

DEFAULT

**in Family Court Cases
WITH MINOR CHILDREN**

3

How to Get a Default Court Order

FORMS AND INSTRUCTIONS

SELF-SERVICE CENTER

DEFAULT

HOW TO GET A DEFAULT DECREE IN FAMILY COURT CASES WITH MINOR CHILDREN

This packet contains court forms and instructions to apply for a default hearing in cases with minor children, **if the other party did not respond**. Items in **BOLD** are forms to fill out, copy, and file with the Court. Non-bold items are documents that are NOT filed with the Court. **Do NOT copy or file non-bold items**. The documents should appear in the following order:

Order	File Number	Title	# pages
1	DRDC6t	Table of Contents (this page)	1
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3	DRDC60p	Procedures: How to File an “Application and Affidavit for Default” and How to Get a Default Hearing (<i>in cases with minor children</i>)	2
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SELF-SERVICE CENTER

HOW TO GET A DEFAULT HEARING IN FAMILY COURT CASES INVOLVING MINOR CHILDREN

CHECKLIST

You may use this packet if the following factors apply to your situation:

- ✓ You have filed a summons and petition for one of the following:
 - Divorce (with minor children)
 - Legal Separation (with minor children)
 - Annulment (with minor children)
 - Paternity
 - A First Court Order for Custody and/or Parenting Time or Custody, Support and Parenting Time
- ✓ The other party was served with the court papers.
- ✓ The **“Acceptance of Service”** signed by the other party **OR** 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 court order.

READ ME: Consulting a lawyer before filing documents with the court may help prevent unexpected results. The Self-Service Center has a list of lawyers who can give you legal advice and who can help you on a task-by-task basis for a fee, and a list of court-approved mediators as well. You may view the lists at the Self-Service Centers or on the Internet at:
www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/LawyersAndMediators/

SELF-SERVICE CENTER

PROCEDURES: HOW TO FILE AN APPLICATION AND AFFIDAVIT FOR DEFAULT *and* HOW TO GET A DEFAULT HEARING IN FAMILY COURT CASES *with* CHILDREN

If the other party files a Response/Answer with the Court, YOU CANNOT GET A DEFAULT HEARING.

APPLICATION AND AFFIDAVIT FOR DEFAULT: TIME FRAMES AND FILING

STEP 1: BEGIN COUNTING THE DAY AFTER THE OTHER PARTY WAS SERVED WITH THE PETITION/COMPLAINT. Look at the Default Timetable below to find the method of service you used and the number of days you should count.

INCLUDE WEEKENDS AND HOLIDAYS until you reach the number of days listed in the Default Timetable. 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

<u>SERVICE MADE IN ARIZONA</u>	<u>COUNT</u>	<u>EVENT</u>
Acceptance of Service	20 Days	after other party signs the "Acceptance of Service"
Delivery with Signature Confirmation*	20 Days	after other party signs an acknowledgement of delivery*
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
<u>SERVICE MADE OUT OF STATE</u>		
Acceptance of Service	30 Days	after the other party signs the "Acceptance of Service"
Delivery with Signature Confirmation*	30 Days	after other party signs an acknowledgment of delivery*
Process Server	30 Days	after other party receives papers from a process server
Service by Sheriff	30 Days	after other party receives papers from Sheriff
<u>SERVICE BY PUBLICATION</u>	60 Days	after 1 st publication

*available for family court matters only

STEP 2: Depending on HOW the papers were served on the other party, wait the number of days indicated above. If the other party did not file an Answer/Response with the Court within the time frame indicated, on the **next day after the number of days indicated (day 21, 31 or 61), complete the "Application and Affidavit for Default", file it and mail or deliver a copy to the other party as instructed below. You must take this action for your case to proceed.**

STEP 3: **SIGNATURE:** Go to a Deputy Clerk of the Superior Court or a Notary Public and sign the **"Application and Affidavit for Default."** Bring a picture ID with you and **make sure** you date the **"Application and Affidavit for Default"** with the date you are signing it. Do **not** go to the Notary Public or Clerk or sign the **"Application and Affidavit for Default"** before the amount of time shown in the Default Timetable above has passed.

COPIES: Make **two copies** of your notarized **"Application and Affidavit for Default"**.

STEP 4: **FILE** File the original with the Clerk of the Court at any of these locations:
Central Court Building, 201 West Jefferson Street, Phoenix, AZ 85003 (1st Floor);
Northwest Court Building, 14264 West Tierra Buena Lane, Surprise, AZ. 85374;
Southeast Court Building, 222 East Javelina Drive, Mesa AZ 85210; OR
Northeast Regional Court Center, 18380 North 40th Street, Phoenix, AZ 85032.

CLERK: 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.

MAIL: Mail or hand-deliver 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.

HOW TO GET A DEFAULT HEARING

STEP 5: COUNTING FROM THE DAY AFTER THE “APPLICATION AND AFFIDAVIT” WAS FILED, WAIT 10 WORKING DAYS BEFORE PROCEEDING TO STEP 6.

STEP 6: FILL OUT THE “DEFAULT SCREENING CHECKLIST” (the next document in this packet).

STEP 7: SCHEDULE YOUR OWN HEARING BY CALLING 602-372-3332

STEP 8: PREPARE FOR THE COURT HEARING

- **GET YOUR PAPERS TOGETHER.** Read the instructions for the Court Order/Decree packet that applies to your case. Fill out the Order or Decree and **MAKE COPIES** as instructed. Bring all required court papers to your hearing. If you do not bring all required documents, your hearing will be rescheduled.
- **IF THE COURT PAPERS YOU FILED INCLUDE A REQUEST TO ESTABLISH CUSTODY AND/OR PARENTING TIME (visitation)** (other than “Grandparent Visitation”), the person asking for the default hearing, **must** attend the **PARENT INFORMATION PROGRAM** and file the “*Certificate of Completion*” before that person can get a default hearing. If you have questions concerning the Parent Information Program, call 602-506-1448.
- **IF THE COURT PAPERS YOU FILED INCLUDE A REQUEST TO ESTABLISH CHILD SUPPORT**, and you do not already have a Temporary Order for Child Support, you must bring the following:
 - ✓ **Gross Monthly Income information** for both parties (If unknown, last known income, income earning potential or minimum wage may be used to calculate child support).
 - ✓ **Social Security Numbers and Employer’s name(s)**, address(es) and telephone number(s).
 - ✓ **Information About Costs for Children’s** day care, medical insurance, special needs, etc.

STEP 9: READ “ATTENDING YOUR DEFAULT HEARING - WHAT TO DO IN THE COURTROOM”.

STEP 10: GO TO YOUR HEARING AT THE SCHEDULED DATE AND TIME.

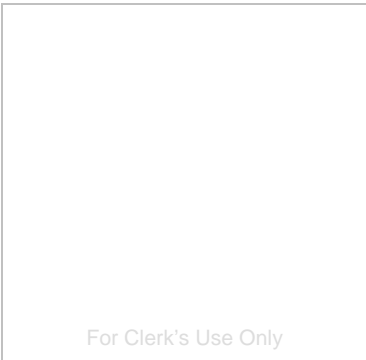
**ALL DEFAULT HEARINGS: Held at 201 West Jefferson Street, Phoenix, Arizona 85003.
Check in on the 3rd Floor of the Central Court Building in the DEFAULT ROOM.**

- **DO NOT BRING CHILDREN.**
- **EXPECT TO BE IN THE COURTHOUSE UP TO 4 HOURS OR MORE.**
- Your paperwork will be checked and (if applicable) Child Support calculated before you enter the courtroom.

ARRIVE BEFORE THE TIME SCHEDULED FOR YOUR HEARING.

You cannot be late. If you are late or if you bring your children you hearing will be rescheduled to a different day.

Name of Person Filing: _____
Your Address: _____
Your City, State, Zip code: _____
Your Telephone Number: _____
ATLAS Number (if applicable): _____
Representing Self (Without an Attorney) OR
Attorney for Petitioner OR Respondent



For Clerk's Use Only

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

(Name of Petitioner)

Case No. _____

APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES INVOLVING MINOR CHILDREN

(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 Defendant/Respondent files an Answer/Response or otherwise defends before the ten working day 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 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 as notice that I have applied for default and default has been entered in this court case.

5. Check all boxes that are true:

Case No. _____

- I have mailed a copy of this Application and Affidavit to the Defendant/Respondent at his/her last known address, **OR**
- IF** I know the Respondent, 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, **OR**
- I have **not** mailed a copy of this Application and Affidavit to the Respondent because I do **not** know his/her location or whereabouts and do not believe the Respondent is represented by an attorney. **(You can only check this box, if the Respondent was served by publication.)**

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.

OATH OR AFFIRMATION

I swear or affirm the contents of this document are true and correct under penalty of perjury.

Signature _____ Date _____

Affirmed before me this: _____ by _____
(Date) Printed Name of Person Who Signed

My Commission Expires: _____
or Seal (below) : Deputy Clerk or Notary Public

CERTIFICATE OF MAILING OR DELIVERY

On (date) _____ a copy of this document was: (check ONLY one box)

mailed postage pre-paid, OR delivered by _____
(name of person who made the delivery)

to the Defendant/Respondent at the following address:

Address: _____

Your signature : _____

Default Screening Checklist

1. **Case Number:** _____

2. **Case Type**

- Dissolution Legal Separation Annulment
 Paternity Grandparents Visitation Other

3. **Does your case involve Children?** Yes No

If Yes,
What type of Custody is requested in the
Petition? Joint or Shared Sole

Have you filed your Parent Information
Program Certificate? Yes No

Has the Respondent filed their Parent
Information 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/Support being
requested? Yes No

**Has at least 60 days passed since the
respondent was served? (90 days after
1st publication if service was by publication),
If you answer no, you must wait until the
time has passed.** Yes No

6. **For all cases) Has at least 10 working
days passed since the Affidavit and
Application for Default was filed?** Yes No

*If you answer no, you must wait until the
time has passed.*

7. **Type of Service:**

Acceptance In State Out of State
Date Acceptance was signed: _____

Private Process Server/Sheriff In State Out of State
Date documents were served: _____

Registered Mail or Delivery with Signature Confirmation
Date receipt was signed: _____

Publication
Date of 1st publication: _____

8. **Date Application & Affidavit of Default was filed:** _____

9. **Date Application & Affidavit of Default was mailed:** _____

CALL 602-372-3332 TO SCHEDULE YOUR HEARING between 8 a.m. and 5 p.m., Monday–Friday.

- Have the completed **“Default Screening Checklist”** with you when you call.
- **The date and time for your court hearing will be given to you when you call.**
- **Write down your court date/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: _____

ATTENDING YOUR DEFAULT HEARING: and WHAT TO DO IN THE COURTROOM

GET YOUR PAPERS TOGETHER. MAKE COPIES. The list below shows the documents and number of copies required for the various default hearings. If you do not bring all required documents, your hearing will be rescheduled to another day.

Dissolution/Legal Separation/Annulment

- Completed Decree of Dissolution, Legal Separation or Order of Annulment +2 copies

If you have requested Spousal Maintenance:

- Completed Current Employer or Other Payor Information and 2 copies

If your case involves minor children:

- Parent Information Program Certificate if it has not already been filed
- Signed Parenting Plan and 2 copies
- Completed Child Support Worksheet and 2 copies
- Completed Current Employer or Other Payor Information and 2 copies
- Wage information/pay stubs for both parties, and other financial information such as childcare costs, medical insurance premiums etc.
- Copy of any prior Court Order for Child Support or for Paternity.
- 9X12 envelope addressed to the other party with 3 standard current postage stamps.

Paternity

- Completed Order of Paternity and 2 copies
- Parent Information Program Certificate if it has not already been filed
- Signed Parenting Plan and 2 copies
- Completed Child Support Worksheet and 2 copies
- Completed Current Employer or Other Payor Information and 2 copies
- Wage information/pay stubs for both parties, and other financial information such as childcare costs, medical insurance premiums, etc.
- Copy of any prior Child Support Order
- 9X12 envelope addressed to the other party with 3 standard current postage stamps

Grandparent Visitation

- Completed Order for Grandparent Visitation and 2 copies
- Copy of any prior Paternity or Child Support Order that establishes your relationship to child

Custody, Parenting Time and Support Cases

- Completed final Court Order and 2 copies
- Parent Information Program Certificate if it has not already been filed
- Signed Parenting Plan and 2 copies
- Completed Child Support Worksheet and 2 copies
- Completed Current Employer or Other Payor Information and 2 copies
- Wage information/pay stubs for both parties, and other financial information such as child care costs, medical insurance premiums, etc.
- Copy of any prior Court Order establishing Paternity or Child Support
- 9X12 envelope addressed to the other party with 3 standard current postage stamps

I. THE DEFAULT HEARING: DO'S AND DON'TS

1. **BE ON TIME.**
2. **DO NOT BRING CHILDREN.**
3. **IF YOU ARE LATE OR BRING CHILDREN, YOUR HEARING WILL BE RESCHEDULED TO A DIFFERENT DAY.**
4. **EXPECT TO BE IN THE COURTHOUSE UP TO FOUR HOURS OR LONGER. PLAN YOUR CHILD CARE AND PARKING ACCORDINGLY.**
5. **DO NOT BRING FOOD OR DRINKS INTO THE COURTROOM.**
6. **DO NOT CHEW GUM IN THE COURTROOM.**
7. **Review your Decree/Order/Judgment.** Make sure your Decree/Order does not ask for anything different from what you asked for in your Petition/Complaint.
8. **DRESS APPROPRIATELY.** If it could be worn at a swimming pool or for playing basketball, it probably is not appropriate for court. Men should remove caps and hats in the courtroom.

II. AT THE HEARING: WHAT TO DO IN THE COURTROOM

1. **Be on time.** Wait quietly in the courtroom until your name is called.
2. **Children are not permitted in the courtroom.**
3. **Stand when your name is called** and walk toward the "bench" where the Judge is seated. Court staff will ask you to take an oath or to affirm that the information you are providing to the Court is true. You will raise your right hand and swear *or affirm* that the information you are providing is true. Lying in court, or *perjury*, is a serious crime.
4. **Sit in the witness chair** located next to the Judge.
5. **Call the Judge "Your Honor."**
6. **Do not reach** over the desk to take anything from the Judge or to hand anything directly to the Judge, unless the Judge first gives permission or asks you to do so.

III. BE PREPARED TO ANSWER THE JUDGE'S QUESTIONS, such as . . .

- What is your name and address?
- Is the relief you are asking for today the same as what you asked for in the Petition/Complaint? (Your answer should be "yes" because you cannot change anything from the Petition unless you have written consent from the other party and have filed the consent with the Court.)
- How did you serve the other party, and when was he or she served? (You should know what type of service was used: publication, service by the Sheriff, service by a registered process server, or acceptance of service.)
-
- **If you served the other party by publication, the Judge will ask:**
 - What steps did you use to try to find the other party?
 - Whom did you talk to about how to find the other party?
 - What was the last date you saw, received a letter or phone call from the other party?

Questions for Divorce / Legal Separation / Annulment Cases Only

- A. How long have you lived in Arizona? Did you or your spouse live in Arizona or was either of you a member of the Armed Forces and stationed in Arizona at least 90 days before the Petition was filed?
- B. What is the date of marriage and where were you married?
- C. Is your marriage irretrievably broken? Do you think your marriage can be reconciled? (This means: is there any reasonable chance that you can continue with the marriage?)

- D. Are you aware of Conciliation Services? (Conciliation Services is a service of the Court that provides free marital counseling.) If you were not aware of the services, the Judge may describe these services to you and send you to Conciliation Services.
- E. Do you want your former name restored? (Your former name will be restored, if you answer "yes" to this question.)
- F. What property and debts do you have from the marriage? (Describe your property and debts listed in your Petition and Decree.)
- G. How have you divided the property and debts? (Explain what you have asked for and put in the Decree.)
- H. Do you think the division of property and debts is fair?

Questions for Divorce / Legal Separation / Annulment and Paternity / Custody / Parenting Time and Support Cases

- A. The following questions may be asked if you have children:
 1. How many children do you have and what are their ages?
 2. Are you requesting custody of your minor children?
 3. What type of parenting time do you want the other party to have?
 4. Are there any expected problems with parenting time? (If you have requested supervised parenting time or no parenting time, you should be prepared to tell the judge why. For example, you should tell the judge if there has been domestic violence, child abuse, or if the other party has a drug or alcohol problem.)
 5. Do you think the portions of the Decree/Order/Judgment dealing with custody and parenting time are fair?
 6. Who will provide medical insurance for the minor children? (Generally, this should be the parent who has insurance available through his or her employer at the most affordable cost. If no insurance is available and the minor children are on AHCCCS, you can tell the judge this.)
 7. Can the other party pay child support?
 8. Is your spouse/other parent employed? How much does your spouse/other parent earn? (The amount he or she earns should be on the **"Parent's Worksheet for Child Support Amount"**.)

AFTER THE HEARING, IF THE JUDGE SIGNED YOUR DECREE/ORDER:

1. **Immediately mail a copy of the Court Order or Decree and all related documents that become part of it, to the other party** (such as custody agreement, parenting plan, etc.).
2. **If you have an Atlas Number, or if DES (DCSE) is involved in your case, mail a copy of the Completed "Parent's Worksheet for Child Support" to: Child Support Enforcement, Attn.: Attorney General Department, P.O. Box 40458, Phoenix, Arizona 85067**