

# 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 14<sup>th</sup> day after service (or 42<sup>nd</sup> 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 also 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**