

# BAIL FORFEITURE

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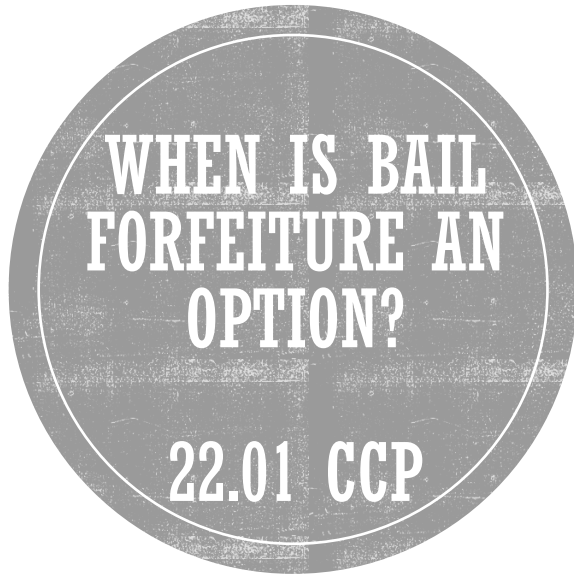
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# RESOURCES

Code of Criminal Procedure (CCP)  
[www.tjctc.org](http://www.tjctc.org) – Deskbooks, forms, and other resources



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The defendant fails to appear and:

- ✓ The defendant was arrested and released on bond (a bail bond or a personal bond)

OR

- ✓ The justice court required the defendant to post an appearance bond and the court issued a written summons to appear to the defendant.

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## APPEARANCE BONDS

- A court may require a defendant to post a bond securing their appearance at trial
    - In justice court, this **MUST** be a personal bond initially
      - Defendant can't be required to put up cash up front or use a surety
- Code of Criminal Procedure 45.016*
- If the defendant does not appear as required by their personal bond, the court can require the defendant to post a bail bond.
    - Must find that defendant is able to post a bail bond
    - Must be necessary to order to secure the defendant's appearance

*Code of Criminal Procedure 45.016*



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**ENSURE THAT  
THE DEFENDANT  
IS ABSENT  
CCP 22.02**

- The bailiff, judge, or clerk must call the defendant's name at the courthouse door
- If the defendant fails to answer "within a reasonable time after such call is made," the justice court may initiate bail forfeiture proceedings.
- How long is a "reasonable time?"
  - It depends on the facts of the case, but it is more than being three to five minutes late. *Meador v. State*,

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**INITIATE  
FORFEITURE  
PROCEEDINGS**

**Step 2:**

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“An action by the state to forfeit a bail bond under this chapter must be brought not later than the fourth anniversary of the date the principal fails to appear in court.”

# STATUTE OF LIMITATIONS CCP 22.18

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## INITIATE FORFEITURE PROCEEDINGS

- Proceedings begin when the court generates a **judgment nisi**
- A judgment nisi is NOT a final judgment.
  - The literal meaning of “judgment nisi” is “judgment unless.”
  - It is a **preliminary judgment** that will become final if the defendant does not appear and show cause why it should not be made final.

*Int'l Fid. Ins. Co. v. State*, 71 S.W.3d 894, 896 n.1 (Tex. App. – Texarkana 2002, no pet.)(quoting Black's Law Dictionary 1068 (7<sup>th</sup> ed. 1999)).



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# INITIATE FORFEITURE PROCEEDINGS

- The judgment nisi should be styled:  
State of Texas vs. [name of the defendant] and [name of the bail bondsman/surety]
- Shall state the amount owed based on the forfeiture (bond amount)
- Shall state the judgment will be made final unless there is good cause for the defendant's failure to appear

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CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS	§ § § § §	IN THE JUSTICE COURT
v.  _____		PRECINCT NO. _____  _____ COUNTY, TEXAS

**JUDGMENT NISI**

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, the above-styled numbered cause was called for trial whereupon came the State of Texas by its attorney, but Defendant, \_\_\_\_\_ failed to appear and answer. Defendant's name was called distinctly three times at \_\_\_\_\_, and a reasonable time given after such call was made in which to appear, yet Defendant came not, but wholly made default.

It appearing to the court that Defendant, \_\_\_\_\_ as Principal, and \_\_\_\_\_ and \_\_\_\_\_ as Sureties, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ did enter into a bail bond payable to the State of Texas in the penal sum of \$ \_\_\_\_\_; conditioned that Defendant should well and truly make personal appearance before the honorable Justice Court, Precinct \_\_\_\_\_ Place \_\_\_\_\_ County, Texas, at the courthouse of said county, in \_\_\_\_\_, Texas, instanter OR [OPTIONAL: on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ o'clock a.m. / p.m.] there to remain from day to day and term to term of said court until discharged by due course of law to answer the State of Texas upon a charge by complaint filed therein accusing Defendant of the offense of \_\_\_\_\_; wherefore, all premises being considered by the court that the State is entitled to a forfeiture of Defendant's bail; now, therefore, it is

ORDERED by the court that the State of Texas do have and recover of and from \_\_\_\_\_, as Principal, the sum of \$ \_\_\_\_\_ and in like manner that the State of Texas do have and recover of and from \_\_\_\_\_, and \_\_\_\_\_ as Sureties, jointly and severally, the sum of \$ \_\_\_\_\_, and that this judgment will be made final unless good cause be shown why Defendant did not appear; therefore, it is

ORDERED that a copier shall be issued for the rearrest of \_\_\_\_\_, Defendant according to Art. 23.05, Texas Code of Criminal Procedure. Upon the arrest being made, Defendant shall pay a bond in the amount of \$ \_\_\_\_\_ to be deposited with this court.

ISSUED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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# DOCKETING THE CASE

## CCP 22.10

- When a forfeiture has been declared upon a bond, the court or clerk shall docket the case on the **scire facias** docket or on the **civil docket**
  - “Scire facias” means “to be made known” so this just refers to a show cause proceeding; the defendant must “show cause” why the judgment nisi should not be made final.
- The proceedings are governed by the same rules as other civil suits



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# ISSUE A CAPIAS

## Step 4:

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## ISSUE A CAPIAS CCP 23.05

- “If forfeiture of bail is declared by a court...a capias shall be immediately issued for the arrest of the defendant.”
- The court may require the defendant to post a cash bond in order to be released from custody following an arrest based on a capias issued as the result of a bond forfeiture

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## ISSUANCE OF CITATION

## Step 5:

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# ISSUANCE OF CITATION

## CCP 22.04

- The citation should be issued just as it would in any civil case
- Shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final
- Attached to the citation should be:
  - A copy of the judgment of forfeiture entered by the court
  - A copy of the forfeited bond
  - A copy of any power of attorney (originally attached to the forfeited bond)



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# SERVICE OF CITATION

## Step 6:

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- The surety is entitled to service (can be waived)
- A surety who is an individual shall be served at the address shown on the face of the bond or at their last known address
- A surety that is a corporation or other entity shall be served through the attorney designated for service of process designated under Chapter 804 of the Insurance Code

## SERVICE OF CITATION CCP 22.03

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## SERVICE OF CITATION CCP 22.05

- Shall be served on parties as in a civil case
  - Time to serve
  - Manner of service
  - Officer to execute a return

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**SERVICE OF  
CITATION  
CCP 22.035**

- If a defendant posted a cash bond, they shall be served with citation at the address on the face of the bond or their last known address

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The principal shall be served if:

The bond forfeited was a cash bond; or  
The defendant "has furnished his address on the bond."



Service of citation is by mail



CCP states that it is otherwise not necessary, but **BEST PRACTICE** is to always serve both the surety and the principal

**SERVICE OF  
CITATION  
CCP 22.05**

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# **FYI**

**SERVICE OF  
CITATION  
CCP 22.06 & 22.08**

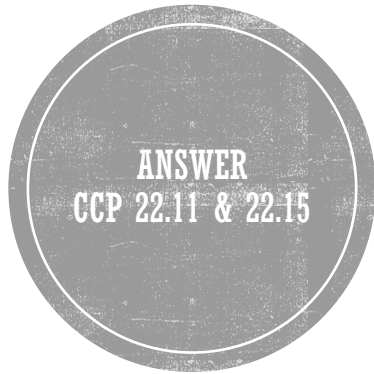
- The prosecutor can request a citation by publication in writing if surety cannot be found
  - Cost is paid by the county
- Can serve someone out-of-state by “any person competent to make oath of the fact”
  - Affidavit of return is still necessary

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# **ANSWER**

## **Step 7:**

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- The surety in a bond forfeiture proceeding may answer, “within the time limited for answering in other civil actions.”
  - Justice Court – 14 days following service of citation
- When the surety has been duly cited and fails to answer and the principal also fails to answer, the court shall enter a default judgment

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**TRIAL**

**Step 8:**

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## IS THE DEFENDANT LIABLE?

- The Surety claims the principal did not appear in court due to “car trouble.”
- Is the defendant liable?
- What kind of information would you want to know?

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- The following are defenses to bail forfeiture cases:
  - The bond was invalid/illegal;
  - The principal did not appear due to death;
  - Sickness or “uncontrollable circumstance” prevented the principal’s appearance;
  - No complaint or citation was presented before the forfeiture; or
  - The principal was incarcerated at the time of forfeiture

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# JURY TRIAL?

A surety may request a jury trial, and it would be made in the same manner as other civil trials.

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## TRIAL CCP 22.125

- After a judicial declaration of forfeiture is entered, the court may proceed with trial
- The court may:
  - Exonerate the defendant and his sureties
  - Remit the amount of the forfeiture
  - Set aside the forfeiture only as expressly provided in this chapter
  - Approve any proposed settlement agreed to by the state and the defendant or defendant's sureties

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# REMITTING THE BOND AFTER FORFEITURE

## CCP 22.16

- After forfeiture but prior to final judgment
- Court **SHALL** remit if:
  - Principal released on new bail or the underlying case the bond was given on is dismissed
  - Surety files a written motion seeking bond amount back
- Court **MAY** remit all or part of the bond amount if:
  - Good cause shown



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# REMITTING THE BOND AFTER FORFEITURE

## CCP 22.16

- Deducted from amount remitted:
  - Costs of court
  - Any reasonable and necessary costs to the court for the return of the principal
  - The interest accrued on the bond amount
    - Interest accrues on the bond amount from the date of forfeiture in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases



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## Step 9:

# FINAL JUDGMENT

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## FINAL JUDGMENT CCP 22.14

- If the defendant(s) are exonerated (have a valid defense) by the evidence presented at trial, the justice court should issue a final judgment on behalf of the defendant(s).
- If the defendant(s) are not exonerated (do not have a valid defense) by the evidence presented at trial, the court should issue a final judgment on behalf of the state in the amount of the bond forfeited.

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## Step 10:

# POST-JUDGMENT REMEDIES

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## POST-JUDGMENT REMEDIES CCP 22.14

- If the defendant fails to pay the amount owed, a prosecutor representing the state may request a writ of execution
- “Separate executions shall issue against each party (principal and surety) for the amount adjudged against him.”
- The costs shall be equally divided between the sureties, if there is more than one.



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- Final judgment for bail forfeiture can be appealed
- The surety, as the party aggrieved by judgment of bail bond forfeiture is the “defendant” and can appeal

*City of Dallas v. Smith*, 716 S.W.2d 114 (1986)

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## **BILL OF REVIEW CCP 22.17**

- Two (2) years after final judgment
- Surety may file a “special bill of review”
- May include a request that the final judgment be reformed and all or part of the bond amount be remitted to the surety (excluding costs of court, any reasonable costs to the county of the return of the principal, and the interest accrued on the bond amount from the date of forfeiture).
- The court in its discretion may grant or deny the bill in whole or in part



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