

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.