

DEFAULT

In Family Court Cases

3

**How to Apply for Default
When the Other Party Has Not Filed a
Response**

FORMS AND INSTRUCTIONS

Law Library Resource Center

HOW TO APPLY FOR A DEFAULT IN FAMILY 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 (Legal custody) and/or Parenting Time and/or Support
 - To establish Grandparent Visitation **AND**
- ✓ The other party was served with the court papers **OR** you served the other party by publication;
- ✓ Proof of service has been filed with the Clerk of Superior 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 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 Law Library Resource Center website.

Law Library Resource Center

PART 3: DEFAULT

How to apply for a default in family cases

This packet contains court forms and instructions to file default in how to get a default decree in family cases. Items in **BOLD** are forms that you will need to file with the Court. Non-bold items are instructions or procedures. Do not copy or file those pages!

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Instructions: How to Complete the “*Application and Affidavit for Default*” in Family Cases

1. About the “*Application and Affidavit for Default*”

Your application:

- a. *Informs* the Court that the other party:
 - has been served with the court papers, and
 - has not responded or answered the court papers within the proper time.
- b. *Asks* the court to “default” the other party.
- c. The Affidavit (part of the application)
 - Attests that all the information in your application and attachments is true to the best of your belief.

Note: you must attach the following papers to complete your application:

- a. a copy of the proof or acceptance of service. This establishes the date and manner of service on the party in default; and

2. When to file the “*Application and Affidavit for Default*”

- after the other party has been served with the court papers, and
- the time to respond has passed (see Default Timetable below), and
- the other party has not filed a response or answer with the court.

3. How to determine when to apply and file for default

- Step 1: Count. Look at the Default Timetable below to find the type of service you used and the number of calendar days to count before you can apply for a default hearing or default order.
- Begin counting the day after the other party was served with the Summons and Petition (Amended Petition, if applicable).
 - Include weekends and Court 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 Court holiday, do not count that day.

STEP 2: WAIT. Wait until the day after the number of days listed in the Default Timetable below.

- If the other party did not file an Answer/Response within the number of days listed in the table, you may complete an “*Application and Affidavit for Default*” as instructed below.
- You must take this action for your case to proceed.

DEFAULT TIMETABLE

<u>Service Made in Arizona</u>	<u>Count</u>	<u>Event</u>
Acceptance of Service	20 Days	after you file <i>"Acceptance of Service"</i> with the court
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 1 st publication in newspaper
<u>Service Made Out of State</u>		
Acceptance of Service out of State	30 Days	after you file <i>"Acceptance of Service"</i> with the court
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 1 st publication in newspaper

4. How to complete the *"Application and Affidavit for Default"*

Step 1: Gather the papers. You will need the following papers to complete the application:

- *"Application and Affidavit of Default"*
- A copy of your proof or acceptance of service which establishes the date and type of service on the other party.

Step 2: Complete the *"Application and Affidavit for Default."* Use black ink.

- Answer every question/section on the form. Do not leave any question blank.
- Place a copy of the proof or acceptance of service at the end of the *"Application and Affidavit."*
- Certificate of mailing: write in the last known address of the other party – even if you think the party no longer lives there. Sign the *"Application and Affidavit for Default"* in front of a Notary or Clerk of Superior Court when filing.

Step 3: Make copies

- Stack into one set - the original *"Application"*, copy of proof or acceptance of service
- Make two (2) copies of the set of papers. Note: If the defaulting party has an attorney, make one more copy, since you must mail an entire set to both the party and the attorney.

Now you are ready to file your application packet. Read the "Procedures" in this packet.

Procedures: How to file an “Application and Affidavit for Default” and schedule a default hearing

When to file the application for default:

- after the other party has been served with the court papers, and
- the time to respond has passed, and
- the other party has not filed a response or answer with the court, and
- you completed the “Application and Affidavit for Default” and other papers and made two photocopies of the papers.

Step 1: File the original “*Application and Affidavit for Default*,” and other required papers, plus at least two (2) copies with the Clerk of Superior Court at any of these locations:

- **YUMA COUNTY JUSTICE CENTER**

Clerk of Superior Court
250 W. 2nd Street
Yuma, Arizona 85364

Hand the original & copies of the “*Application and Affidavit for Default*” to the Clerk of Superior Court at the filing counter. The Clerk of Superior Court will keep the original, date-stamp the copies and return the copies to you. Make sure the copies are stamped. Note: If the defaulting party has an attorney, make one more copy since you must file and mail an entire set to *both the party and the attorney*.

Step 2: Mail one of the date-stamped copies of the “*Application and Affidavit for Default*” (and attachments) to the other party on the same day you file the papers with the Clerk of Superior Court. Keep the other copy for your records. (The “*Application and Affidavit for Default*” must be mailed, hand delivery is not acceptable.) Note: If the defaulting party has an attorney, make one more copy since you must mail an entire set to *both the party and the attorney*.

Step 3: Count 10 Court business days. Starting the day after the “*Application and Affidavit for Default*” was filed, count 10 court business days before proceeding to next step. (In this case do not count Saturdays, Sundays and Court holidays.)

Step 4: Fill out the “*Default Decree Checklist*” to determine if you are ready to schedule a hearing or submit your default decree. If the “*Default Decree Checklist*” indicates you met all requirements, you can proceed to the next step.

Step 5: If you are requesting a default hearing, schedule your default hearing by calling **(928) 817-4066 9AM-Noon ONLY ON THURSDAYS**.

You will need the information from the “*Default Screening Checklist*” with you when you schedule your hearing.

Prepare a default decree and go to your hearing. The default decree is a separate packet available online or at any Law Library Resource Center. See “Step 4 of 4: Default Decree.”

or

If you will not request a hearing and wish to submit your proposed default decree without a hearing proceed to the next packet in the series, see “Step 4 of 4: Default Decree.” This is a separate packet available online or at any Law Library Resource Center location.

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

ATLAS Number: _____

Lawyer's Bar Number: _____

For Clerk's Use Only

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

SUPERIOR COURT OF ARIZONA IN YUMA COUNTY

(Name of Petitioner / Party A)

Case No. _____

APPLICATION and AFFIDAVIT FOR ENTRY of DEFAULT IN FAMILY CASES

(Name of Respondent / Party B)

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**) court business days after the filing of this completed document, unless the Respondent files an Answer/Response or otherwise defends before the ten court business day period expires. In this case do not count Saturdays, Sundays and court holidays to calculate court business days.

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.

1. Name of other party against whom I seek this default:

_____ has failed to respond
within the time allowed by the Arizona Rules of Family Law Procedures, and (choose one)

☐ the last known mailing address for the Party in default is _____

_____; **OR**

☐ I do not know the whereabouts of the Party in default.

2. **The name of the attorney** known to represent the Party in default, either in this action or in a related matter, is

_____, (whether or not the attorney has formally appeared) **OR**

☐ I do not know the identity and address of any such attorney.

3. **Evidence of Service** (this must be true)

☐ I attached to this Application a copy of the **proof** or **acceptance** of service establishing the date and manner of service on the Party in default.

4. **Spousal Maintenance** (choose one)

☐ Does not apply.

☐ I attached a completed "Default Information for Spousal Maintenance" form to the end of this "*Application*," since I am asking for spousal maintenance **and** will proceed by motion without a hearing.

5. **SERVICE MEMBERS CIVIL RELIEF ACT:** The Party in default is either: (choose one)

☐ not in the active military service of the United States **OR**

☐ has waived his/her rights under the Service Members Civil Relief Act (formerly "Soldiers and Sailor's Civil Relief Act").

6. **CERTIFICATE of MAILING:**

As required by Arizona Rules of Family Law Procedures Rule 44(a):

- a. Party in default: (must choose one)

☐ I will mail a copy of this "*Application and affidavit for Default*" and attachments to the Party in default, at the last known mailing address listed below, on the day I file this "*Application*" with the Clerk of Superior Court – even if the Party in default is represented by an attorney:

(Mailing address, city, state, and zip code)

OR

☐ I do not know the whereabouts of the Party in default.

- b. Attorney for Party in default: (must choose one)

☐ I will mail a copy of this "*Application and affidavit for Default*" to the attorney of the Party in default, (whether or not that attorney has formally appeared in the action) on the day I file this "*Application*:"

(Mailing address, city, state, and zip code)

OR

☐ I do not know the identity and address of any such attorney.

c. Other parties who have appear in this case (must choose one)

☐ I will mail a copy of this "*Application and affidavit for Default*" to all other parties who have appeared in this action, on the day I file this Application at the Clerk of Superior Court or soon thereafter.

(Name and mailing address, city, state, and zip code)

OR

☐ No other parties have appeared in this action.

BY SIGNING BELOW, I swear or affirm that the information above is true and correct

Date

Signature

STATE OF _____

COUNTY OF _____

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

_____.

(Notary seal)

Deputy Clerk of Superior Court or Notary Public

WARNING

1. If the Party in default fails to file a responsive pleading or otherwise defend this action within **10 working days** after the filing of this Application, A DEFAULT JUDGMENT MAY BE ENTERED.
2. 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 et seq.1.
3. A DEFAULT HEARING WILL **NOT** BE SCHEDULED IF THIS APPLICATION AND AFFIDAVIT FOR ENTRY OF DEFAULT IS MISSING INFORMATION OR NOT COMPLETED CORRECTLY.

DEFAULT DECREE CHECKLIST

(To determine if you are ready for Step 4 – Default Decree)

(Do not file this form)

1. **Case Number:** _____
2. **Case Type:**
☐ Dissolution/Divorce ☐ Legal Separation ☐ Annulment
☐ Paternity ☐ Grandparent Visit ☐ Other
3. **Does your case involve children?**
A. Have you filed your Parent Information Program Certificate? ☐ Yes ☐ No
B. Have you completed a Child Support Worksheet? ☐ Yes ☐ No
4. **Do you need an Interpreter?**
If Yes, what language and dialect? _____
☐ Yes ☐ No
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 going to Step 4)
☐ Yes ☐ No
7. **Type of Service:**

☐ Acceptance of Service Date filed: _____ ☐ in state ☐ out of state	☐ Private Process Server/Sheriff Date documents served: _____ ☐ in state ☐ out of state
☐ US mail or delivery service Date signed: _____ ☐ in state ☐ out of state	☐ Publication First date of publication: _____ ☐ in state ☐ out of state
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

10. To schedule a hearing, call (928) 817-4066
9AM-NOON THURSDAYS ONLY

Court Date: _____ Court Time: _____

(Write down your court date and time. You will not receive any other notice of the date/time.)
Complete decree forms that are part of the
Step 4 default process

DO NOT BRING CHILDREN TO COURT

To proceed by motion and no hearing, complete the motion and all decree forms that are part of the **Step 4 default process**.