

DEFAULT

In Family Court Cases

**How to Get a (default) Court Order
When the Other Party Has Not Filed a
Response**

FORMS AND INSTRUCTIONS

SELF-SERVICE CENTER

HOW TO GET A DEFAULT COURT ORDER IN FAMILY COURT 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 (custody) and/or Parenting Time and/or Support **AND**
- ✓ The other party was served with the court papers;
- ✓ 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 (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 Self-Service Center website.

SELF-SERVICE CENTER

PROCEDURES: WHEN AND HOW TO FILE AN APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES

WHEN TO FILE THE APPLICATION FOR DEFAULT:

- after the other party has been served with the court papers, AND
- the appropriate response period has passed (see Default Timetable below), AND
- the other party has not filed a response or answer with the court.

STEP 1: COUNT. Look at the **Default Timetable** below to find the method of service you used and the number of calendar days to count before you can apply for a default hearing or order.

- **BEGIN COUNTING THE DAY AFTER THE OTHER PARTY WAS SERVED WITH THE PETITION.**
- **INCLUDE WEEKENDS AND 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 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 the other party signs the “Acceptance of Service”
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
<u>SERVICE MADE OUT OF STATE</u>		
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
<u>Publication</u>	60 Days	after 1 st publication

** available for Family Court matters only*

STEP 2: WAIT. Wait until the day after the number of days indicated in the Default Timetable above. If the other party did not file an **Answer/Response** with the Court you may complete, file and mail a copy of the Application and Affidavit for Default as instructed in Steps 3 and 4 below. **You must take this action for your case to proceed.**

STEP 3: SIGN AND COPY: Sign and date the **“Application and Affidavit for Default.”** Do **NOT** sign and date the **“Application and Affidavit for Default”** before the amount of time shown in the Default Timetable has passed.

Make two copies of your signed and dated **“Application and Affidavit for Default.”**

STEP 4: FILE: File the original Application and Affidavit for Default with the Clerk of the Court at any of these locations:

GRAHAM COUNTY CLERK OF THE COURT
800 W MAIN STREET
SAFFORD, AZ 85546

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.**

STEP 5: MAIL: Mail 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. (The **“Application and Affidavit for Default”** must be mailed, hand delivery is not acceptable.)

No children involved?

Would you like to get your divorce, annulment or legal separation default decree *without* having to go to court?

If you qualify, you may apply for *Default Without Hearing* to get your default court order by mail. See **“Procedures: How to get a Default Decree Without Hearing”**, the next to last document in this packet, to determine if you qualify. Otherwise, follow the steps below to schedule your default hearing.

STEP 6: COUNT 10 COURT BUSINESS DAYS. Starting from **THE DAY AFTER** the **“Application and Affidavit for Default”** was filed, count **10 court business days** before proceeding to **STEP 7**.

STEP 7: FILL OUT THE “DEFAULT SCREENING CHECKLIST” (in this packet). If the *Default Screening Checklist* indicates you met all requirements, proceed to **STEP 8**.

STEP 8: SCHEDULE YOUR DEFAULT HEARING BY CALLING 928-428-3100 or going to the the
Graham County Clerks Office
800 W Main St
Safford, AZ 85546

STEP 9: PREPARE THE PAPERWORK YOU ARE REQUIRED TO BRING TO THE COURT HEARING: A complete list of documents you are required to bring to your default hearing is available on page 2 of the **“Default Screening Checklist.”**

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

DEFAULT HEARING: Do’s and Don’ts

DO

- ✓Be on Time (if you are late, your hearing will be rescheduled to another day)
- ✓Expect to be in the Courthouse up to four hours or longer (plan accordingly)
- ✓Dress appropriately (no caps or hats in the Courtroom)
- ✓Bring required documents (if you do not bring the required documents, your hearing will be rescheduled to another day)

Don’t

- ✓Do **not** bring children (if you bring children, your hearing will be rescheduled to another day)
- ✓Do **not** bring food or drinks in the courtroom
- ✓Do **not** chew gum in the courtroom



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 GRAHAM COUNTY

 (Name of Petitioner)

Case No. _____

APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES

 (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) 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.

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 (on the next page), I certify to the Court that on the date of filing this document I will mail a copy of this **Application and Affidavit** to the Respondent at his or her current or last known address *even if that is my own address* and/or I have served the other party by publication, and if applicable, to his or her attorney as notice that I have applied for default.

5. I UNDERSTAND THAT I WILL NOT QUALIFY FOR DEFAULT if:
 I fail to mail this document, and/or
 I fail to complete the Certificate of Mailing below.

CERTIFICATE OF MAILING

As required by Arizona Rules of Court (A.R.C.P. 55(a) and A.R.F.L.P. 44(A)).

A copy of this **Application and Affidavit for Default** will be mailed on the day of filing, postage-prepaid, to the Respondent* at his/her **current address**, OR **last known address** (if current address is unknown) of:

 (street and number, including the apartment number, city and state, and zip code)

* Mailing to current or last known address must be done even if last known address is *your* address and/or you *know* the Respondent is no longer at the last known address.

- (If applicable)
 I believe the Respondent whom I believe to be in default is represented by an attorney and have **also** mailed a copy of this **Application and Affidavit for Default** to that attorney.

DECLARATION UNDER PENALTY OF PERJURY

I state to the court under penalty of perjury that the contents of this document are true and correct.

 Date this document was filed

 Signature

 Printed Name

<p><u>WARNING</u></p> <p>1. If the Respondent 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.</p> <p>2. The 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(B)(1).</p> <p>3. A DEFAULT HEARING WILL <u>NOT</u> BE SCHEDULED IF THIS APPLICATION AND AFFIDAVIT FOR DEFAULT IS MISSING INFORMATION OR NOT COMPLETED CORRECTLY.</p>

DEFAULT SCREENING CHECKLIST
(DO NOT FILE THIS FORM)

1. **Case Number:** _____
2. **Case Type:** Dissolution/Divorce Legal Separation Annulment
 Paternity Grandparents Visitation Other
3. **Does your case involve children?** Yes No
If yes, answer A, B and C.
- A. What type of legal decision making authority (custody) is requested in the petition? Sole Joint/Shared
- B. Have you filed your Parent Information Program Certificate? Yes No
- C. Has the other party 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 (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 scheduling your hearing)* Yes No

7. **Type of Service:**

Acceptance of Service
 Date Acceptance was signed: _____
 in state out of state

Private Process Server/Sheriff
 Date documents were served: _____
 in state out of state

US mail or commercial delivery service
 Date confirmation was signed: _____
 in state out of state

Publication
 First date of publication: _____

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

Call 928-428-3100 to Schedule Your Hearing
8 a.m. to 5 p.m., Monday – Friday

✓ Complete the "Default Screening Checklist" before you call
 ✓ Write down your court date and hearing 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: _____

WHAT TO BRING TO YOUR DEFAULT HEARING

DISSOLUTION/LEGAL SEPARATION/ANNULMENT

- Completed Decree of Dissolution, Legal Separation or Order of Annulment and two (2) copies.
- Completed and notarized **Service Members Civil Relief Act Waiver** (if applicable).
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

If your case involves minor children you also need:

- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support or Paternity.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc. – **ALSO NEEDED FOR SPOUSAL MAINTENANCE REQUESTS**

PATERNITY

- Completed Order of Paternity and two (2) copies.
- Completed and notarized **Service Members Civil Relief Act Waiver** (if applicable).
- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc.
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

ESTABLISHMENT OF LEGAL DECISION MAKING (CUSTODY), PARENTING TIME AND SUPPORT

- Completed final Court Order and two (2) copies.
- Completed and notarized **Service Members Civil Relief Act waiver** (if applicable).
- Parent Information Certificate if it has not already been filed.
- Signed Parenting Plan and two (2) copies
- Copy of any prior Court Order for Child Support or Paternity.
- Completed Child Support worksheet and two (2) copies.
- Wage information/pay stubs for both parties and other financial information such as childcare costs, medical insurance premiums etc.
- 9X12 envelope addressed to the other party with four (4) standard current postage stamps.

GRANDPARENT VISITATION

- Completed Order for Grandparent Visitation and two (2) copies.
- Completed and notarized **Service Members Civil Relief Act waiver** (if applicable).
- Copy of any prior Paternity or Child Support Order that establishes your relationship to the child.
- 9X12 envelopes addressed to the other parties involved in the case with four (4) standard current postage stamps.

Failure to bring the required documents to your hearing will result in your hearing being rescheduled to another day.

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 GRAHAM COUNTY

In the Marriage of

Case No. _____

Name of Petitioner
and

MOTION AND AFFIDAVIT FOR DEFAULT DECREE WITHOUT HEARING

(in cases without children) for

DISSOLUTION OF MARRIAGE (Divorce)

LEGAL SEPARATION

ANNULMENT

A.R.F.L.P. 44 (B)(1)(b)

Name of Respondent

I am the Petitioner and I am asking the court to enter a **“Decree of Dissolution of Marriage,”** **“Legal Separation,”** or for **“Annulment”** by default without a Court hearing. I have put a check mark in each box in front of the statements below that are true and I understand that if any statement is not true, I cannot get a default decree *without a hearing*.

- I have read this **“Motion and Affidavit for Default Decree Without a Court Hearing”** and to the best of my knowledge everything I have said is true.
- I have paid the filing and service fees or the filing and service fees have been waived or deferred. A copy of the receipt showing payment or a copy of the Order showing that the fees have been waived or deferred is attached.
- To the best of my knowledge, both Petitioner and Respondent are competent and sane at this time (even if “legal incompetence” or “insanity” *at the time of the marriage* is listed as a ground for an annulment).
- At least 60 days have passed since the Respondent was served with the dissolution, legal separation, or annulment papers. Service was not done by publication.
- The Respondent has not made an appearance in this matter or filed a **“Response.”** I have filed the **“Application and Affidavit for Default”** and Default has been entered against the Respondent.
- At the time this action was filed, the Petitioner or the Respondent was domiciled in Arizona or was stationed in Arizona while a member of the United States Armed Forces. If this is an action for dissolution of marriage (divorce) or annulment, the Petitioner or the Respondent was domiciled or stationed in Arizona for more than 90 days.

- Conciliation Services provisions have been met since the filing of the Petition for Dissolution of Marriage or the provisions do not apply. (A.R.S. 25-381.09).
- If for divorce, the marriage is irretrievably broken,
If for legal separation, the parties desire to live separate and apart, or
If for annulment, a condition exists which renders the marriage void or voidable.
- There are no minor children common to the parties who were born before or during the marriage, or who were adopted by the parties during the marriage. The wife, to my knowledge, is not pregnant.
- Neither Petitioner nor Respondent has made a claim for spousal maintenance/support. A claim for spousal maintenance/support is deemed waived by both parties.
- All of the allegations, including those concerning property and debts listed in the **"Petition"** were true at the time filed and remain true as of the date of the filing of this motion and affidavit, **OR any changes are explained below:**

- Everything in the **"Petition for Dissolution of Marriage," "Legal Separation," or for "Annulment,"** concerning who gets the property and who pays the bills/debts is fair and reasonable. If applicable, attorney fees are itemized on the paper attached to this Motion and Affidavit.
- The relief to be awarded in the **"Decree for Dissolution of Marriage," "Legal Separation," or for "Annulment,"** is the same as the relief I requested in the underlying **"Petition,"** OR if the relief to be awarded is different, it has been approved by both parties, as reflected in a notarized statement from the other party, or a **"Decree for Dissolution of Marriage," "Legal Separation," or for "Annulment,"** containing the notarized signatures of both parties.
- My case does not involve a member of the military waiving service OR I have submitted a notarized **"Service Members Civil Relief Act Waiver"** completed by the other party.

OATH OR AFFIRMATION

I swear or affirm that the information on this document is true and correct under penalty of perjury.

Signature

Date

Printed Name of Signer

Sworn to or Affirmed before me this:

My Commission expires: _____
(or Seal below)

Date

Deputy Clerk of Court or Notary Public

SELF-SERVICE CENTER
PROCEDURES FOR GETTING A DEFAULT DECREE
WITHOUT A HEARING

IN FAMILY COURT CASES THAT DO NOT INVOLVE MINOR CHILDREN

REQUIREMENTS

Sometimes a court hearing is not required to get a default decree. This procedure may be used if you meet the following requirements:

- ✓ Husband and wife **both must** be legally competent and sane.
- ✓ There are **no** minor children common to the parties **or** adopted by the parties during the marriage.
- ✓ Wife is **not** pregnant with husband's child.
- ✓ Neither husband nor wife is making a claim for spousal maintenance/support (alimony).

YOU CANNOT USE THIS PROCEDURE IF . . .

- **the responding party was served by publication,**
- **if the other party is insane or incompetent, or**
- **if the other party has filed a response.**

For a list of requirements, read the *"Motion and Affidavit for a Default Without a Hearing"*.

PROCEDURES

1. **BEFORE YOU REQUEST A DEFAULT DECREE WITHOUT A HEARING, CHECK TO BE SURE THAT YOU HAVE:**
 - Properly served the other party and filed the proof of service. (Service cannot be done by publication), **AND**
 - Completed and filed the *"Application and Affidavit for Default,"* and mailed a copy to the other party; **AND**
 - Completed and notarized *"Service Member Civil Relief Act Waiver"* if the other party is on active duty in the United State Military, **AND**
 - Waited at least **61** days **after** the completion of service.
2. **COMPLETE** the *"Motion and Affidavit for Default Decree Without a Hearing"* and make one copy.
3. **FILE YOUR MOTION:** Hand the original *"Motion and Affidavit for Default Decree Without a Hearing"* and the copy to the Clerk at the filing counter. The Clerk will keep the original, date stamp the copy and return the copy to you.
4. **HAND-DELIVER OR MAIL THE FOLLOWING DOCUMENTS AS INDICATED BELOW:**
 - **One** (1) file stamped copy of the *"Motion and Affidavit for Default Decree Without a Hearing"*
 - The **original** and **two (2) copies** of the *"Decree"* for signature by the Judge;
 - **Two** (2) 9" x 12" envelopes, **with sufficient postage**, one addressed to you, and one addressed to the other party.

Graham County Clerk of the Court
800 W. Main Street
Safford, AZ 85546

5. THERE IS A REVIEW PROCESS upon receipt of your paperwork. This process can take as long as 4-6 weeks. You can call (602) 372-3332 between the hours of 8:00 a.m. and 5:00 p.m. to check on the status of your case. Please wait at least four (4) weeks before checking the status.

The Judicial Officer will review your file and the documents you have submitted. If the Judicial Officer determines that everything is in order they will sign the final decree. The Courtroom Clerk will file stamp your copies and they will be mailed to you and the other party in the envelopes you have provided.

If the Judicial Officer finds any deficiencies in your court file or paperwork, your documents will be returned to you in the envelope you have provided along with a coversheet describing the deficiency and in most cases how it can be corrected. Below is a list of the most common reasons why your paperwork might be returned to you unsigned:

- The **“Decree”** was not fully completed and not all applicable boxes were marked.
- Items asked for in the **“Decree”** were not the same as the items asked for in the **“Petition.”**
- The original **“Decree”** and copies were not submitted with the **“Motion and Affidavit for Default Decree Without Hearing”**.
- Did not mark all boxes on the **“Motion and Affidavit for Default Decree Without Hearing”** as true statements.
- Did not provide a notarized **“Service Members Civil Relief Act Waiver”**

Arizona Rules of Family Law Procedure (ARFLP), Rule 44(B)1(b), allows for application for a default decree *without hearing* in Family Court cases not involving minor children, for divorce, legal separation, *and annulment*, but be WARNED:

- There are special legal requirements involved in qualifying for an annulment.
- If your court papers do not fully explain how you meet those requirements, it could result in your case being delayed or dismissed.
- Consulting an experienced attorney about whether your situation *and your papers* indicate you qualify for an annulment may help you to avoid unnecessary expense, delay, and disappointment.