

# **DEFAULT**

**In Family Court Cases**

**How to Get a (default) Court Order  
When the Other Party Has Not Filed a  
Response**

**FORMS AND INSTRUCTIONS**

## SELF-SERVICE CENTER

# HOW TO GET A DEFAULT COURT ORDER IN FAMILY COURT CASES

## CHECKLIST

*You may use this packet if . . .*

- ✓ You have filed a summons and petition for one of the following:
  - Divorce
  - Legal Separation
  - Annulment
  - To Establish Paternity
  - To Establish a first court order for Legal Decision Making authority (custody) and/or Parenting Time and/or Support **AND**
- ✓ The other party was served with the court papers;
- ✓ Proof of service has been filed with the Clerk of the Court, **AND**
- ✓ The other party has not filed a written response or answer within the time frame set by law. (Check the court file to be sure this is true.), **AND**
- ✓ You want to proceed to get a (default) court order.

**READ ME:** Consulting a lawyer before filing documents with the court may help prevent unexpected results. A list of lawyers you may hire to advise you on handling your own case or to perform specific tasks, as well as a list of court-approved mediators can be found on the Self-Service Center website.

**PROCEDURES: WHEN AND HOW TO FILE AN APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES WITH OR WITHOUT CHILDREN**

**WHEN TO FILE THE APPLICATION FOR DEFAULT:**

- after the other party has been served with the court papers, AND
- the appropriate response period has passed (see Default Timetable below), AND
- the other party has not filed a response or answer with the court.

**STEP 1: COUNT.** Look at the **Default Timetable** below to find the method of service you used and the number of calendar days to count before you can apply for a default hearing or order.

- Begin counting the day after the other party was served with the Petition.
- Include weekends and holidays until you reach the number of days listed.
- If the last day for the other party to respond falls on a Saturday, Sunday, or legal holiday, do NOT count that day.

**DEFAULT TIMETABLE**

<b><u>SERVICE MADE IN ARIZONA</u></b>	<b><u>COUNT</u></b>	<b><u>EVENT</u></b>
Acceptance of Service	20 Days	after the other party signs the “ <i>Acceptance of Service</i> ”
Delivery with Signature Confirmation*	20 Days	after other party signs delivery confirmation*
Process Server	20 Days	after other party receives papers from a process server
Service by Sheriff	20 Days	after other party receives papers from Sheriff
Publication	50 Days	after the 1st publication in newspaper

**SERVICE MADE OUT OF STATE**

Acceptance of Service out of State	30 Days	after the other party signs the “ <i>Acceptance of Service</i> ”
Process Server out of State	30 Days	after other party receives papers from a process server
Delivery with Signature Confirmation*	30 Days	after other party signs delivery confirmation*
Service by Sheriff	30 Days	after other party receives papers from Sheriff
Certified Mail out of State	30 Days	after other party signs a green return receipt card
Publication	60 Days	after 1st publication in newspaper

*\* available for Family Court matters only*

- STEP 2:**     **WAIT.** Wait until the day after the number of days indicated in the Default Timetable above. If the other party did not file an *Answer/Response* with the Court you may complete, file and mail a copy of the Application and Affidavit for Default as instructed in Steps 3 and 4 below. You must take this action for your case to proceed.
- STEP 3:**     **SIGN AND COPY:** Sign and date the “*Application and Affidavit for Default.*” Do NOT sign and date the “*Application and Affidavit for Default*” before the amount of time shown in the Default Timetable has passed.
- Make two copies of your signed and dated “*Application and Affidavit for Default.*”
- STEP 4:**     **FILE:** File the original Application and Affidavit for Default with the Clerk of the Court.
- Hand the original & both copies of the “*Application and Affidavit for Default*” to the Clerk at the filing counter. The Clerk will keep the original, date-stamp both sets of copies and return the copies to you. Make sure both copies are stamped.
- STEP 5:**     **MAIL:** Mail one of the date-stamped copies of the “*Application and Affidavit for Default*” to the other party on the same day you file the papers with the Clerk of the Court. Keep the other copy for your records. (The “*Application and Affidavit for Default*” must be mailed, hand delivery is not acceptable.)
- STEP 6:**     **COUNT 10 COURT BUSINESS DAYS.** Starting from THE DAY AFTER the “*Application and Affidavit for Default*” was filed, count 10 court business days before proceeding to STEP 7.
- STEP 7:**     **FILL OUT THE “DEFAULT SCREENING CHECKLIST.”** If the *Default Screening Checklist* indicates you met all requirements, proceed to STEP 8.
- STEP 8:**     **SCHEDULE YOUR DEFAULT HEARING BY CALLING THE COURT.** Be sure to have your “*Default Screening Checklist*” with you when you schedule your hearing.
- STEP 9:**     **PREPARE THE PAPERWORK YOU ARE REQUIRED TO BRING TO THE COURT HEARING:** A complete list of documents you are required to bring to your default hearing is available on page 2 of the “*Default Screening Checklist.*”
- STEP 10:**    **GO TO YOUR HEARING AT THE SCHEDULED DATE AND TIME.**

**DEFAULT HEARING: Do's and Don'ts**

**DO**

- ✓Be on Time (if you are late, your hearing will be rescheduled to another day)
- ✓Expect to be in the Courthouse up to one hour or longer (plan accordingly)
- ✓Dress appropriately (no caps or hats in the Courtroom)
- ✓Bring required documents (if you do not bring the required documents, your hearing will be rescheduled to another day)

**Don't**

- ✓Do **not** bring children (if you bring children, your hearing will be rescheduled to another day)
- ✓Do **not** bring food or drinks in the courtroom
- ✓Do **not** chew gum in the courtroom

**DEFAULT SCREENING CHECKLIST**  
(DO NOT FILE THIS FORM)

1. **Case Number:** \_\_\_\_\_
2. **Case Type:**     Dissolution/Divorce                       Legal Separation                       Annulment  
                                  Paternity     Grandparents Visitation                       Other
3. **Does your case involve children?**     Yes                       No  
*If yes, answer A, B and C.*
- A. What type of legal decision-making authority (custody) is requested in the petition?     Sole                       Joint/Shared
- B. Have you filed your Parent Information/Education Program Certificate?     Yes                       No
- C. Has the other party filed their Parent Information/Education Program Certificate?     Yes                       No                       Not Sure
4. **Do you need an Interpreter?**     Yes                       No  
If Yes, what language and dialect? \_\_\_\_\_

**5. For Divorce, Legal Separation and Annulment matters only:**  
Is spousal maintenance (alimony) being requested?     Yes                       No

6. **Did at least 10 Court business days pass since you filed the Application and Affidavit for Default?** (if you answer no, you must wait until the time has passed before scheduling your hearing)     Yes                       No

7. **Type of Service:**

Acceptance of Service  
Date Acceptance was signed: \_\_\_\_\_  
 in state                       out of state

Private Process Server/Sheriff  
Date documents were served: \_\_\_\_\_  
 in state                       out of state

US mail or commercial delivery service  
Date confirmation was signed: \_\_\_\_\_  
 in state                       out of state

Publication  
First date of publication: \_\_\_\_\_

8. **Date Application and Affidavit of Default was:**    Filed: \_\_\_\_\_ Mailed: \_\_\_\_\_
9. **Is the other party an active member of the United States Military?** *If yes, you will need to bring a signed and notarized "Service Members Civil Relief Act Waiver" to your hearing.*     Yes                       No

**Call the Court to Schedule Your Hearing**  
**8 a.m. to 5 p.m., Monday – Friday**

✓ Complete the "Default Screening Checklist" before you call  
✓ Write down your court date and hearing time  
✓ You will not receive any other notice of your court date and hearing time

**MY HEARING IS SET FOR THE FOLLOWING DATE AND TIME:**

## WHAT TO BRING TO YOUR DEFAULT HEARING

### DISSOLUTION/LEGAL SEPARATION/ANNULMENT

- Completed Decree of Dissolution, Legal Separation or Order of Annulment and two (2) copies.
- Completed and *notarized* **Service Members Civil Relief Act Waiver** (if applicable).
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

If your case involves minor children you also need:

- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support or Paternity.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc. – **ALSO NEEDED FOR SPOUSAL MAINTENANCE REQUESTS**

### PATERNITY

- Completed Order of Paternity and two (2) copies.
- Completed and *notarized* **Service Members Civil Relief Act Waiver** (if applicable).
- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc.
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

### ESTABLISHMENT OF LEGAL DECISION MAKING (CUSTODY), PARENTING TIME AND SUPPORT

- Completed final Court Order and two (2) copies.
- Completed and *notarized* **Service Members Civil Relief Act waiver** (if applicable).
- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support or Paternity.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc.
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

### GRANDPARENT VISITATION

- Completed Order for Grandparent Visitation and two (2) copies.
- Completed and *notarized* **Service Members Civil Relief Act waiver** (if applicable).
- Copy of any prior Paternity or Child Support Order that establishes your relationship to the child.
- 9X12 envelopes addressed to the other parties involved in the case with four (4) standard current postage stamps.

**Failure to bring the required documents to your hearing will result in your hearing being rescheduled to another day.**

Person Filing: \_\_\_\_\_  
Address (if not protected): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
ATLAS Number: \_\_\_\_\_  
Representing  Self or  Lawyer for \_\_\_\_\_  
Lawyer's Bar Number: \_\_\_\_\_



**SUPERIOR COURT OF ARIZONA  
IN GRAHAM COUNTY**

\_\_\_\_\_  
**Name of Petitioner**

**Case No.** \_\_\_\_\_

**APPLICATION AND AFFIDAVIT FOR  
DEFAULT IN FAMILY COURT CASES**

\_\_\_\_\_  
**Name of Respondent**

**NOTICE: THIS IS AN IMPORTANT COURT DOCUMENT.**  
When this document is properly completed and filed, Default has been applied for and entered. The Default will be effective ten (10) working days after the filing of this completed document, unless the Respondent files an Answer/Response or otherwise defends before the ten working days period expires.

1. I am the Petitioner in this court case. I understand and make the following statements under oath or by affirmation. I give notice that I am requesting entry of default against the other party, the Respondent, because the Respondent has not filed an Answer/Response.
  
2. Service of the court papers on Respondent has been accomplished as follows: (Check ONLY one box.)  
  
 The Respondent has signed an "Acceptance of Service" and has accepted service of the "Summons," Complaint or Petition and other papers. The Respondent has not filed an "Answer/Response", or otherwise appeared or defended in this court case. Default may be entered.  
  
OR  
 I have served the Respondent according to law with the "Summons," Complaint or Petition and other papers. Respondent has not appeared, answered, responded, or otherwise

defended in the time required by law.

3. The Respondent is either not in the active military service of the United States or has otherwise waived his/her rights under the Service Members Civil Relief Act (formerly “Soldiers and Sailor’s Civil Relief Act”).
4. By completing the *Certificate of Mailing* (on the next page), I certify to the Court that on the date of filing this document I will mail a copy of this Application and Affidavit to the Respondent at his or her current or last known address *even if that is my own address* and/or I have served the other party by publication, and if applicable, to his or her attorney as notice that I have applied for default.
5. I UNDERSTAND THAT I WILL NOT QUALIFY FOR DEFAULT if:
  - I fail to mail this document, and/or
  - I fail to complete the Certificate of Mailing below.

#### **CERTIFICATE OF MAILING**

As required by Arizona Rules of Court (A.R.C.P. 55(a) and A.R.F.L.P. 44(A)), a copy of this *Application and Affidavit for Default* will be mailed on the day of filing, postage-prepaid to the Respondent\* at his/her: [ ] current address OR [ ] last known address (if current address is unknown) of:

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(street and number, including the apartment number, city and state, and zip code)

\* Mailing to current or last known address must be done even if last known address is *your* address and/or you *know* the Respondent is no longer at the last known address.

[ ] I believe the Respondent is represented by an attorney and have *also* mailed a copy of this *Application and Affidavit for Default* to that attorney.

**DECLARATION UNDER PENALTY OF PERJURY**

**I state to the court that the contents of this document are true and correct under penalty of perjury.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

**WARNING**

1. If the Respondent fails to file a responsive pleading or otherwise defend in this action within 10 working days of the filing of this Application, a default judgment will be entered.
2. *The Petitioner must still attend the default hearing at the court UNLESS you qualify, apply for, and complete the process to obtain a default decree without a hearing pursuant to A.R.F.L.P 44(B)(1).*
3. A DEFAULT HEARING WILL NOT BE SCHEDULED IF THIS APPLICATION AND AFFIDAVIT FOR DEFAULT IS MISSING INFORMATION OR NOT COMPLETED CORRECTLY.

Person Filing: \_\_\_\_\_  
Address (if not protected): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Representing [ ] Self or [ ] Lawyer for \_\_\_\_\_  
Lawyer's Bar Number: \_\_\_\_\_

FOR CLERK'S USE ONLY

**SUPERIOR COURT OF ARIZONA  
IN GRAHAM COUNTY**

\_\_\_\_\_  
**Petitioner**

**Case Number:** \_\_\_\_\_

\_\_\_\_\_  
**Respondent**

**Default Information for Spousal  
Maintenance**

*A.R.S. § 25-319  
A.R.F.L.P. Rule 97-Form 6*

*(To be included with an Application for Default if spousal maintenance is requested with your petition and you choose to proceed by motion without a hearing.)*

To qualify for spousal maintenance under A.R.S. § 25-319, you must provide the following information. (Check all boxes that apply.)

- I lack sufficient property, including property I will be receiving in the dissolution, to provide for my reasonable needs.
- I am unable to be self-sufficient through appropriate employment.
- I am unable to earn enough money to support myself.
- I am the custodian of a child whose age or condition is such that I should not be required to seek employment outside the home.
- I contributed to the educational opportunities of my spouse.
- My marriage has lasted \_\_\_\_\_ years.
- I am \_\_\_\_\_ years old.
- There have been excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
- There are actual damages and judgments from conduct resulting in criminal conviction of either you or your spouse in which the other spouse or child was the victim.

If the court finds you qualify for spousal maintenance, it will need the following information in determining the appropriate amount and duration. To assist the court, please answer the following:

1. If you have been employed during the marriage, state how and when you have been employed.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. Do you have a physical or emotional condition that limits your ability to work? Describe:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Describe any contributions you have made to your spouse's earning ability or how you reduced your income or career opportunities to benefit your spouse.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. If your request for spousal maintenance is granted, will you and the other party be able to contribute to the educational expenses of your children? Describe.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Why are the financial resources available to you, including property awarded in the decree, not adequate to meet your needs?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Do you think additional education or training would enable you to find employment sufficient to meet your needs?  Yes  No

Is this education or training readily available? [ ] Yes [ ] No

How long do you think it will take to complete this education or training? \_\_\_\_\_

7. How much will it cost you per month to obtain health insurance after the divorce? \$ \_\_\_\_\_

How much will the other party save per month if the insurance changes from a family plan to employee only health insurance? \$ \_\_\_\_\_

8. What is your spouse's present occupation and monthly income?

Occupation: \_\_\_\_\_

Monthly Income: \$ \_\_\_\_\_

If you do not have documentation of your spouse's income, describe how you came to your estimate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Complete the financial statement.

**NECESSARY MONTHLY EXPENSES** (For yourself and minor children who reside with you)

House (mortgage/rent)	\$
Repair/Upkeep	\$
Utilities	
Electricity	\$
Gas	\$
Water & Sewer	\$
Phone	\$
Garbage	\$
Food & Household Supplies	\$
Work/School Lunch	\$
Medical, dental, drugs, supplies	\$
Insurance not deducted from pay	\$
Clothing	\$
Laundry/Dry Cleaning	\$
Childcare/Sitter	\$
Support paid for spouse and/or minor children of prior relationship	\$
Car Repair/Maintenance	\$
Car Insurance	\$
Gas/Oil	\$
Vehicle License	\$
Public Transportation	\$
Other _____	\$
Other _____	\$
Other _____	\$
<b>Total Monthly Expenses</b>	\$

**MONTHLY PAYMENTS/DEBTS**

<b>Creditor</b>	<b>Balance</b>	<b>Payment</b>
	\$	\$
	\$	\$
	\$	\$
<b>Total Monthly Payments</b>	\$	\$
<b>Total Expenses, Payments</b>		\$

**INCOME**

**GROSS PAYCHECK**

[ ] weekly [ ] twice mo.\* \$

[ ] monthly [ ] every 2 weeks

\*For example, the 1st and 15th

Less: Federal Taxes \$

Less: State Taxes \$

SS & Medicare \$

Insurance \$

Savings, etc. \$

Other \_\_\_\_\_ \$

Other \_\_\_\_\_ \$

Other \_\_\_\_\_ \$

**Total Deductions** \$

**Net Paycheck** \$

**TOTAL GROSS MONTHLY INCOME**

\$

**Case Number:** \_\_\_\_\_

9. I request \$ \_\_\_\_\_ per month for spousal maintenance for \_\_\_\_\_ years.
10. Can the other party's needs be met if you receive this requested spousal maintenance?  
[ ] Yes [ ] No

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature