DEFAULT IN FAMILY COURT CASES

3

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

(Forms and Instructions)

051322

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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.

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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 Entry of Default in family cases

1. About the Application and Affidavit for Entry of 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. If you do not have copies of the documents that establish that service of process was completed, you may fill in section three of your Application. This establishes the date and manner of service on the party in default; and
   b. the Default Information for Spousal Maintenance form, if you are asking for spousal maintenance, and will proceed by motion without a hearing. (You may NOT seek an award of spousal maintenance in an Annulment action.)

2. When to file the Application and Affidavit for Entry of 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 Entry of Default as instructed below and then file it with the Clerk of Superior Court.
- You must take this action for your case to proceed.

DEFAULT TIMETABLE

Service Made in Arizona	Count	Event
Acceptance of Service	20 Days	after you file Acceptance of Service 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 1st publication in newspaper
Service Made Out of State		
Acceptance of Service out of State	30 Days	after you file Acceptance of Service 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 1st publication in newspaper

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4. How to complete the Application and Affidavit for Entry of Default

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

- Application and Affidavit of Entry of Default
- A copy of your proof or acceptance of service which establishes the date and type of service on the other party.
- Default Information for Spousal Maintenance form, if you are seeking spousal maintenance, and choose to proceed by motion without a hearing. (Optional).

Step 2: Complete the Application and Affidavit for Entry of Default. Use black ink.

- Answer every question/section on the form. Do not leave any question blank.
- If you are attaching a copy of your proof or acceptance of service, place it at the end of the Application and Affidavit for Entry of Default.
- If your proof or acceptance of service is in the court record and you are not attaching it to the Application and Affidavit for Entry of Default, state how and when the Party in default was served.

- 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 Entry of Default in front of a Notary or Clerk of Superior Court when filing.

Step 3:   Make copies.

- Stack into one set - the original Application and Affidavit for Entry of Default, copy of proof or acceptance of service (and if applicable), and the original Default Information for Spousal Maintenance form (if applicable).
- 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 the following location:

- 250 West Second Street, Yuma, AZ 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. <u>Make sure</u> 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 <u>the day after</u> the *"Application and Affidavit for Default"* was filed, count 10 <u>court business</u> 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 <u>requesting a default hearing</u>, schedule your default hearing by calling 928-817-4020. 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 <u>submit your proposed default decree without a hearing</u> 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:_____

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 (one of the following 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. OR
   ☐ I do not have a copy of the proof or acceptance of service but the proof or acceptance of service appears in the court record, and the Party in default was served by:

   ☐ Acceptance of Service ☐ Process Server

   ☐ Publication ☐ Signature Confirmation by Mail

   ☐ Other: _____

   Date of Service: _____.

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 Entry of 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)

☐ If an attorney has filed a notice of appearance with the court on behalf of the Party in default or I have been contacted by an attorney who claimed to be representing the Party in default, I will mail a copy of this Application and Affidavit for Entry of Default to the attorney of the Party in default 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 appeared in this case (must choose one)

☐ I will mail a copy of this Application and Affidavit for Entry of 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 _____

Subscribe 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 <u>10 working days</u> after the filing of this Application, a default judgment may be entered.

2. Petitioner must still participate in a default hearing to be set by the court (see the procedures document in this packet for instructions on getting a hearing). If Petitioner qualifies, they may complete the process to obtain a default decree without a hearing pursuant to Rule 44.1, A.R.F.L.P.

3. A default hearing will <u>not</u> be scheduled if this Application and Affidavit for Entry of Default is missing information or not completed correctly.