

Default Judgment Information

This brochure explains what you need to do to get a Final Judgment when the Respondent will not answer the law suit or appear in court. This judgment is called a Default Judgment. Before you can understand the Default Judgment process, you will need to learn about the basic steps in every lawsuit.

There are three basic steps to any civil lawsuit:

- 1) Filing the petition,
- 2) Giving legal notice to the other party, and
- 3) Finalizing the matter in court.

Filing a Petition

The *petition*, which is filed by the Petitioner, is the Petitioner's opportunity to tell the other party, and the Court, what the Petitioner wants the Court to order.

The *Petitioner* is the person who started the lawsuit by filing the Petition, and who is asking the Court to do something.

There is usually a fee to file the petition. In some cases, the fee may be waived by the clerk's office. To have the fee waived, the Petitioner must file an *Affidavit of Inability to Pay Costs*. This is a sworn statement that says the Petitioner cannot pay the filing fees. If the Respondent disagrees, s/he can file a written contest, disputing the Petitioner's Inability to Pay the court costs and filing fees.

Giving Legal Notice

The Petitioner must give *legal notice* to the other party. The other party is called the *Respondent*. There are two general ways to give legal notice:

- 1) Have the Respondent *waive* his or her right to service by signing a *Waiver of Citation* in front of a notary. OR
- 2) Have the Respondent *served* with a copy of the Petition by some one who is authorized by the Court to give the Respondent the petition. This person is called a *Process Server*. It may be a private process server or a sheriff or constable. *The Petitioner is not authorized by the Court to serve the petition on the Respondent.*

There are four authorized *methods of service* or ways that a process server may deliver the petition to the Respondent: personal service, service by certified mail, substituted service, and publication.

- a) *Personal service* is the best choice for service. This means the process server hand delivers the petition to the Respondent. The Court knows for sure that the Respondent actually received notice of the lawsuit when personal service is accomplished.

- b) **Service by certified mail** may be used if you ask the clerk to issue citation and mail the petition to the Respondent instead of having the process server personally deliver it. Service by certified mail is only valid if the *Respondent's* signature appears on the return receipt that is returned. If someone else has signed for the letter (including a mail clerk), the Respondent was not actually served. The Court will require the Petitioner to serve the Respondent again, and the Petitioner may have to pay additional fees for service.
- c) Sometimes, a court may allow **substituted or alternative service**. If the Petitioner files a sworn statement (affidavit) and motion convincing a court that a substitute or alternative method of service would be reasonably effective to give the Respondent notice, the court may allow a method of service other than personal service or certified mail.
- d) If a Respondent cannot be located, a Petitioner is still required to give him or her legal notice. The method used in these cases is called **publication**. With service by publication, the notice runs in a newspaper or other publication. In cases where service by publication is required, the court must appoint an attorney to represent the Respondent. The Petitioner usually has to pay the attorney's fees in such cases. The attorney's role is to conduct a diligent search, and show the court that the Respondent really cannot be located.
In a divorce proceeding, if the Petitioner cannot locate Respondent, and the parties have no children and limited property, the court may allow the legal notice to be posted at the courthouse. This is called service by **posting**.

Once the Respondent has been served with a copy of the petition, the process server must complete a **Return of Citation**. The **return** lets the judge know how and when the Respondent was served. The Return of Citation must be filed in the clerk's office with the rest of the court papers. It has to be on file for at least ten days (not counting the day it is filed or the day the Petitioner appears before the judge) in order for the court to grant a Default Judgment.

Responding to the Petition

After the process server serves the Respondent with legal notice, the Respondent may or may not respond. If the Respondent does not respond, the Petitioner may finalize the case by default as explained on page 3. If the Respondent does respond the Petitioner must send the Respondent written notice of the date and time of any court hearings in the case or obtain Respondent's agreement to finalize the divorce as explained on page 4.

The Respondent responds to the Petition by filing an **Answer** or a **General Denial**. The Respondent files an answer or a general denial in the clerk's office. Simply filing a letter that says the Respondent does not agree with the Petitioner is considered an answer or a general denial. There is no fee to file an answer or a general denial.

A Respondent may also choose to file a **Counter-Petition**. Filing a Counter-Petition would re-name the Respondent a **Counter-Petitioner**. Filing a counter-petition gives the Respondent (Counter-Petitioner) an opportunity to ask the court to order the things that s/he wants. There is usually a fee to file a Counter-Petition.

A Respondent should send a copy of any filed response to the Petitioner.

The Respondent must file the response within the **Answer period**. The answer period begins to run at the time the Respondent was served, and goes for 20 days, plus the following Monday until 10 am. (When counting the answer period, count all calendar days, including weekends and holidays.) The Petitioner may take a judgment after the answer period has passed, as long as all other statutory waiting periods have also passed. However, if the Respondent files a response any time before the court announces judgment, even if the answer period has already passed, the court cannot sign a default judgment. The Petitioner will have to set the case for a hearing, and notify the Respondent of any hearings or obtain the Respondent's agreement to finalize the divorce. Respondent shows his or her agreement by signing the Final Decree.

Finalizing the Case

Getting a Judgement Entered by Default when the Respondent has Failed to Respond

If the Respondent has never appeared in court in the case, and has not ever filed any kind of response, then the Petitioner can try to get a **Default Judgment**. A default judgment happens when the court awards a judgment to the Petitioner because the Respondent does not appear in court at the hearing. Sometimes, this occurs when the Respondent has not filed any response after being served with the petition. Default Judgments almost always favor the Petitioner; so the legislature requires a little more paperwork from the Petitioner in order to get a default judgment.

To get a default judgment, the Petitioner must file a sworn statement telling about the Respondent's military status. This is called the **Servicemember's Affidavit**. In the Servicemember's Affidavit, the Petitioner states facts showing the court either:

1. The Respondent does not serve in the military, or
2. The Respondent serves in the military, or
3. The Petitioner cannot determine whether or not the Respondent serves in the military.

The court can grant a default judgment if the Respondent does not serve in the military. If the Respondent does serve in the military, the court must appoint an attorney to represent the Respondent. If the court cannot determine whether or not the Respondent serves in the military, that court may require the Petitioner to file a bond. The bond is money which would be used by the Respondent, if it is later determined that the Respondent was serving in the military and that s/he suffered a loss because of the default judgment.

A service member may ask the court to cancel a default judgment that was announced while s/he was in the military or one that was announced within 60 days of his or her discharge from the military. The service member has 90 days from the time of his or her discharge from military service to ask the court to cancel the default judgment entered during those time periods.

When asking the court to grant a default judgment, the Petitioner must also file a ***Certificate of Last Known Address***. This is a signed statement that tells the clerk the Respondent's last known address. The clerk will send the Respondent a notice that the default judgment was entered.

The Petitioner will also need to prepare the ***Order*** for the judge to sign (in a divorce, this is called the Decree of Divorce). In some cases, when service was accomplished by posting or publication, the Petitioner also needs to prepare a ***Statement of the Evidence*** for the judge to sign.

When seeking a default judgment, the Petitioner should always ask the ***court reporter*** to make a record of the testimony given. In some court rooms, a court reporter is not always available, so the Petitioner should make arrangements ahead of time to make sure that a court reporter will be available to make the record. If a default judgment is awarded, and a record of testimony is not made, the Respondent may be granted a new trial, if s/he requests a new trial within 30 days from the day the judgment or order is signed.

Getting a Judgment Entered after Respondent has Filed a Response

If the Respondent filed an answer or a general denial, or has come to any court proceeding in the case the Petitioner may not get a judgment entered unless:

- 1) the Respondent agrees to and signs the judgment OR
- 2) a final hearing is held after the Petitioner sends the Respondent legal notice of the final hearing. At the final hearing, each side would have an opportunity to tell his or her side of the case. The judge would make a decision and sign an order prepared by the parties.

When the Respondent files a response and will not agree to sign the Final Decree, your case is ***contested***. It is very difficult to represent yourself in a contested case. If your case is contested, you should seek the advice and assistance of an attorney. Many times, you may be surprised by an attorney's willingness to help you. Many attorneys provide low cost services to clients. Some may be able to refer you to resources for pro bono or free legal services. Contact a lawyer referral service in your area if you need assistance to locate an attorney to represent you in a contested case.

A Word of Caution

Getting the judge to sign a default judgment is never guaranteed. There may be additional rules of civil procedure or family law that apply specifically to your case, which may prevent the judge from signing your default judgment. If you choose to represent yourself in your legal matter, you must have patience with the legal system. The rules are meant to protect all parties in a lawsuit. If you feel yourself running into roadblocks, you may need to seek help from an attorney.

To make sure you have completed all of the steps needed for a Default Judgment, complete the ***Default Judgment Check List***.