

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?

Fill out forms online

Default the other party if they don't respond

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 <u>Servicemembers Civil Relief Act (SCRA) website</u> (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



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.

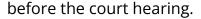
You must notify the other party of your motion for default even if they only made an **informal appearance**. An informal appearance could be:

- 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





3. Military issues

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 activeduty 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



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

- 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 <u>Notice</u>
 of Hearing form in this guide.
- 2. **Fill out the forms** (except for the Proof of Mailing and Hand Delivery). You can <u>fill out the forms online</u> or <u>print them</u>. 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 <u>follow the rules for</u> personal service.



If it has been **less than a year**, you can <u>follow the rules for service after</u> <u>a case starts</u>. 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 <u>Proof</u> <u>of Mailing or Hand Delivery</u>. 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

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 <u>tips for phone and video</u> 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

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 <u>Servicemembers Civil Relief Act (SCRA) website</u> (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 <u>Notice to Military</u> Dependent form

(https://www.courts.wa.gov/forms/documents/FL%20All%20Family%20103%20Notice%20re%20. If you already served this Notice with your petition, don't serve it again. If you didn't 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 <u>Notice re Military</u> Dependent

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

. 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 <u>report from DMDC</u>

(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%)

., 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 <u>Get legal help</u> page.

	Superior Court of Washington,	County of
In r	re:	No
Pe	etitioner/s (person/s who started this case):	Motion for Default
		(MTDFL)
And	nd Respondent/s (other party/parties):	
	Motion fo	or Default
	ortant! The person making this motion must ask the oill ill 162) either at a hearing or at ex parte.	court to sign the Order on Motion for Default (FL All
•	If you must notify the other side about this motion, y 185) unless local rule requires a different form. Cor	ou may use the Notice of Hearing form (FL All Family nated the court for scheduling information.
•	If you don't have to notify the other side, you may a party there). Contact the Superior Court Clerk's offi	sk the court to sign the Order "ex parte" (without the other ce for the procedure in your county.
1.	My name is:	<u> </u>
2.	Request	
	I ask the court to find the other party, (name in default, and to approve final orders in the because the other party has not filed a Re	ne):is case without the other party's participation sponse.
3.	Notice about the motion (check one):	
	☐ I must give the other party a copy of th because:	is motion and advance notice of the hearing
	 they have filed a Notice of Appeara 	ance or appeared in this case in some other way
	OR	
	 it has been more than one year sin Petition. 	ce they were served with the <i>Summons</i> and

	☐ 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 <i>(date)</i> : with a <i>Summons</i> and <i>Petition</i> 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				
J .	The other party was served with the <i>Summons</i> and <i>Petition</i> by <i>(check one):</i>				
	□ 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. 				
2	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 <i>Petition</i> 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. 				
00	FF/a), DCW 2C 00 020 Mation for Default				

			d in or residents of Washington (lic Health Service and NOAA.)	state, and their dependents, excep	t for the commissioned corps of	
			e other party is not covered now this because <i>(check al</i>	•	ricemembers Civil Relief Act.	
			status. (To get the report,	the Defense Manpower Data visit the Defense Manpower r social security number to s		
			inform them of dependent			
			The Notice was (check or	e): □ personally served or	n <i>(date):</i>	
				☐ mailed by first class	mail on <i>(date):</i>	
			_ _	e of the other party's military	•	
			□ 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 Resp	onse, AND		
		•	the court has not granted	a stay (or any stay previously	y granted has ended).	
				er party is covered by the stat act. I did the following things to		
8.	Otl	her	(specify):			
					_	
Pers	on	mal	king this motion fills out I	pelow:		
			der penalty of perjury unde this form are true.	r the laws of the state of Was	shington that the facts I have	
Sign	ed at <i>(city and state):</i>		ity and state):	Date:		
•						
Pers	on m	akir	ng this motion signs here	Print name here		
Law	yer	(if a	ny) fills out below			
)						
Lawy	er s	igns	here	Print name and WSBA No.	Date	
CR	55(a)	; RC	W 26.09.030	Motion for Default		

The state Service Members' Civil Relief Act covers those service members listed above who are either

	Superior Court of Washington,	County of
ln ı	re:	
Pe	titioner/s (person/s who started this case):	No
And Respondent/s (other party/parties):		Order on Motion for Default ☐ ORDFL (Granted) ☐ ORDYMT (Denied) Clerk's Action Required: 9
	Order on Moti	on for Default
1.	The court has considered the Motion for De	efault filed by (name):
The Court Finds:		
2. Response		
	The other party, (name):	, (check one):
	☐ has not filed a <i>Response</i> to the <i>Petition</i>	n.
	☐ has filed a <i>Response</i> to the <i>Petition</i> .	
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 <i>Summons</i> and <i>Petition</i> more than one year ago. <i>(Check one):</i>		
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 <i>Motion</i> s	should be denied.
		or Default because they have not filed a Notice his case in any other way, AND were served an one year ago.
☐ Notice was given even though it was not required. The other party was served w the <i>Motion for Default and notice of the hearing on (date)</i> :		

4.	Service of Summons and Petition					
		The other party was properly served on <i>(date)</i> : with a <i>Summons</i> and <i>Petition</i> 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.	Ac	Active duty military				
	(Th	(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. 				
	sta	e state Service Members' Civil Relief Act covers those service members listed above who are either tioned in or residents of Washington state, and their dependents, except for the commissioned corps of 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 <i>(check one):</i>				
		 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 <i>Order re Service Me</i> Family 170) filed separately.	embers Civil Relief Act (form FL All
	☐ The court does not have enough information to fi by the state or federal Servicemembers Civil Relie	
8.	Other findings (if any):	
The	he 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 to the defaulted party.	I hearings in this case without notice
	☐ Denied . The other party must still be given copic hearings scheduled in this case.	es of documents filed and notice of
10.	O. Other orders (if any):	
Ord	rdered.	
	<u> </u>	
Date	ate Judge or Commissione	er
Pres	resented by: Petitioner or lawyer Respondent or	lawyer
Sign	gn here Print name (a	and WSBA No., if lawyer)

		Superior Court of Washington	on, County of		
In r	e:				
Pet	itione	er/s (person/s who started this case	e): No		
And	l Res	spondent/s (other party/parties):	Notice of Hearing (NTHG)☑ Clerk's action required:	1	
		Notice	of Hearing		
To th	e Co	ourt Clerk and all parties:			
1.	A co	ourt hearing has been scheduled:			
	for:		at:		a.m. □ p.m.
Ш		date	time		_ p
	at:		i	n	
		court's address		rooi	m or department
		docket / calendar or judge / commis	sionor's namo		
^	T I				
2. 		purpose of this hearing is (specify			
	_	! If you do not go to the hearing, thing was requested by: ☐ Petitione			ing your side.
		king for this booring signs have	Print name (if lawyer, also list WSB	2/1 #1	Date
Perso	n asi	king for this hearing signs here	, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	ν Α # <i>)</i>	24.0