

Motion and Order to Set Aside Judgment Forms and Instructions

Instructions

The attached forms are to be used by a Respondent in an original Dissolution, or other family law case who wants to request that a Judgment entered by default be set aside based on the grounds of mistake, inadvertence, surprise or excusable neglect; fraud, misrepresentation, or other misconduct of an adverse party. 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 respond to the Petition within the required time set out by Oregon law and/or the actions of the adverse party.

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. You must also be prepared to tender a Response to the original Petition in the case at the time you file your Motion. There are filing fees for filing a Motion or Response with the Court. If you can't afford to pay the filing fee you may request that the fees be waived or deferred. The fee schedule, Applications for Waiver or Deferral of Fees/Costs, and Response forms are all available at the

Family Court Assistance Office as well as to download directly from the Lane County Circuit Court website at: <http://courts.oregon.gov/Lane/>. Make two sets of copies of the documents; one for yourself and one to mail to the other party in the case. The Court always gets the originals.

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. Filing the Forms

If you are requesting a waiver or deferral of the filing fees, you will need to attend an Ex parte hearing to present your request to a judge. 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 certain types of orders and judgments. **The Ex parte judge will not be able to consider your Motion to Set Aside.** You do not need to have an appointment to attend. Check in first with the civil/domestic cashiers on the second floor of the courthouse. If you are able to pay the fee you do not need to attend this hearing and you may file your paperwork with the Civil/Domestic cashiers located on the second floor of the courthouse. The cashiers are available Monday through Friday from 7:45 a.m. to 5:00 p.m.

Mail a copy of the Motion, Declaration and proposed Order to the other party and file the Certificate of Mailing.

The Motion will be forwarded to the Motions judge and the Judge will have several weeks to make a decision. The Judge **MUST** have proof (see Certificate of Mailing) that the other party has received a copy of the Motion, Declaration and Order.

V. Completion

If the Judge allows the Motion and signs an Order to Set Aside the Judgment, the Court will enter your Response and the case will be set at issue. The court docket and calendar division will send letters to both parties regarding the scheduling of a trial date.

FORM 1

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, |) | MOTION TO SET ASIDE |
| and |) | GENERAL JUDGMENT OF |
| |) | <input type="checkbox"/> CUSTODY AND PARENTING TIME |
| _____ |) | <input type="checkbox"/> DISSOLUTION OF MARRIAGE |
| Respondent. |) | |

Comes now Respondent _____ and, based upon the following Points and Authorities and the attached Declaration, moves the court for an Order setting aside the default judgment entered on the _____ day of _____, 20____ in the above captioned case, on the grounds of mistake, inadvertence, surprise or excusable neglect; fraud, misrepresentation, or other misconduct of an adverse party.

DATED this _____ day of _____, 20____.

Respondent, 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; fraud, misrepresentation, or other misconduct of an adverse party 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:

Respondent, 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 JUDGMENT |
| |) | |
| _____ |) | |
| Respondent. |) | |

I, _____, declare the following is true:

I am the Respondent in the above proceeding and make this declaration in support of my motion to set aside the judgment in the case. The General Judgment should be set aside because: _____

I have tendered my Response to the Court along with this Motion and Declaration (ORCP 71B(1)).

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____.

Respondent (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 <input type="checkbox"/> Marriage of: |) | |
| |) | |
| _____ |) | Case No. _____ |
| Petitioner, |) | |
| and |) | ORDER ON MOTION TO SET ASIDE |
| |) | JUDGMENT |
| _____ |) | |
| Respondent. |) | |

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

IT IS HEREBY ORDERED AND ADJUDGED that: Respondent’s Motion to Set Aside Default Judgment is hereby GRANTED.

MOTION DENIED for failure to comply with ORCP 71B(1).

Judge Signature:

Certificate of Readiness

This proposed judgment is ready for judicial signature because *(check all that apply)*:

Service is not required under UTCR 5.100 because the other party has been found in **default** or an order of default is being requested with this proposed judgment; because this judgment is submitted **ex parte** as allowed by statute or rule; or this judgment is being submitted in **open court** with all parties present.

Each party affected by this judgment has **stipulated** to or approved the judgment, as shown by the signatures on the judgment.

I have **served** a copy of this judgment and written notice of the 7-day objection period set out in UTCR 5.100 on all parties entitled to service *(complete service information below)*. **And:**

- No objection has been served on me within that time frame.
- I received objections that I could not resolve with the other party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.
- After conferring about objections, the other party agreed to file any remaining objection with the court.

Certificate of Service under UTCR 5.100

I certify that on *(date)*: _____ I placed a true and complete copy of this proposed *Judgment* in the United States mail to *(name)* _____ at *(address)* _____

| | |
|---------------|------------|
| Submitted by: | |
| _____ | _____ |
| Signature | Print Name |

