DEFAULT
In Civil Cases

3

How to Apply for Default When the Other Party Has Not Filed an Answer (Response)

FORMS AND INSTRUCTIONS

04/2020

CIVIL DEFAULT

CHECKLIST

You may use these forms if . . .

✔ You filed a Summons and Complaint in the Yuma County Superior Court, **and**

✔ You served Defendant with the court papers, **and**

✔ Proof of service on Defendant has been filed with the Clerk of Superior Court, **and**

✔ The Defendant failed to file an answer, response, pleading, or otherwise defend within the time allowed by the Arizona Rules of Civil Procedure, **and**

✔ You want to get a Default Judgment against the Defendant.

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 is presented on the Law Library Resource Center website.

How to Apply for Default in Civil Cases

Part 3: Default

This packet contains court forms and instructions listed below. Items italicized in **BOLD** are **forms** you will need to file with the Court. Non-bold items are instructions or procedures. Do not copy or file those pages! Always use **BLACK INK**.

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Procedures: When and how to file an Application and Affidavit for Default in civil cases

When to file the application and affidavit for default:

- After the defendant was served with the Summons and Complaint papers, and
- Time: The appropriate response time period has passed (see Default Timetable below), and
- No Response: The defendant has failed to defend, or file an Answer or response with the court.

  If more than one Defendant in your case has not filed an Answer after being served with the Summons and Complaint, you will need to file an Application and Affidavit for default for each Defendant.

Step 1: Count. Look at the Default Timetable below to see the method of service you used and the number of calendar days to count before you can apply for default.
- Begin counting on a calendar starting from the day after the other party was served the Complaint.
- Include weekends and holidays when counting, 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.
- Ex. Plaintiff served Defendant by Process Server in the State of Arizona on October 1. Defendant has until October 22 to file an Answer, since October 21 is a Sunday. If Defendant hasn't filed an Answer by end of the day on October 22, Plaintiff can file an Application and Affidavit for Default on October 23.

Default Timetable

Service Made in Arizona	Count	Event
Acceptance of Service	20 Days	after the other party signs the *"Acceptance of Service"*
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
Waiver of Service	60 Days	after the date the request for waiver was sent to Defendant
Publication	50 Days	after the date of the 1st publication

Service Made Out of State		
Acceptance of Service out of State	30 Days	after the other party signs the *"Acceptance of Service"*
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
Waiver of Service	60 Days	after the date the request for waiver was sent to Defendant
Publication out of State	60 Days	after the date of the 1st publication

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Step 2:   Wait. Wait until the day after the number of days shown in the Default Timetable above. If the other party did not file an *Answer/Response* or did not appear in Court to defend this case, you may complete the Application and Affidavit for Default and follow the Steps below. Do not sign and date the "Application and Affidavit for Default" before the amount of time shown in the Default Timetable has passed.

Step 3:   Complete the *"Application and Affidavit for Default."*
Mark the boxes, and write in the spaces to provide the required information.
Note that the *"Affidavit"* is on the last page of the "*Application."*
Wait to sign it in until you are in front of the clerk or a notary.

Step 4:   Make two copies of: (1) Your original signed and dated *"Application and Affidavit for Default;"* and (2) your proof of service establishing the date and manner in which you served the party claimed to be in default.

Step 5:   File with Clerk of Superior Court: Take your originals and 2 copies (3 Total) of both the *"Application and Affidavit for Default"* and your proof of service to the Clerk of Superior Court for filing. The Clerk of Superior Court is located at the following addresses:

- 250 W. 2nd Street, Yuma, Arizona 85364

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 2 copies to you. Make sure both copies are stamped.

Step 6:   Mail: Mail one of the date-stamped copies of the *"Application and Affidavit for Default"* to the Defendant or the Defendant's attorney on the same day you file the papers with the Clerk of Superior Court. Keep the other copy for your records.

Step 7:   Count 10 court business days. Starting from the day after you filed and mailed your "*Application and Affidavit for Default,"* count 10 court business days (not including weekends or court holidays).

When 10 court business days have passed, you can ask the Court to enter a Default Judgment against the Defendant. Please note, the Law Library Resource Center does not currently have a "Default Judgment" packet.

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

Lawyer's Bar Number: _____

Representing ☐ **Self, without a Lawyer or** ☐ **Attorney for** ☐ **Petitioner OR** ☐ **Respondent**

SUPERIOR COURT OF ARIZONA
IN YUMA COUNTY

_____

Name of Plaintiff

Case Number: _____

APPLICATION and AFFIDAVIT
For DEFAULT
(Civil Cases Only)

_____

Name of Defendant

NOTICE: This is an important Court Document. Properly complete and file this Application and Affidavit. Filing of this Application constitutes "Entry" of Default. The Default is effective ten **(10)** working days after you file this completed Application, unless the Defendant files an Answer/Response or otherwise defends before the ten working day period expires.

APPLICATION FACTS:

1.   IDENTIFICATION of PARTIES:

☐   **I am the Plaintiff** in this court case. I understand and make the following statements under oath or by affirmation. I give notice that I am applying for default against the other party, the Defendant, because the Defendant has **not** filed an Answer/Response.

☐   I am seeking a default against, Defendant, _____, in this case.   (name of defendant)

(Check all that apply)

☐ Defendant has not filed an Answer/Response, and has failed to appear, or defend within the time allowed by A.R.C.P Rule 55.

☐ Defendant is 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").

☐ Defendant is not a minor and is not incompetent.

☐ Defendant's current mailing address is: _____

_____

☐ I do not know Defendant's current address, or the Defendant's whereabouts.

2. **IDENTIFICATION of PARTIES' ATTORNEYS:**
(Check One)

☐ I have no attorney.

☐ I am represented by an attorney whose name and address is:

_____

(Check One)

☐ Defendant is not represented by an attorney that I know of.

☐ Defendant is represented by an attorney whose name and address is:

_____

☐ I do not know the identity and address of the attorney known to represent the Defendant in this action or a related action.

3. **PROOF OF SERVICE:** I served Defendant as follows:
(Check One)

☐ Defendant signed an *"Acceptance of Service*" form, and accepted service of the "*Summons,"* "*Complaint,"* and other papers.

☐ I attached the **"*Acceptance of Service"*** form to this Application as proof of service.

☐ Defendant signed a "***Waiver of Service***" form, and waived service of the "***Summons,***" "***Complaint,***" and other papers.

☐ I attached the **"*Waiver of Service"*** form to this Application as proof of service.

☐ I served the Defendant by process server, alternative service, or by publication, with the ***"Summons," "Complaint,"*** and other papers.

☐ I attached the proof of service to this Application.

4. NOTICE:
(Check all that apply)

☐ **To the Defendant**

☐ I know the Defendant's address, and mailed a copy of the "***Application and Affidavit for Default***" to his/her last known address giving NOTICE of default; even if the Defendant is represented by an attorney who has entered an appearance in this action.

☐ I have not mailed a copy of this "***Application and Affidavit"*** to the Defendant because I do not know Defendant's address or whereabouts, and I do not believe the Defendant is represented by an attorney. (You can only check this box, if you served the Defendant by publication.)

☐ **To the Attorney of the Defendant:** I mailed a copy of the "***Application and Affidavit"*** to Defendant's attorney, giving NOTICE of Default whether or not the attorney has formally appeared in this action.

☐ **To Other Parties (If applicable)**: I mailed a copy of the "***Application and Affidavit"*** to all other parties who have appeared in this action, which gives the parties NOTICE of default.

☐ **Time of Notice:** I mailed a copy of this "***Application and Affidavit"*** to the Defendant on the date that I filed this Application, or as soon as practicable after its filing, thus giving NOTICE. Please see the Affidavit and Certificate of Mailing or Delivery at the bottom of this form.

APPLICATION REQUEST:

1. I file this Application and Affidavit to give notice to all parties in this action, and the Court, that I am beginning default proceedings against the named Defendant, who has failed to answer, plead, or otherwise defend this action.

2. With this document, I apply for Entry of Default. I understand my filing of this document at the Office of the Clerk of the Superior Court constitutes "Entry of Default."

AFFIDAVIT:

I, _____, the Plaintiff in this action, hereby swear or affirm that:

☐ _____ is the Defendant in this action.

☐ I served the Summons, Complaint, and other court documents to the above-named Defendant according to law.

☐ Defendant is the party against whom I seek a judgment for affirmative relief.

☐ Defendant has failed to answer, plead or otherwise defend in this action.

☐ I filed this Application and Affidavit for Default on _____ (date) which constitutes the official Entry of Default.

UNDER OATH OR BY AFFIRMATION

I swear or affirm under penalty of perjury that the contents of this document are true and correct to the best of my knowledge and belief.

_____
Date

_____
Petitioner's Signature

_____
Printed Name

STATE OF _____

COUNTY OF _____

Subscribed and sworn to or affirmed before me this: _____ by
(date)

_____.

(notary seal)

_____
Deputy Clerk or Notary Public

CERTIFICATE OF MAILING: On (date) _____20_____, a copy of this
Application and Affidavit for Default was mailed, postage-prepaid, to the Defendant at:

☐ current address (as listed below),

_____
(address, city, state)

OR *(if current address is unknown)*

☐ his/her last known address, as listed below:

_____
(address, city, state)

☐ IF I know the Defendant, who I claim to be in default, is represented by an attorney, I have ***also*** mailed
a copy of this Application and Affidavit to that attorney.

_____
Name of Attorney

_____
(address, city, state)