que está en la cárcel, es inmigrante ilegal, o es severamente discapacitado, etc.)

- “I do not know if the Respondent is in the military now. Because of this *(check one)*:
No sé si el Respondedor está actualmente en las Fuerzas Armadas. Debido a eso *(marque uno)*:

- “I am willing to post a bond in case the Respondent is in the military now and is harmed by this judgment. *Print the amount of bond you are able to post:*
\$ _____

Estoy dispuesto a pagar una fianza en caso que el Respondedor esté en las Fuerzas Armadas actualmente y este fallo lo perjudique. *Escriba el monto de fianza que podrá pagar:* \$

- “There is no need to post a bond, because the Respondent will not be harmed by this judgment.”

No es necesario pagar fianza, ya que el Respondedor no será perjudicado por este fallo.

Do not sign until you are in front of a notary. – No firme hasta que esté ante un notario.



Petitioner signs here in front of a notary – *Solicitante firma aquí ante un notario*

Date - Fecha

Notary fills out below.

State of Texas, County of _____
(Print the name of county where this statement is notarized)

Sworn to and subscribed before me, the undersigned notary, on this date: _____

By _____
(Print name of person who is signing this affidavit.)

(Notary's seal here)



Notary's signature

Print court information exactly as it appears on your Petition

Name of person who filed for divorce (*Petitioner*):

First Middle Last

Your spouse's name (*Respondent*):

First Middle Last

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Case No:

In the (*check one*): District County Justice Court of:

_____ County, Texas

CERTIFICATE OF LAST KNOWN MAILING ADDRESS

I, _____,
Print your first and last name here

certify that the last
known mailing address
that I have for the
Respondent,

Print Respondent's name here

is: _____

Print Respondent's last known address above

Petitioner's signature, *pro se*

Default Judgment in Family Law Cases Check List

If you plan to ask the Court for a Default Judgment, make sure you completed the following Check List.

- Waiting Period** The petition has been on file for the required number of days. Most family law matters do not have a statutory waiting period, but divorce cases do. In a divorce action, the petition must be on file for at least 60 days before a judge can grant the divorce. To calculate the waiting period for a divorce, begin counting the day *after* the petition was filed, and count 60 days. Include weekends and holidays. *Texas Family Code, Section 6.702*

- Petition**
Make sure the petition gives adequate notice for the relief you are asking the Court to grant in your Decree. *Adequate notice* means your Final Decree does not give you anything more than what you asked for in your petition. If it does not, you may need to amend your petition and re-serve the Respondent.

Proper Service

The Respondent was served with citation, using *one* of the following methods:

- **Personal Service** The process server delivered the Petition to the Respondent, **OR**
- **Substitute or Alternative Service**

You filed a motion with supporting affidavits, and obtained a court order that allowed the process server to use a substitute or alternative method of service.

Texas Rules of Civil Procedure 106, 109a, OR

- **Service by Posting**

You cannot locate the Respondent. You have no children of the marriage and limited property. You filed the Petitioner's Supporting Affidavit and Affidavit for Citation by Posting, and prepared a Statement of Evidence for the judge to sign at the time of the hearing. *Texas Rules of Civil Procedure 109, Texas Family Code, Section 6.409, OR*

- **Service by Publication**

You cannot locate the Respondent. You have children and/or significant property. You filed the petitioner's Supporting Affidavit and Affidavit for Citation by Publication. The process server published the citation in the county where your lawsuit has been filed. You have found an attorney to be appointed to represent the Respondent, and you have prepared a Statement of Evidence for the judge to sign, as required by *Texas Rules of Civil Procedure 244* and *Texas Family Code, Section 6.409*

Return of Citation

The Return of Citation has been on file with the clerk's office for at least ten days. To calculate, do not count the day the return was filed or the day you have your hearing in front of the judge. *Texas Rules of Civil Procedure 107*

Answer Period

The answer period has passed, and the Respondent has not filed a written response or appeared in court in the case. **The answer period = 20 days, plus the following Monday, after 10am.** Begin counting from the date the Respondent was served.** Count out 20 days. Include weekends and holidays. Then, go to the next Monday. The Respondent’s deadline to answer ends at 10 am. *** If the 20th day falls on a Monday, the answer period ends at 10 am on the next Monday. If the “following Monday” is a legal holiday, the Respondent’s answer is due at the **end** of the next business day that is not a legal holiday. *Texas Rules Civil Procedure 99(b)*

** If the Respondent was served by posting, the citation must post for 7 days before the answer period begins to run. Begin counting the answer period after the 7th day.

*** If the Respondent files a written response or appears in court in the lawsuit at any time before the judge announces a final judgment, ***even if it is after the answer period has ended***, the Petitioner cannot get a default judgment without sending notice of the date and time of the hearing to the Respondent. The Respondent is entitled to at least 45 days notice of the hearing. *Texas Rules of Civil Procedure 245*

Certificate of Last Known Address

The Certificate of Last Known Address has been completed and filed.
Texas Rules of Civil Procedure 239(a)

Servicemembers’ Affidavit

The Servicemembers’ Affidavit has been completed, notarized, and filed.
The Servicemembers’ Civil Relief Act 50 United States Code, Section 501

TDH Vital Statistics Form

This form is filed with the clerk’s office, and forwarded to the Bureau of Vital Statistics, where the State of Texas maintains a record of marriages, divorces, and other family matters. If this form is not filed, the state database will have no record of your family matter.
Texas Family Code, Section 6.410

Decree or Order

You have prepared the court order for the judge to sign.

Court Reporter You have made arrangements to have a court reporter available to make a record of your testimony. Without the court reporter recording the testimony, the Respondent may be able to request and receive a new trial. Court reporters are not always available for every court proceeding. Make sure a court reporter is available for you when you plan to get the default judgment.