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**Default Judgments**

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## DEFAULT JUDGMENTS

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Law students often wonder why they spend time learning about default judgments—surely default judgments were few and far between. Why would anyone not respond to service of process? And, the distinctions between “void” and “voidable” judgments, and “direct” and “collateral” attacks on them, seemed arcane, complicated, and ridiculous. After a short time in practice, one learns that defendants fail to respond to service more often than one would expect, and knowing how to overturn a default judgment is a valuable skill. Defendants fail to answer for a variety of reasons—sometimes the defendant simply has no defense, sometimes the defendant wasn’t really served so did not get notice of the proceeding, and sometimes the defendant just forgets to respond.

The Texas Supreme Court decided eight default judgment cases in the last six years.<sup>1</sup> In this article, I will discuss those recent opinions and reacquaint you with the procedures for obtaining and overturning default judgments in Texas state court.

### **I. Obtaining a Default Judgment**

When a defendant is served with process, he is obligated to respond by answer or other appearance by the Monday next following 20 days after service of process.<sup>2</sup> If he does not, the

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<sup>1</sup> *Katy Venture, Ltd. v. Cremona Bistro Corp.*, 469 S.W.3d 160 (Tex. 2015); *Valdez v. Hollenbeck*, 465 S.W.3d 217 (Tex. 2015); *Milestone Operating, Inc. v. ExxonMobil Corp.*, 388 S.W.3d 307 (Tex. 2012); *In the Interest of E.R.*, 385 S.W.3d 552 (Tex. 2012); *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267 (Tex. 2012); *Sutherland v. Spencer*, 376 S.W.3d 752 (Tex. 2012); *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177 (Tex. 2012); *Mabon Ltd. v. Afri-Carib Enters., Inc.*, 369 S.W.3d 809 (Tex. 2012).

<sup>2</sup> Rule 99(b). References to Texas Rules of Civil Procedure will hereinafter be to “Rule \_\_\_.”

plaintiff may ask the court to render a judgment by default—a “no-answer” default judgment. The non-answering party “is said to have admitted both the truth of facts set out in the petition and the defendant’s liability on any cause of action properly alleged by those facts. The defendant’s default thus established liability, but a trial may still be necessary if the plaintiff’s damages are unliquidated.”<sup>3</sup>

To obtain a default judgment, the plaintiff should file a motion for default judgment, informing the court that the return of service has been on file for more than 10 days<sup>4</sup> and providing the defendant’s last known address.<sup>5</sup> Check the local rules, as some may require you to serve this motion on the defendant. And, the Texas Lawyer’s Creed requires you to inquire about counsel’s “intention to proceed” when you “know the identity of an opposing counsel.”<sup>6</sup>

The best practice is to have the court sign the default judgment on liability as soon as possible, and, if damages are unliquidated,<sup>7</sup> schedule a hearing and present evidence of damages.<sup>8</sup> Usually, the defendant will not appear at this hearing, although he is entitled to if he learns of it.<sup>9</sup>

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<sup>3</sup> *Paradigm*, 372 S.W.3d at 183 (internal citations omitted).

<sup>4</sup> Rules 239, 107(h).

<sup>5</sup> Rule 239a.

<sup>6</sup> *PNS*, 379 S.W.3d at 276 (internal citation and quotation marks omitted).

<sup>7</sup> Unliquidated damages are damages that are uncertain in amount, and cannot be established from the pleadings by a mathematical calculation. Liquidated damages are damages of a sum certain, or an amount that can be mathematically calculated from information set forth in the pleadings. For example, personal injury damages are unliquidated. Principal and interest due on a promissory note are liquidated damages.

<sup>8</sup> Rule 243.

<sup>9</sup> *Paradigm*, 372 S.W.3d at 183.

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