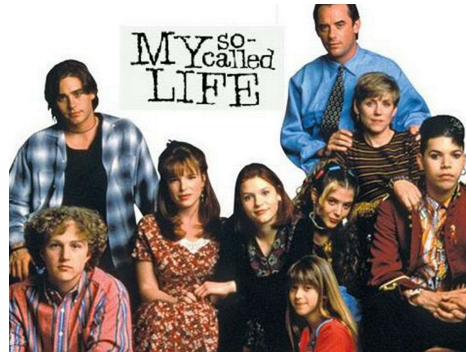


MY so-called SERVICE

Defaults, Publication, and Alternative Service



Judge Emily Miskel
470th District Court

Helpful Checklists

	CAUSE NO. _____ CERTIFICATE FOR DEFAULT JUDGMENT Checklist for Personal Service or Certified Mail	
Before the court will set your default judgment, you must complete, sign, and file this form showing that you have satisfied all the prerequisites for a default judgment.		
Service and Return		
<input type="checkbox"/> The respondent was served via personal service by an authorized person. (TRCP 103) <input type="checkbox"/> The respondent was served via certified mail by the clerk, and the green card on file shows that the respondent personally signed for it. (TRCP 103, 107(c)) <input type="checkbox"/> If the respondent was served outside Texas, the pleadings allege a basis for personal jurisdiction and a witness will testify at the default trial to facts that support jurisdiction. (Tex. Fam. Code § 6.305, § 102.011, or §§ 152.201-152.204). <input type="checkbox"/> The answer date has passed and no answer or other appearance has been made. <input type="checkbox"/> The return will have been on file for at least 11 days before the default judgment. (TRCP 107(h))		
Paperwork that Must be Filed Before the Court can Enter Default Judgment		
<input type="checkbox"/> A written certificate of the respondent's last-known address was filed on _____ (TRCP 239a) <input type="checkbox"/> If there is any property to be awarded, a sworn inventory and appraisal listing all assets and liabilities was filed on _____		
Preparing for the Default Trial		
<input type="checkbox"/> All relief contained in the proposed default order is supported by the pleadings. <input type="checkbox"/> All relief contained in the proposed default order will be supported by evidence admitted at the default trial. <input type="checkbox"/> If the proposed default order contains provisions that differ from presumptions in the Family Code, sufficient evidence will be put on at the default trial to rebut the presumptions. <input type="checkbox"/> I understand that I must put on evidence to prove each of my claims and that conclusory prove-up testimony is not sufficient to support a default judgment.		
SIGNED by Petitioner/Attorney: _____		

	CAUSE NO. _____ CERTIFICATE FOR DEFAULT JUDGMENT Checklist for Publication, Posting, Alternative Service, and Substituted Service	
Before the court will set your default judgment, you must complete, sign, and file this form showing that you have satisfied all the prerequisites for a default judgment.		
Requesting Service by Publication, Posting, Alternative Service, or Substituted Service		
<input type="checkbox"/> On _____, a detailed affidavit was filed that contains specific facts showing the diligent attempts to locate the respondent and obtain personal service. <input type="checkbox"/> Citation was issued AFTER the date the affidavit was filed and any order authorizing service was signed by the court. <input type="checkbox"/> The respondent was served by (check one): <input type="checkbox"/> Alternative service under TRCP 106(b). <input type="checkbox"/> Publication under TRCP 109, 116, 117, and 244. Citation was published on the public information internet website and in a newspaper (unless indigent). <input type="checkbox"/> Posting under Tex. Fam. Code § 6.409(d) or § 102.010(a). <input type="checkbox"/> Substituted service under TRCP 106(c) and 244.		
Service and Return		
<input type="checkbox"/> The respondent was served by publication and a return of service was filed. <input type="checkbox"/> A copy of the newspaper publication. (TRCP 116 & 117), and <input type="checkbox"/> A public information website return generated by the Office of Court Administration (TRCP 116 & 117) <input type="checkbox"/> The respondent was served by alternative service or substituted service, and there is a return of service on file by an authorized person (not an attorney party in the case) that shows strict compliance with every part of the order. (TRCP 106, 107(f), 109a) <input type="checkbox"/> The answer date has passed and no answer or other appearance has been made. <input type="checkbox"/> The return will have been on file at least 11 days before the default trial. (TRCP 107(h))		
Attorney Ad Litem After Service by Publication or Substituted Service		
<input type="checkbox"/> This is a divorce with no minor children or appreciable property so the requirement of an attorney ad litem is waived. (Tex. Fam. Code § 6.409(e)) <input type="checkbox"/> After the answer date, the court signed an order appointing an attorney ad litem for the respondent. (TRCP 244) <input type="checkbox"/> The attorney ad litem has used due diligence to attempt to locate the respondent for personal service.		
<input type="checkbox"/> The attorney ad litem representing the respondent received notice of the default trial setting. <input type="checkbox"/> The attorney ad litem was unsuccessful in locating the respondent and will appear at the default trial to defend the respondent. (TRCP 244) <input type="checkbox"/> The attorney ad litem was successful in locating the respondent, and the respondent answered or personal service was completed. The attorney ad litem filed a proper motion to withdraw and a withdrawal order was signed by the court.		
Paperwork that Must be Filed Before the Court can Enter Default Judgment		
<input type="checkbox"/> A <u>Military Status Affidavit</u> was filed on _____. (See <u>50 U.S.C. § 3931</u> . You can use the <u>Servicemembers Civil Relief Act</u> website to determine the defendant's military status https://scra.dmdc.osd.mil/) <input type="checkbox"/> A written certificate of the respondent's last-known address was filed on _____ (TRCP 239a) <input type="checkbox"/> A proposed statement of evidence was e-filed on _____ for the judge to sign at the default trial. (Tex. Fam. Code § 6.409(e) and § 102.010(d)) <input type="checkbox"/> If there is any property to be awarded, a sworn inventory and appraisal listing all assets and liabilities was filed on _____.		
Preparing for the Default Trial		
<input type="checkbox"/> All relief contained in the proposed default order is supported by the pleadings. <input type="checkbox"/> All relief contained in the proposed default order will be supported by evidence admitted at the default trial. <input type="checkbox"/> If the proposed default order contains provisions that differ from presumptions in the Family Code, sufficient evidence will be put on at the default trial to rebut the presumptions. <input type="checkbox"/> I understand that I must put on evidence to prove each of my claims and that conclusory prove-up testimony is not sufficient to support a default judgment.		
SIGNED by Petitioner/Attorney: _____		
SIGNED by Attorney Ad Litem: _____		

Types of Service

Types of Service

If you know where Respondent is:

- ✓ Personal service
- ✓ Certified mail (👉 🗑️)
- ✓ Alternative service

If you don't know where Respondent is:

- ✓ Substituted service
- ✓ Publication



Personal Service - Jurisdiction

If Respondent was served outside Texas:

- ✓ Pleadings allege a basis for personal jurisdiction
- ✓ Witness will testify to facts that support personal jurisdiction
- ✓ If it's a child custody case, you attached a sworn UCCJEA affidavit to your petition (152.209)

Personal Service - Jurisdiction



If no personal jurisdiction over Respondent:

- ✓ *In rem*, status-only divorce
- ✓ Child custody: rights & duties, possession schedule
- ✗ Cannot do anything that affects Respondent's money: division of property & debts, attorney fees, child support, medical

Certified Mail

- ✓ Must be served by the clerk or a process server (TRCP 103)
 - ✗ Certified mail can't be sent by client or attorney
- ✓ The green card must be legibly signed by the Respondent (TRCP 107(c))
- 🗑 Please never do this in a family law case

Alternative Service – Rule 106

When you know where Respondent is

- ✓ Motion includes sworn facts showing where defendant can probably be found
- ✓ Motion includes sworn facts that service has been unsuccessfully attempted there
 - ✗ Service attempts can't only be during work hours

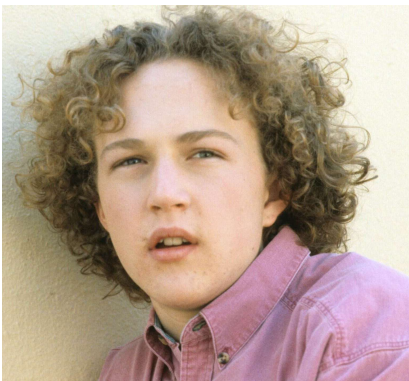


Alternative Service – Rule 106

Court may authorize:

- ✓ Leaving a copy with anyone older than 16 at that location
- ✓ In any other manner, including social media, email, or other tech
- ✓ Motion must include sworn facts about why you believe that's respondent's email, FB, etc.

Alternative Service – Rule 106



Social media, email, or other tech:

- ✓ Service must still be done by an authorized person (TRCP 103)
 - ✗ Alternative service can't be sent by a party or attorney
- ✓ A proper return must be filed (TRCP 107)

Substituted Service – Rule 109a

When you don't know where Respondent is

- ✓ Motion includes the sworn facts showing diligent search that would be required for publication
- ✓ Court may order service by ANY method that would be as good as publication
- ✓ Motion must include sworn facts about why you believe it would reach respondent

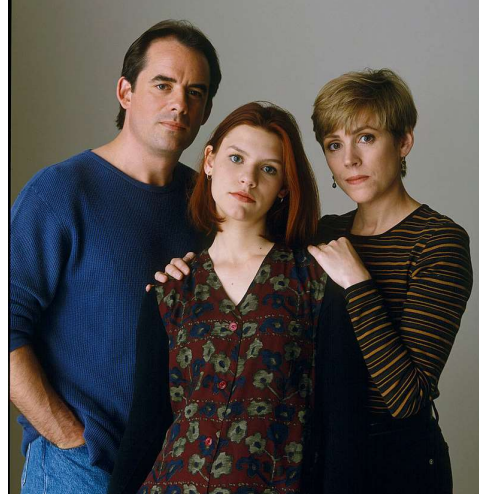
Substituted Service – Rule 109a

- ✓ Service must still be done by an authorized person (TRCP 103)
 - ✗ Substituted service can't be sent by a party or attorney
- ✓ A proper return must be filed (TRCP 107, 109a)
- ✓ Publication rules apply – attorney ad litem (TRCP 244), motions for new trial (TRCP 329)

Publication Service

*When you don't know
where Respondent is*

- ✓ Motion includes sworn facts showing diligent search
- ✓ Just use the sample affidavit from texaslawhelp.org



Publication

- ✓ Must be published in newspaper* and state's website
 - ✗ Newspaper not required if petitioner is indigent, publication costs >\$200/week, or county doesn't have a newspaper
- ✓ Return must contain image of newspaper publication
- ✓ Website return is done by OCA

\$ Attorney Ad Litem \$

- ✓ If the respondent was served by **publication** or **substituted service**, the petitioner must pay for an attorney ad litem (TRCP 244)
- ✓ The AAL must try to find the respondent and must appear at trial to defend him
 - ✗ Except divorces with no kids or property (6.409(e))

Default Paperwork

File with the Court



- ✓ Military Status Affidavit (50 USC §3931)
 - ✓ Just use the form from texaslawhelp.org
- ✓ Certificate of last-known address (TRCP 239a)
- ✓ Statement of evidence (6.409(e), 102.010(d))

Default Trial

The Trial

- ✓ Attorney ad litem appears to defend respondent if publication or substituted service
- ✓ Relief is supported by pleadings
- ✓ Relief is supported by evidence admitted at the default trial
- ✓ Trial evidence rebuts any presumptions in the Family Code

The Trial

**Conclusory
prove-up testimony
is NOT sufficient to
support a default
judgment**



Defaults Reversed – Lacking Evidence

1. *Short v. Short*, No. 05-21-00095-CV (Tex.App.—Dallas 2022)
2. *IMOMO Flores*, No. 13-20-00313-CV (Tex.App.—Corpus Christi 2021)
3. *IMOMO Hottinger*, No. 07-20-00211-CV (Tex.App.—Amarillo 2021)
4. *IMOMO Durham*, No. 10-19-00199-CV (Tex.App.—Waco 2021)
5. *B.K. v. T.K.*, No. 02-19-00472-CV (Tex.App.—Fort Worth 2021)
6. *Welch v. Welch*, No. 05-19-01260-CV (Tex.App.—Dallas 2020)
7. *Arevalo v. Fink*, No. 01-19-00822-CV (Tex.App.—Houston [1st Dist.] 2020)
8. *Hildebrand v. Hildebrand*, No. 01-18-00933-CV (Tex.App.—Houston [1st Dist.] 2020)
9. *Houston v. Thorpe*, No. 04-19-00469-CV (Tex.App.—San Antonio 2020)
10. *In re R.G.A.C.L.G.*, No. 05-19-00846-CV (Tex.App.—Dallas 2020)
11. *Smith v. Hickman*, No. 04-19-00182-CV (Tex.App.—San Antonio 2020)