

Motion and Order to Set Aside Dismissal Forms and Instructions

Instructions

The attached forms are to be used by a Petitioner in an original Dissolution, or other family law case who wants to reinstate a Petition that was dismissed by the court because the Petition was not served, the defendant was not defaulted or other appropriate action was not taken within a reasonable period of time. Do not use this form for post-judgment Motions to Modify.

I. General Instructions

A. Use black ink and print or type when you fill out your forms.

B. Always file the original forms with the clerk. Be sure and make yourself an extra copy of any document before you file it with the clerk.

C. Case heading. On each document, fill out the case caption exactly as it appears in the original case filing, including the case number.

D. Completing the declaration. Explain in clear detail why you did not serve the petition, default the defendant or take whatever other action that was required by the court.

E. Address information. On most pages you are asked for your address and telephone number. You must give a contact address and telephone, which may be your own. However if you do not wish the other side to know your address, you may give the address of some person who can be relied upon to get mail and messages to you promptly.

F. Representing yourself. We strongly recommend that you seek legal advice and representation to protect yourself. If you are unable to hire an attorney, an explanation of the process you will go through is described below.

II. Completing the form

Fill out the Motion, Declaration, and the case heading on the Order. Make a copy of the documents for yourself.

III. Review of Document

You may schedule an appointment for the Family Court Assistance Office to review your documents by calling 541-682-4302.

IV. Completion

You will need to attend an Ex parte hearing to have a judge make a decision on your motion. Ex parte takes place Monday through Friday from 8:30 to 8:50 a.m., it is a hearing where judges are available to sign documents and you do not need to have any appointment to attend. Check in first with the cashiers on the second floor of the courthouse.

If the judge grants your motion to set aside the Judgment of Dismissal, your case will be reopened at the point at which it was dismissed. You will need to take action to bring your case to a conclusion.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

In the Matter of the Marriage of:)
 _____) Case No. _____
)
) Petitioner,) MOTION TO SET ASIDE
 and) DISMISSAL
)
 _____)
) Respondent.)

Comes now Petitioner_____ and, based upon the following Points and Authorities and the attached Declaration, moves the court for an Order setting aside the judgment of dismissal entered on the _____ day of _____, 20__ in the above captioned case, on the grounds of mistake, inadvertence, surprise or excusable neglect.

DATED this _____ day of _____, 20__.

Petitioner, pro se (signature)

STATEMENT OF POINTS AND AUTHORITIES

ORCP 71B(1) allows the court to relieve a party from a judgment or order for mistake, inadvertence, surprise or excusable neglect when accompanied by a pleading containing an assertion of a defense. In the case of an involuntary dismissal for failure to prosecute, a party should be able to meet the intent of that rule by submitting the next appropriate pleading.

Submitted by:

Petitioner, Print Name Address or Contact Address

 City, State, Zip Telephone or Contact Telephone

FORM 2

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

In the Matter of <input type="checkbox"/> the Marriage of:)	
)	Case No. _____
_____)	
Petitioner,)	DECLARATION IN SUPPORT OF
and)	MOTION TO SET ASIDE DISMISSAL
)	
_____)	
Respondent.)	

I, _____, declare the following is true:

I am the Petitioner in the above proceeding and make this declaration in support of my motion to set aside the dismissal in the case. I did not “prosecute” my petition within the time limit set by the court because: _____

I hereby declare that the above statements are true and complete to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

DATED this _____ day of _____, 20____.

Petitioner (signature)

Print Name

Address or Contact Address

City, State, Zip Code

Telephone or Contact Telephone

FORM 3

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

In the Matter of:)	
)	
_____)	Case No. _____
Petitioner,)	
and)	ORDER ON MOTION TO SET ASIDE
)	DISMISSAL
_____)	
Respondent.)	

Based on the motion and declaration of Petitioner, and good cause appearing therefore,

IT IS HEREBY ORDERED AND ADJUDGED that: Petitioner’s Motion to Set Aside Dismissal be the same is hereby GRANTED.

Petitioner has _____ days to file a completed proof of service or this case will be dismissed without further notice.

Petitioner has _____ days to have the defendant file an appearance or take a default against the defendant or this case will be dismissed without further notice.

Petitioner must provide Respondent with a copy of this Order and 10 day written notice of intent to take a default per ORCP 69 and provide proof thereof to the Court.

MOTION DENIED.

DATED

CIRCUIT COURT JUDGE

Certificate of Readiness under UTCR 5.100

This proposed judgment is ready for judicial signature because service is not required under UTCR 5.100 because this judgment is submitted ex parte as allowed by statute or rule.

Submitted by:

Petitioner, Print Name

Address or Contact Address

City, State, Zip

Telephone or Contact Telephone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

In the Matter of the Marriage of:)

_____,)

Petitioner,)

and)

_____,)

Respondent.)

Case No. _____

PETITIONER'S RESPONDENT'S NOTICE
OF INTENT TO APPLY FOR ORDER OF
DEFAULT (ORCP 69)

NOTICE IS HEREBY GIVEN pursuant to ORCP 69B that Petitioner Respondent intends to apply for
an order of default unless an appearance is filed by Petitioner Respondent within ten (10) days of
being served with this Notice.

DATED this ____ day of _____, 20__.

Petitioner Respondent (signature)

Submitted by:

Petitioner Respondent, Print Name

Address or Contact Address

City, State, Zip

Telephone or Contact Telephone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

In the Matter of:)
)
_____,) Case No. _____
Petitioner,)
and) CERTIFICATE OF MAILING
)
_____,)
Respondent.)

I certify that on _____, 20_____, I placed a true copy of the Notice of Intent to
Apply for Order of Default, previously filed in the above case, in the United States mail:

to the other party directly, at the following address, because s/he has no attorney:

to the other party's attorney _____ at the following address:

in a sealed envelope with first class postage, fully prepaid.

DATED this _____ day of _____, 20_____.

Signature of Petitioner Respondent

Print Name

Address or Contact Address

City, State, Zip Code

Telephone or Contact Telephone