

OBTAINING A DEFAULT JUDGMENT OR DECREE

Packet #5

Separate forms from packet before filing.

SOUTHERN ARIZONA LEGAL AID, INC.

OBTAINING A DEFAULT JUDGMENT OR DECREE FORMS AND INSTRUCTIONS

USE AND DISCLAIMER

These forms shall not be used to engage in the unauthorized practice of law. Court cases can be very complicated, and even if you are representing yourself you should see a lawyer for legal advice as to how the law applies to you, and what is best in your particular situation. This might save you time, money, trips to the courthouse, and avoid serious mistakes. There are lawyers who will help you help yourself. This means that they will only charge you for giving you the help you need, and you can complete the court papers on your own or ask the lawyer for additional help with your papers.

There are professional mediators in the community who can help you with your problems. They help you solve your present problem, and anticipate future problems and how to solve them. Mediators work with both parties in a dispute to help resolve areas of disagreement or trouble.

HOW TO ASSEMBLE THESE DOCUMENTS

This packet contains court forms and instructions about obtaining a Default Judgment or Decree. Be sure the documents are in the following order. Look at the lower right-hand corner of the document for the document description. Documents that end with "info" are instructions and/or general information. Documents that end with "form" are court forms that MUST be completed and filed with the court.

Title	Form Name
Use and Disclaimer (1 page)	default-use and disclaimer.info
What happens after service of process? (2 pages)	default-general.info
Instructions – Step 1 – Count Down (2 pages)	default-instructions.info
Instructions for going to court for a default hearing (4 pages)	default-going to court.info
Application for default, affidavit of default and entry of default (3 pages)	default-application.form

**DEFAULT
GENERAL INFORMATION
WHAT HAPPENS AFTER SERVICE OF PROCESS?**

General Information

With each method of service, one or more documents must be filed with the Court which show that service has been made. This tells the Court that the other party has officially received notice of the case. In EVERY instance of service, the ORIGINAL SUMMONS is also filed with the Court. Do not attempt to "fake" service. It could result in the need to refile your Petition/Complaint or in your final Judgment or Decree being thrown out by the Court at a future date.

After service, if the other party files a written Response/Answer with the Court, then he/she should send you a copy. However, this does not always happen. You can check the Court file during Clerk's regular business hours to see if the other party has filed a Response/Answer.

A. If the other party has filed a Response/Answer, there are several things that you might consider doing:

1. **File a Motion to Set.** Once the other party has filed a Response/Answer, the case will not move forward unless one party or the other does something to make it move forward. Normally, one party files a Motion to Set and asks the Court to set a trial date. The Court will then set a trial date for some date in the future. This may be as far off as 4 to 6 months depending on the Court's schedule. Also, the other party can object to the trial date if he or she feels he or she cannot be ready by the scheduled trial date. The Motion to Set form is in the **Trial Preparation** packet.
2. **File a Petition for Temporary Orders.** Because the other party has filed a Response/Answer, there will be some delay in getting your Judgment or Decree. You may wish to ask the Court for Temporary Orders until the final Judgment or Decree is signed. Temporary Orders can be granted for a number of things. The most common are temporary orders for custody/parenting time/support of the children, spousal maintenance, exclusive use of the family residence and/or automobile, and attorney's fees. See **Temporary Orders** packet.
3. **Request Mediation.** In matters dealing with custody/parenting time/support of the children, the Conciliation Court can assist the parties in reaching some agreement through Mediation. To request Mediation, use the forms and instructions provided in the **Mediation** packet that is a part of this kit.

You can do any or all of these steps.

- B. If the other party has not filed a Response/Answer, you may be able to get your final Judgment or Decree by **Default**. Follow the procedures in this packet to get a Default Judgment or Decree.
- C. At times, instead of filing a Response/Answer, a party may file with the court motions such as Motions to Dismiss stating the Court does not have jurisdiction (the legal right) to make orders on some or all of the case or a Motion to Change Venue, stating that the case should be transferred to some other county in Arizona. If any of these motions are filed, you must file a Response to the motion or the Judge may grant the motion. Also, the other party does not have to file a Response to the Petition/Answer to the Complaint until the Judge rules on the motion and then only if the Judge does not dismiss the case. If any of these motions are filed, you are strongly urged to seek the advice of a lawyer and may not get a Default until after any response time set by the Judge.

Default Time Table

The papers you served on the other party explain that he or she has 20 days to file a written Response/Answer to the Court if the papers were served in Arizona. (If served outside of Arizona, the other party has 30 days to file a Response/Answer.)

Requirements for Obtaining a Default

- ❑ Make sure that the time for the other party to file a Response/Answer has passed by referring to the Default Time Table and that the other party has not filed a Response/Answer or other document such as a Motion to Dismiss or Motion to Change Venue.
- ❑ Complete the Application For Default and Affidavit of Default (**Default.form**), and file it (and 2 copies) with the Clerk of the Court. You must be sure service of process was complete, and that a written Response/Answer was not filed with the court by the other party. The Clerk will check the court file to make sure the other party has not filed a Response/Answer.
- ❑ After the Default is entered by the Clerk, the “effective date” will be stamped on the side of the Application. This date includes the 10 working-day grace period that the other party has to file a Response/Answer. After this grace period passes, the other party can no longer file a Response/Answer without an order of the Court setting aside the Default.
- ❑ Be sure you get two (2) copies of the Application stamped by the Clerk. Then mail or hand-deliver one copy to the other party. The other copy is for your records. Be sure to note the “effective date.”
- ❑ If the other party has not filed a Response/Answer before the “effective date” passes, in Paternity cases, you can go immediately to a default hearing. **In a divorce case, you must also make sure that the minimum 60 day waiting period from the date the other party was served has also passed.** Then you can go for a default hearing. Follow the procedures on **GoingtoCourt.info**, located in this packet for a default hearing.
- ❑ If you have had a hearing in your case in which the Respondent/Defendant appeared, such as a hearing on temporary orders, before you may proceed to a default hearing you must serve the respondent/defendant or his/her attorney, if represented, with written notice of the application for default decree or judgment as least three (3) days prior to the default hearing, pursuant to Rule 55(b)(2) Arizona Rules of Civil Procedure. In other words, in such case you must give the Defendant/Respondent written Notice of the exact day that you intend to seek a default Judgment or Decree and file a copy of that Notice with the Court.

INSTRUCTIONS

STEP 1 - COUNT DOWN

- ❑ **BEGIN COUNTING THE DAY AFTER THE OTHER PARTY RECEIVED THE PAPERS** - look at the Default Time Table below. **WARNING:** You **cannot** begin Step 2 below until **after** your last counted day. Enter Date of DAY 1 here _____.
- ❑ **INCLUDE WEEKENDS AND HOLIDAYS IN YOUR COUNT** until you reach the number of days in Default Time Table below. If the last day for the other party to respond falls on a Saturday, Sunday, or legal holiday, you DO NOT count that day. Count the next workday. Enter Date of LAST DAY here _____.
- ❑ If the other party files a written Response or Answer with the Court, **YOU CANNOT PROCEED BY DEFAULT.**

DEFAULT TIME TABLE*

<u>SERVICE BY</u>	<u>COUNT</u>	<u>EVENT</u>
Acceptance	20 Days	after other party <u>signed</u> the Acceptance
Acceptance Outside AZ	30 Days	after other party <u>signed</u> the Acceptance
Process Server	20 Days	after other party <u>received papers</u> from Server
Process Server Outside AZ	30 Days	after other party <u>received papers</u> from Server
Sheriff in Arizona	20 Days	after other party <u>received papers</u> from Sheriff
Sheriff Outside AZ	30 Days	after other party <u>received papers</u> from Sheriff
Mail Outside Arizona	30 Days	after the other party <u>signed</u> the Receipt of Mail card
Publication (Other party in Arizona)	50 Days	after the <u>1st date of publication</u> (service is considered complete 30 days after the 1st date of publication.)
Publication (Other party outside Arizona)	60 Days	after the <u>1st date of publication</u> (service is considered complete 30 days after the 1st date of publication.)

*If the parties attend Conciliation Court for marriage counseling after a Petition for Conciliation is filed, exclude the days while the stay is in effect. (Refer to **conciliation.info**)

STEP 2 - COURT PAPERWORK

- ❑ Complete Application and Affidavit for Default.

STEP 3 - SIGN, NOTARIZE & COPY APPLICATION

- ❑ **SIGNATURE:** Go to a Notary Public or the Clerk of the Court to sign under oath the Application and Affidavit for Default. Bring a picture ID. **Make sure** you fill in the date you are signing. Do not go or sign before the correct amount of time has passed.
- ❑ **COPIES:** Make two copies of your Application and Affidavit for Default after you and the Notary or Clerk of the Court sign it:
 - ❑ Original to be filed with the court
 - ❑ 1 copy for the other party
 - ❑ 1 copy for yourself

STEP 4 - FILE & MAIL

- ❑ **FILING:** Go to the Clerk of the Superior Court at:

**Pima County
Arizona Superior Court**
110 West Congress
Tucson, Arizona 85701
Between the hours of 8 a.m. and 9 p.m.

- ❑ **Hand to the clerk at the filing counter** the original + two copies of Application and Affidavit for Default. The Clerk will stamp the “effective date” on all copies and keep original. Clerk will return both sets of stamped copies to you. **Make sure** you have the copies stamped.
- ❑ **Mail or hand-deliver a copy** of Application and Affidavit for Default to the other party. If you don't know where the other party is living, send a copy to his/her last known address and obtain and file with the Court the **proof of mailing form**.
- ❑ **WAIT:** Even after the Application for Default has been filed, you must wait for 10 working days after the Default has been entered before you can have a default hearing and have the Judgment or Decree signed by a Judge. The Clerk of the Court will stamp the effective date on the Application for Default. On or after the effective date (after the 10th business day), you can obtain a default hearing any day at 12:30 p.m. Follow the procedures outlined in **generalinfo.info**, located in this packet.

In addition, for Dissolution of Marriage (Divorce) Petitions, there is a minimum 60-day waiting period before a divorce can be granted. In divorce cases, you must wait 61 days after the other party has been served with the Petition before you can get a default hearing and have the Decree signed by a Judge. On or after the 61st day, you can obtain the default hearing.

- ❑ As noted in the **General Information**, if the Respondent/Defendant has appeared at any hearing in this case, you must serve him/her in person or by mail with written notice of the date that you intend to take the default judgment at least three (3) days prior to the default hearing.

INSTRUCTIONS FOR GOING TO COURT FOR A DEFAULT HEARING

What is a default?

- ❑ A default means that the party who did not file the Complaint/Petition also did not contest or disagree with the Complaint/Petition in writing to the Court and on time after he or she was served with the papers. The party who filed for the Complaint/Petition is the only one who comes to the default hearing and talks to the Judge under oath.

Going to Court for the Default Hearing

- ❑ Bring the proposed Judgment or Decree and any other necessary papers to the Default Hearing. If you have filled the papers out completely and correctly, and taken all the other correct steps such as service and notice on your spouse or other parent, you usually will receive your requested Judgment or Decree by the end of the hearing.

BRING THESE INSTRUCTIONS WITH YOU TO COURT TO HELP YOU!!

General Information:

- ❑ If you have never been to court before, you may be somewhat intimidated by the thought of going to your Default Hearing. Don't be. The Default Hearing is one of the simplest types of hearings. As long as you have the necessary papers, have followed all the rules, and are prepared to answer a few simple questions, you should have no problems and your hearing will go smoothly.

STEP 1: COPIES AND PACKETS

MAKE 2 COPIES OF ALL APPLICABLE PAPERS, SUCH AS:

- ❑ Divorce Decree or other Order (**See Decree packet**)
- ❑ Paternity Judgment (**See Paternity Judgment packet**)
- ❑ Parenting Plan signed by both parents (if applicable) (**See Custody packet**)
- ❑ Agreement regarding division of community property and debt signed by both spouses (if applicable)
- ❑ Parent Worksheet for Child Support (**See Child Support packet**)
- ❑ Child Support Order (**See Child Support packet**)

- ❑ Order of Wage Assignment (**See Child Support packet**)
- ❑ Obligee/Obligor Fact Sheet (**See Child Support packet**)

ASSEMBLE THE DOCUMENTS:

- ❑ Attach one copy of everything to the ORIGINAL of the proposed Judgment or Divorce Decree -- this is what you will give the judge at the hearing.
- ❑ Attach one copy of everything to a COPY of the proposed Judgment or Divorce Decree -- this is your packet.

STEP 2 - REVIEW YOUR ORDER OR DIVORCE DECREE

- ❑ Know what your order or decree says and what you are requesting. The judge might ask you some questions about the proposed Order or Decree, such as how you divided the property and debts, why you asked for a particular type of custody or parenting time, and where the children have been living, etc. The information you filled out in the proposed Order or Decree **must** be the same as the requests you made in the Complaint/Petition unless you and the other party have agreed otherwise in writing and that written agreement is filed in Court with the other party's signature notarized.

STEP 3 - PREPARING FOR THE COURT HEARING

- ❑ Dress properly - wear a suit, dress, or other neat, clean clothing. DO NOT wear shorts, cut-offs, sleeveless t-shirts, other overly casual or suggestive clothing.
- ❑ DON'T bring drinks or food to court and don't chew gum in the Courtroom
- ❑ **DON'T bring your children with you to Court.** Get a babysitter, or someone to watch your children away from the Courtrooms.
- ❑ You may ask the Judge questions, but he/she cannot give you legal advice.

STEP 4 - POSSIBLE FEE TO KNOW ABOUT

- ❑ If you served the other party by publication, you will be expected to pay a court reporter's fee if this fee has not been deferred or waived.

STEP 5 - GOING TO THE SUPERIOR COURT HEARING

- ❑ You can go for a Default Hearing any non-holiday weekday. On the day you go for the Hearing, **at 12:30 p.m.**, take your proposed Judgment or Decree and attached forms to the Clerk of Superior Court, 110 W. Congress, 1st Floor. The Clerk will take your forms and pull your file for the Hearing. The Clerk will check your file to make sure that a Response or Answer has not been filed, that the appropriate waiting period has run, and that you have been granted a deferral or waiver of court fees/costs (if applicable).
- ❑ You will be asked to wait in the lobby. The Judge will begin the hearings at approximately 1:30 p.m. **Turn off all cell phones and pagers while in the court room.**
- ❑ **Remember, children are not permitted in the Courtroom.**
- ❑ Stand when your name is called and walk toward the "bench" where the Judge is seated. You will be sworn to tell the truth. Attached is a list of questions you MAY be asked by the Judge if this is a divorce action. Some of these questions may be asked in a paternity case. Answer these questions honestly and to the best of your ability. If you do not understand the question, tell the Judge and he/she will re-phrase the question. Lying in court is called perjury and can have serious consequences, including criminal charges.
- ❑ Always refer to the Judge as "Your Honor."
- ❑ The Judge will then make the final decisions, and/or make changes to the proposed Judgment or Decree regarding your case. He/she will then sign the Judgment or Decree and any other appropriate papers.
- ❑ You will need to wait in the Courtroom until all the cases have been heard. Then, the Clerk will take you back to the Clerk's office.
- ❑ At the Clerk's office you may ask for a certified copy of the Judgment or Decree of Dissolution of Marriage. There is a separate charge for certified copies. A Deferral or Waiver of court fees includes a deferral or waiver of the certified copy fee. The Clerk will conform (stamp) your other three copies. In a divorce case you must mail one copy of the signed Decree to your now-former spouse within 24 hours.

GENERAL QUESTIONS THAT YOU MIGHT BE ASKED

- What is your name?
- How long have you been domiciled (lived) in Arizona?
- Were you or your spouse living in Arizona or were either of you a member of the Armed Forces and stationed in Arizona at least 90 days before the Divorce Petition was filed?
- Are you or the other party pregnant?
- What was your date of marriage and where were you married?
- Have you been made aware of the Conciliation Services marriage counseling? (If you were not aware of the services, the Judge may describe these services to you and may or may not grant the divorce.)
- Is your marriage irretrievably broken with no reasonable prospect of reconciliation? (This means: is there any reasonable chance in your mind that you and your spouse can continue with the marriage. Unless your answer is NO to the question the divorce can not be granted)
- Do you want your name restored? (Answer YES, only if you want to return to your maiden or former last name.)
- Is the relief you are asking for today the same as what you asked for in the Petition for Dissolution or Paternity Judgment? (The answer should be YES. You should not be changing anything from the Petition unless you have written agreement from your spouse and filed the agreement with the court file.)
- What property and debts do you have from the marriage? (Tell about the property and debts listed on your Petition and Decree.)
- How have you requested to divide the property and debts? (Explain what division you have asked for and put in the proposed Decree.)
- Do you think the proposed division of property and debts is fair and equitable?
- How did you serve the Petition and other papers on your spouse and when was he or she served? (You should know what type of service (notice) was used, for example, Service by Acceptance, Sheriff, etc.)

The following questions, or similar questions, may be asked if you served your spouse by publication:

- What steps did you use to try to find your spouse?
- Who did you talk to about how to find your spouse?
- What was the last date you saw your spouse, received a letter or phone call?
- If you did not know where your spouse or other party was at the time that you filed and served by publication but you now know or have an idea who might be able to reach him/her, you must tell the Judge.** Although this may mean that you may have to attempt to personally serve the respondent/defendant, if you do not do so and he or she finds out about the default judgment or decree, the Court may set aside the decree and you will have to start all over. Also, you could get in trouble for not being truthful with the Court.

ADDITIONAL QUESTIONS THAT YOU MIGHT BE ASKED IF YOU HAVE CHILDREN

- ❑ How many children do you have from this marriage and what are their ages?
- ❑ What type of custody are you requesting for your minor child(ren)?
- ❑ What type of parenting time are you requesting for the non-custodial parent?
- ❑ Are there any expected problems with parenting time? (If you have requested supervised parenting time or no parenting time for the other parent, you should be prepared to tell why. For example, you should tell the Judge if there has been domestic violence with the other parent, child abuse, or if the other parent has a serious drug or alcohol problem.)
- ❑ Do you think the portions of the proposed Decree/Order dealing with custody and parenting time are in the best interests of the children?
- ❑ Who will provide medical/dental insurance for the child(ren)? (Generally, this should be the parent who has insurance available through his/her employer at the most affordable cost. If no insurance is available and the children are on AHCCCS or KidsCare, please tell the Judge.)
- ❑ Are you or the other parent employed? How much do you both earn? (The amount you each earn should already be on the Parent's Worksheet For Child Support).
- ❑ What are day care costs for the child(ren)?
- ❑ Who should take the children for tax exemptions for income tax purposes and in which years?
- ❑ Is the proposed Child Support according to the Guidelines? If not, why should the Court not follow the guidelines?

NOTE: There may be lawyers and law students present from the Volunteer Lawyers Program to review your child support calculations and child support order. When available to you, this is a free service and you should participate.

Name: _____

Address: _____

City, State, ZIP: _____

Daytime Telephone No: _____

Representing Self, Without a Lawyer

ARIZONA SUPERIOR COURT, PIMA COUNTY

Case No. _____

Petitioner/Plaintiff

and

Respondent/Defendant

APPLICATION FOR DEFAULT AFFIDAVIT OF DEFAULT AND ENTRY OF DEFAULT

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) business days after the filing of this completed document, unless the Respondent/Defendant files a Response or Answer or otherwise defends before the ten-day period passes.

STATE OF ARIZONA)
)ss.
County of Pima)

APPLICATION AND AFFIDAVIT FOR DEFAULT

1. I am the Petitioner/Plaintiff in this action, and I state all these matters under oath. I now give notice that I am requesting an entry of default judgment against the Respondent/Defendant because no Response or Answer has been filed by Respondent/Defendant as of this time.

2. Service of the court papers on Respondent/Defendant has been accomplished as follows: (check one box)
 - The Respondent/Defendant has signed an Acceptance of Service, in which he or she has accepted service of the Summons, Petition and other papers, but has refused to answer so that a default may be entered;

OR

 - I have had the Respondent/Defendant served according to law with the Summons, Petition and other papers and Respondent/Defendant has failed to plead, appear, answer, or otherwise defend in this court case in the time required by law.

3. The Respondent/Defendant is either not in the active military service of the United States or has otherwise waived his or her rights under the Uniformed Service Members Civil Relief Act.
4. By completing the Certificate of Mailing or Delivery at the bottom of this form, I certify that I am mailing or delivering a copy of this Application and Affidavit to the Respondent/Defendant as notice that I have applied for default and default has been entered.
5. In compliance with Arizona Rules of Civil Procedure, Rule 55(a), I have: (check all boxes that are true)
 - Mailed a copy of this Application and Affidavit to the Respondent/Defendant at his/her last known address;
 - OR
 - Mailed a copy of this Application and Affidavit to the attorney I know is representing my spouse, whom I claim to be in default;
 - OR
 - Delivered a copy to Respondent/Defendant, whom I claim to be in default;
 - Have not mailed a copy of this Application and Affidavit to the Respondent/Defendant because I do not know my spouse's whereabouts and do not believe my spouse is represented by an attorney.

Note: If the Respondent/Defendant fails to file a responsive pleading or otherwise defend in this action within 10 business days of the filing of this Application, a default judgment/decree may be entered. The Petitioner/Plaintiff must generally still attend a default hearing.

Petitioner/Plaintiff

SUBSCRIBED AND SWORN to before me on _____ by _____.

Notary Public/Deputy Clerk

My Commission Expires: _____

ENTRY OF DEFAULT

The Respondent/Defendant having been properly served with the necessary papers in this action and having failed to Respond or Answer in the way or time required by law, the Default of Respondent/Defendant is hereby entered.

WITNESS My Hand and the Seal of the Superior Court.

Dated: _____

CLERK OF THE SUPERIOR COURT

By: _____
Deputy Clerk

PETITIONER/PLAINTIFF'S CERTIFICATE OF MAILING OR DELIVERY

A copy of this document was (check one box) mailed postage pre-paid OR delivered (DESCRIBE HOW DELIVERED) to the Respondent/Defendant at the following address:

Petitioner/Plaintiff

Date: _____