



**Vidaurri,
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A South Texas Law Firm

SUMMARY

- **One key to avoiding a default judgment is a good and candid relationship with the client or insured.**
- **A citation of suit must be answered by the first Monday after twenty days of service.**
- **One way to undo a default judgment is a motion for new trial.**
- **A motion for new trial can be based on legal or equitable grounds.**
- **Other options for undoing a default judgment are restricted appeals or bill of review proceedings.**

NEWS:

VLRH would like to welcome our summer clerk, Nick Denzer, to the VLRH team. Welcome Nick!

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Default Judgments

The attorneys and staff at Vidaurri, Lyde, Rodriguez, & Haynes, LLP, would like to thank everyone who attended our May luncheon seminar. Preparing to teach the various topics covered in the seminar helps all of us take a client-oriented look at the subjects taught. One such area of the law is the default judgment and possible ways to overturn one.

The term “default judgment” encompasses several types of default judgments. The most common type of default judgment is a no-answer default judgment. This occurs when a plaintiff sues a defendant, allegedly properly serves the defendant with citation and the petition, and the defendant fails to answer by the period prescribed in the citation.

The key to avoiding a default judgment is a good and candid relationship with the client or insured. Once an accident or loss has occurred, it is important that the client contact his or her insurance company as soon as possible. During these initial conversations with the insured, the adjuster should stress the need to contact the insurance company immediately after receiving a citation for a lawsuit. The client should also be aware that a citation may be served in a number of ways. The citation could be mailed by certified mail or hand-delivered by a private process server. In either event, once service has been effectuated, the clock starts ticking!

In Texas state court, the deadline for a defendant to file an answer is the first Monday after twenty days after service has been made. If the insured procrastinates too long before calling the insurance company, this delay could result in a default judgment.

If a default judgment is taken against a defendant, there are a few options to overturn the judgment. The defendant could file a mo-

tion for new trial that is based on either legal or equitable grounds. Legal grounds for a motion for new trial include allegations that there was a technical defect in service. For example, the return of citation may be missing critical information or service may not have been made in the first place. An equitable motion for new trial could claim that the failure to timely file an answer was not the result of conscious indifference. In either event, the deadline for filing a motion for new trial is typically thirty days from the date of judgment.

If more than thirty days have elapsed since the signing of a judgment and notice of the judgment was properly sent out by the clerk of the court, then the defendant has a couple of options. The first is a restricted appeal. The deadline for file a restricted appeal is six months after the default judgment. The standard for prevailing in a restricted appeal proceeding is that there is an error that is apparent on the face of the record. This could be an error dealing with service of the citation because there is no presumption of proper service in a restricted appeal.

The other option is a bill of review. The statute of limitations for filing a bill of review is four years. A bill of review is filed in the same court as the initial judgment, and it typically involves the same factors as an equitable bill of review.

Facing a default judgment can be scary. But, there are options to undo a default judgment, especially if there was a defect in serving the citation. A key to avoiding a default judgment is communicating with the client and getting a citation of suit to the proper people as soon as possible.

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