

# **Default if no response**

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If you started a family law case and the other party doesn't respond by the legal deadline, you can ask the court to default them. (Forms and instructions)

## **1. What is a default?**

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### **Fill out forms online**

- Default the other party if they don't respond

<https://lawhelpinteractive.org/Interview/GenerateInterview/7363/engine>

A default is when a judge says someone has failed to respond to a court case by the deadline. After a judge finds someone in default, that person cannot participate in the case. The judge can sign final orders and hold hearings without notice to the defaulted person.

You can get a default order if all of these are true:

- You filed papers to start your court case (usually a Summons and Petition)
- You properly served the person/s on the other side of your case (the “other party” or “other parties”)
- The other party did not file a Response by the legal deadline

The deadline to respond to a court case depends on how and where the other party was served. Generally, the response deadline is:

- 20 days after personal service in Washington state
- 60 days after personal service outside Washington
- 60 days after service by publication
- 90 days after service by mail

## **Military service**

There are special rules for defaulting active-duty members of the military, and their dependents, because military service may make it hard for them to participate in a court case. Before you can get a default, you must tell the court if the other party is covered by these special rules. If you don’t know, you must try to find out.

If you don’t know about the other party’s military status, you can look them up on the Servicemembers Civil Relief Act (SCRA) website (<https://scra.dmdc.osd.mil/scra/#/home>) and get a report from the Defense Manpower Data Center (DMDC). You must create an account on that website to run a search. (They call it a “record

request”.)

If the other party is on active duty, or is a protected dependent, talk to a lawyer for advice on how to proceed. You may have to ask the court to appoint a lawyer for the other party before you can default them.

After a judge signs an order saying the other party is in default, you can **finalize your case**. The judge can sign final orders and hold hearings without notice to the person who was defaulted.

**You must prepare final orders for the judge to sign.** The forms you need depend on the type of case you filed. Answer a few questions on our [\*\*Get family forms\*\*](#) tool to get the right forms for your case.

If you have the final orders prepared, you can ask the judge to sign your final orders **at the same hearing** where you ask for the default.

When you finalize by default, you **cannot** ask for anything you didn't ask for in your petition.

If you need to change what you're asking for, you must re-serve the other party with an updated (called an **amended**) petition (or amended parenting plan or support worksheets, if that's what you want to change) and give the other party another chance to respond.

## 2. Notice requirements

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You can only ask to default the other party if they have **not filed a response** to your petition.

You must notify the other party that you are asking for default if they have **"appeared"** in the case in any way. If the other party has a lawyer who has appeared for them, then you must notify the lawyer. To notify, give the other party (or their lawyer) copies of your default papers before the court hearing.

You must notify the other party of your motion for default even if they only made an **informal appearance**. An informal appearance could be:

- Coming to a court hearing
- Filing any paperwork in the case
- Writing or talking to you about the case
- Trying to get you to make an agreement about the case (settlement negotiation)
- Having a lawyer contact you about the case

**If the other party has not appeared in any way**, you do **not** have to notify them about the default. But we generally recommend you notify them anyway. If you give the other party advance notice that you are asking for a default, it is harder for them to vacate your final orders later.

Even if the other party has not appeared, you must give them notice if you'll be asking for default **more than a year** after the

date you originally served them with the summons and petition that started this case. In that situation, you must have them personally served with the motion for default at least 10 days before the court hearing.

### 3. Military issues

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Generally, the law protects a Respondent in any civil case who is or will soon be on active military duty. This includes Reservists and National Guard members on active duty. The judge can suspend the case or delay hearings until the service member can take part. This is called a "stay of proceedings". The judge may also appoint a lawyer to represent the service member's interests in the case.

The law aims to help service members give full attention to their duties. It may limit the judge's ability to make orders permanently adversely affecting the service member's rights. State and federal laws give service members this extra protection. The state law is the Service Members Civil Relief Act, RCW (Revised Code of Washington) Ch. 38.42. The federal law is the Service Members Civil Relief Act of March 4, 1918, as amended, 50 U.S.C. App., 501 et.seq. (United States Code).

If the service member's military service "materially affects" their ability to take part in a court case, the judge must wait until the service member is available. If a Respondent cannot get to a hearing due to military service, and the outcome depends on their participation, the judge can postpone the hearing.

Usually, the judge will still make temporary decisions without the service member about parental rights and responsibilities, and child support, to protect the children's best interest.

## **How are military dependents protected?**

State law extends the protections of the Service Member Civil Relief Act to the dependents of active-duty service members who are living or stationed in Washington. To be a protected dependent, the person must have received more than half of his/her income from the Washington service member for at least the last six months.

Protected dependents have the same protections against default as active-duty service members.

## **Can I still get a default if the other party is protected by these laws?**

Before a judge can sign a default judgment against someone on active duty (or a protected dependent), the judge must appoint a lawyer to represent that person's interests. Often the judge will delay granting final orders until the service member can get leave and come to court. Talk to a lawyer for advice on how to proceed.

## **What if the service member has a lawyer who has appeared in my case, but has still not filed a Response?**

If the judge has not granted a "stay of proceedings" suspending or delaying the case, you may be able to get a default in that situation. You must give a copy of the default papers to the service member's lawyer before the hearing.

## 4. Step-by-step

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If the other party hasn't responded and the deadline has passed, follow these steps to get an order of default.

1. **Contact the Superior Court Clerk** to ask when you can schedule a hearing on your Motion for Default. Ask the clerk if they have a special form you must use. (Some courts call it a "Note for Motion Docket," a "Notice of Issue," or a "Note for Hearing.") If not, you can use the Notice of Hearing form in this guide.
2. **Fill out the forms** (except for the Proof of Mailing and Hand Delivery). You can fill out the forms online or print them. If your case has more than one Respondent, fill out a separate set of motion and order forms for each person you want the court to default.
3. **Make copies.** You need one copy of each completed form for yourself, one for the judge, and one for everyone who will get notice of the hearing. We recommend you give notice to the other party even if it is not required.

Organize the copies in sets, so there is one set for each person who needs a copy. You don't have to give the other party a copy of the Proof of Mailing or Hand Delivery. Put each set of papers into an envelope addressed to each party, with your return address. You will use these

sets for service.

If a child support prosecutor (often called “the state”) is involved in your case, you’ll need to serve them with a copy of everything you file in court. Make an extra copy to serve on them.

4. **File the originals** with the Superior Court Clerk. Give the clerk the originals of all your forms for filing **except** you should ask the clerk what to do with the originals of your proposed orders. Follow the clerk’s instructions.

Ask the clerk to stamp your copies to show the date you filed the originals. Take the stamped copies back from the clerk. The clerk keeps the original.

Deliver working copies to the judge, if required in your county.

5. **If you're notifying the other party, have them served.** If there are other parties, you must have the papers mailed or delivered to them too. Most counties require service at least **14 days before a hearing**. Ask the clerk if your county’s deadline is different.

If the default hearing will be **more than a year** after the date you originally served the other party with the summons and petition that started this case, you must follow the rules for



personal service.

If it has been **less than a year**, you can follow the rules for service after a case starts. You can serve these papers yourself, but it is better to have someone else do it. Ask an adult friend or relative to do it for you. If the other party has a lawyer, have the papers served on the lawyer.

6. **If you're notifying the other party, have the server fill out the Proof of Mailing or Hand Delivery**. Make 2 copies. File the original with the Superior Court Clerk. Bring your copies to the hearing.
7. **Go to your hearing.** Follow the "At the hearing" instructions in the next section.
8. **Tell the judge's clerk you want a copy of the order.** Follow the clerk's instructions about getting copies.

## 5. At the hearing

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**Take your court papers with you.** Bring along copies of all the papers you filed and all proposed orders you want the judge to sign.

**Get to your hearing early.** Try to figure out before the day of the hearing how you will get there and how long it will take. Give yourself time to get through security, and to the right courtroom. If you aren't there on time, the

judge could cancel the hearing, or the other party may win.

**Bring** your paperwork, a pad of paper, and a dark pen to take notes. Dress neatly. Try not to bring your children if you can make other arrangements for them. The judge usually won't let them sit in the courtroom.

**When you get to the courtroom**, tell the person in charge in the courtroom (the clerk or bailiff) your name and your case name and number. Take a seat. When the judge walks in, stand.

If your hearing is online, follow these [tips for phone and video hearings](#).

Your case will be one of several that are scheduled for the same time. Listen to the judge and wait for them to call your name. When they call your name, tell the court you are present. Stay in court until they call your case for hearing.

**Presenting your papers.** When they tell you to come forward, do so. Give the court the originals of the order/s you want signed.

If you're asking the judge to finalize your case at the default hearing, give the court those proposed final orders as well as the Order on Motion for Default.

The judge will usually ask if any other party is there. The judge may ask you to explain what you want, and why. Be brief. Speak directly to the judge.

The judge may want to see your Proof of Personal Service or Proof of Mailing or Hand Delivery. If you are finalizing your case, the judge may have other questions about your proposed orders.

**Don't interrupt the judge.** The judge may ask about your final papers to make sure they are complete and correct. The judge may swear you in and go through the Findings, asking about each paragraph.

**If the other party shows up at the hearing,** the judge will probably **not** grant your motion for default.

Ask the judge for an order setting a deadline for the other party to file a Response, and a review (repeat) hearing to make sure they file a Response.

- If the respondent does not file a Response by the court's deadline, go to the review hearing. Ask the judge to sign your Order on Motion for Default and your final papers.
- If the respondent files a Response before the review hearing, you cannot get an Order on Motion for Default against that respondent. You must either reach agreement or get ready for trial.

## 6. Forms

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Form attached:

**Motion for Default** (FL All Family 161)

Form attached:

**Order on Motion for Default** (FL All Family 162)

Form attached:

**Notice of Hearing (family law)** (FL All Family 185)

To fill out these forms, you'll need to know:

- When and how the other party was served
- If the other party is active-duty military, or the dependent of someone on active duty
- When you can schedule a hearing (see [step 1](#))

**Tips for filling out the Motion for Default, FL All Family 161**

**Form section 7. Active-duty military.** You must try to find out if the other party is on active military duty or is a military dependent.

You can look them up on the [Servicemembers Civil Relief Act \(SCRA\) website](https://scra.dmdc.osd.mil/scra/#/home) (<https://scra.dmdc.osd.mil/scra/#/home>) and get a report from the Defense Manpower Data Center (DMDC). You will need to create an account on that website to run a search. (They call it a "record request".)

It's best if you also have served the other party with the [Notice to Military Dependent form](#)

(<https://www.courts.wa.gov/forms/documents/FL%20All%20Family%20103%20Notice%20re%2>

. If you already served this Notice with your petition, do not serve it again. If you did **not** already serve this form and you have personal knowledge that the other party is **not** a dependent of someone in the military, you can explain that in the motion. (Some courts may still require you to serve the form.)

Check the first box ("**not covered**") if the other party is **not** on military duty and is **not** a military dependent. Check the first indented box underneath if

you checked SCRA's website. Staple the report you got to this form. Check the second indented box underneath if you sent the party the Notice re Military Dependent

(<https://www.courts.wa.gov/forms/documents/FL%20All%20Family%20103%20Notice%20re%20Military%20Dependent>)

. Under that, check the box and fill out the blank showing how you sent it.

Check the third indented box underneath only if it applies and explain.

If you **don't** have a report from DMDC

(<https://scra.dmdc.osd.mil/scra/#/home>) or you **didn't** serve the

Notice re Military Dependent

(<https://www.courts.wa.gov/forms/documents/FL%20All%20Family%20103%20Notice%20re%20Military%20Dependent>)

., you'll need to explain how you know that the other party isn't in the military or dependent on someone in the military. You can do this if you have personal knowledge of their status.

**Example:** I lived with the other party for X years and know that they have never been in the military (or were discharged on Y date). They are currently working at Z employer and are not financially dependent on anyone else.

Check the second box ("**is covered**") if all of these are true:

- The other party is on active military duty or is a military dependent.
- They have a lawyer in this case.
- They have not filed a response.
- The court has not postponed this matter (granted a stay).

Check the third box ("**don't know**") if that is true. In the blank, explain (example: you contacted the other party's relatives, friends, and/or employers).

**Form section 8. Other.** You can leave this blank unless you have other information about why the other party should be defaulted.

## **Tips for filling out the Order on Motion for Default, FL All Family 162**

Fill out the order form the way you want the judge to sign it. This is your "proposed order." If you're not sure what to put, leave it blank for the judge to complete.

## **Tips for filling out the Notice of Hearing, FL All Family 185**

**Form section 1.** Put the hearing date and time you got from the clerk. Put the courthouse address, courtroom number, and name of the docket or judge.

**Form section 2.** Put "Motion for Default." If you will also be asking the judge to sign the final paperwork for your case at the same time, also put "entry of final orders."

**WashingtonLawHelp.org** gives general information. It is not legal advice. Find organizations that provide free legal help on our [Get legal help](#) page.

**Superior Court of Washington, County of \_\_\_\_\_**

In re:

Petitioner/s (*person/s who started this case*):

\_\_\_\_\_

And Respondent/s (*other party/parties*):

\_\_\_\_\_

No. \_\_\_\_\_

**Motion for Default**

(MTDFL)

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**Motion for Default**

**Important!** The person making this motion must ask the court to sign the Order on Motion for Default (FL All Family 162) either at a hearing or at ex parte.

- If you must notify the other side about this motion, you may use the Notice of Hearing form (FL All Family 185) unless local rule requires a different form. Contact the court for scheduling information.
- If you don't have to notify the other side, you may ask the court to sign the Order "ex parte" (without the other party there). Contact the Superior Court Clerk's office for the procedure in your county.

**1.** My name is: \_\_\_\_\_.

**2. Request**

I ask the court to find the other party, (*name*): \_\_\_\_\_,  
in default, and to approve final orders in this case without the other party's participation  
because the other party has not filed a *Response*.

**3. Notice about the motion (*check one*):**

- ☐ I must give the other party a copy of this motion and advance notice of the hearing  
because:
- they have filed a *Notice of Appearance* or appeared in this case in some other way,  
OR
  - it has been more than one year since they were served with the *Summons* and  
*Petition*.

- ☐ I do **not** have to give the other party a copy of this motion and advance notice of the hearing because they:
- have **not** filed a *Notice of Appearance*,
  - have **not** appeared in this case in any other way, AND
  - were served with the *Summons* and *Petition* less than one year ago.

**Note:** Even if you do not have to notify the other party, you may choose to do so.

#### 4. Service of Summons and Petition

The other party was properly served on (date): \_\_\_\_\_ with a *Summons* and *Petition* for this case and any other documents listed in the proof of service filed with the court.

State (or foreign country) where the other party was served: \_\_\_\_\_

- ☐ The other party had to be served outside of Washington State because (*explain*):

\_\_\_\_\_  
\_\_\_\_\_

#### 5. Timing and type of service

The other party was served with the *Summons* and *Petition* by (*check one*):

- ☐ personal service in Washington State, at least 21 days ago.
- ☐ personal service outside of Washington State, at least 61 days ago.
- ☐ mail, at least 91 days ago.
- ☐ publication, at least 61 days ago.
- ☐ **For a *Petition to Modify Child Support Order* only:**
- ☐ by mail in Washington State. Service was effective at least 21 days ago.
- ☐ by mail outside of Washington State. Service was effective at least 61 days ago.

#### 6. Correct Court (venue and jurisdiction)

At the time this case was filed:

The Petitioner lived in (*county and state*): \_\_\_\_\_

The Respondent lived in (*county and state*): \_\_\_\_\_

The children (if any) lived in (*county and state*): \_\_\_\_\_

The *Petition* describes how this court has jurisdiction over this case and the parties.

- ☐ Other (*specify*): \_\_\_\_\_

\_\_\_\_\_

#### 7. Active duty military

(The **federal** Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard or Reserve members under a call to active service for more than 30 days in a row; and
- commissioned corps of the Public Health Service and NOAA.



The **state** Service Members' Civil Relief Act covers those service members listed above who are either stationed in or residents of Washington state, and their dependents, except for the commissioned corps of the Public Health Service and NOAA.)

☐ The other party is **not** covered by the state or federal Servicemembers Civil Relief Act. I know this because (check all that apply):

☐ The attached report from the Defense Manpower Data Center (DMDC) shows their status. (To get the report, visit the Defense Manpower Data Center website. You will need their birth date or social security number to search this website.)

☐ I sent the other party a Notice to Military Dependent (form FL All Family 103) to inform them of dependents' rights. The other party did not respond within 20 days claiming to be a protected military dependent. Therefore, the other party should not be considered a protected military dependent.

The Notice was (check one): ☐ personally served on (date): \_\_\_\_\_

☐ mailed by first class mail on (date): \_\_\_\_\_

☐ I have personal knowledge of the other party's military or dependent status (explain): \_\_\_\_\_

☐ Other (explain): \_\_\_\_\_

☐ The other party **is covered** by the state and/or federal Servicemembers Civil Relief Act, but:

- they are represented by a lawyer in this case, AND
- they have not filed a Response, AND
- the court has not granted a stay (or any stay previously granted has ended).

☐ I **don't know** whether the other party is covered by the state and/or federal Servicemembers Civil Relief Act. I did the following things to try to find out: \_\_\_\_\_

8. Other (specify): \_\_\_\_\_

**Person making this motion fills out below:**

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (city and state): \_\_\_\_\_ Date: \_\_\_\_\_



\_\_\_\_\_  
Person making this motion signs here

\_\_\_\_\_  
Print name here

**Lawyer (if any) fills out below**



\_\_\_\_\_  
Lawyer signs here

\_\_\_\_\_  
Print name and WSBA No.

\_\_\_\_\_  
Date

Superior Court of Washington, County of \_\_\_\_\_

In re:

Petitioner/s (*person/s who started this case*):

\_\_\_\_\_

And Respondent/s (*other party/parties*):

\_\_\_\_\_

No. \_\_\_\_\_

Order on Motion for Default

☐ ORDFL (Granted)

☐ ORDYMT (Denied)

Clerk's Action Required: 9

## Order on Motion for Default

1. The court has considered the *Motion for Default* filed by (*name*): \_\_\_\_\_.

➤ **The Court Finds:**

**2. Response**

The other party, (*name*): \_\_\_\_\_, (*check one*):

☐ has **not** filed a *Response* to the *Petition*.

☐ has filed a *Response* to the *Petition*.

**3. Notice about the motion**

The other party (*check one*):

☐ is entitled to notice of the motion because they appeared or were served with the *Summons* and *Petition* more than one year ago. (*Check one*):

☐ Notice was given. The other party was served with the *Motion for Default* and notice of the hearing on (*date*): \_\_\_\_\_.

☐ Notice was not given. The *Motion* should be denied.

☐ is **not** entitled to notice of the *Motion for Default* because they have not filed a *Notice of Appearance*, have not appeared in this case in any other way, AND were served with the *Summons* and *Petition* less than one year ago.

☐ Notice was given even though it was not required. The other party was served with the *Motion for Default* and notice of the hearing on (*date*): \_\_\_\_\_.

4. **Service of Summons and Petition**

- ☐ The other party was properly served on (date): \_\_\_\_\_ with a *Summons* and *Petition* for this case and any other documents listed in the proof of service filed with the court.
- ☐ Valid proof of service has **not** been filed.

5. **Timing and type of service**

- ☐ The other party was served with the *Summons* and *Petition* by (check one):
- ☐ personal service in Washington State, at least 21 days ago.
  - ☐ personal service outside of Washington State, at least 61 days ago, because service could not be made within Washington State.
  - ☐ mail, at least 91 days ago.
  - ☐ publication, at least 61 days ago.
  - ☐ **For a *Petition to Modify Child Support Order* only:**
    - ☐ by mail in Washington State. Service was effective at least 21 days ago.
    - ☐ by mail outside of Washington State. Service was effective at least 61 days ago.
- ☐ Does not apply. No valid proof of service was filed.

6. **Correct Court** (venue and jurisdiction)

- ☐ A Washington court can decide this case because it has jurisdiction over the case and the parties. This case should be heard in this county court (venue is proper).
- ☐ Other (specify): \_\_\_\_\_
- 

7. **Active duty military**

(The **federal** Servicemembers Civil Relief Act covers:

- Army, Navy, Air Force, Marine Corps, and Coast Guard members on active duty;
- National Guard or Reserve members under a call to active service for more than 30 days in a row; and
- commissioned corps of the Public Health Service and NOAA.

The **state** Service Members' Civil Relief Act covers those service members listed above who are either stationed in or residents of Washington state, and their dependents, except for the commissioned corps of the Public Health Service and NOAA.)

- ☐ The other party is **not** covered by the state or federal Servicemembers Civil Relief Act.
- ☐ The other party **is covered** by the state or federal Servicemembers Civil Relief Act. They (check one):
- ☐ may be defaulted because:
    - they are represented by a lawyer in this case, AND
    - they have not filed a Response, AND
    - the court has not granted a stay (or any stay previously granted has ended).
  - ☐ may **not** be defaulted at this time.

- ☐ The court signed the *Order re Service Members Civil Relief Act* (form FL All Family 170) filed separately.
- ☐ The court does not have enough information to find whether the other party is covered by the state or federal Servicemembers Civil Relief Act.

**8. Other findings (if any):**

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➤ ***The Court Orders:***

**9.** The *Motion for Default* is (*check one*):

- ☐ **Granted.** The other party, (*name*): \_\_\_\_\_, is in default. The court may sign orders and hold hearings in this case without notice to the defaulted party.
- ☐ **Denied.** The other party must still be given copies of documents filed and notice of hearings scheduled in this case.

**10. Other orders (if any):**

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**Ordered.**

\_\_\_\_\_  
Date

➤ \_\_\_\_\_  
Judge or Commissioner

Presented by: ☐ Petitioner or lawyer ☐ Respondent or lawyer

➤ \_\_\_\_\_  
Sign here

\_\_\_\_\_  
Print name (and WSBA No., if lawyer)

Superior Court of Washington, County of \_\_\_\_\_

In re:

Petitioner/s (*person/s who started this case*):

\_\_\_\_\_

And Respondent/s (*other party/parties*):

\_\_\_\_\_

No. \_\_\_\_\_

Notice of Hearing  
(NTHG)

☒ Clerk's action required: **1**

## Notice of Hearing

To the Court Clerk and all parties:

1. A court hearing has been scheduled:



for: \_\_\_\_\_ at: \_\_\_\_\_ ☐ a.m. ☐ p.m.  
*date time*

at: \_\_\_\_\_ in \_\_\_\_\_  
*court's address room or department*

\_\_\_\_\_  
*docket / calendar or judge / commissioner's name*

2. The purpose of this hearing is (*specify*): \_\_\_\_\_

**Warning!** If you do not go to the hearing, the court may sign orders without hearing your side.

This hearing was requested by: ☐ Petitioner or lawyer ☐ Respondent or lawyer



\_\_\_\_\_  
*Person asking for this hearing signs here*

\_\_\_\_\_  
*Print name (if lawyer, also list WSBA #)*

\_\_\_\_\_  
*Date*

I agree to accept legal papers for this case at:

\_\_\_\_\_  
*address*

\_\_\_\_\_  
*city state zip*

(Optional) email: \_\_\_\_\_

This does **not** have to be your home address. If this address changes before the case ends, you **must** notify all parties and the court clerk in writing. You may use the *Notice of Address Change* form (FL All Family 120). A party must also update their *Confidential Information* form (FL All Family 001) if this case involves parentage or child support.