

Motion and Order for Default Re: Modifications of Judgments Josephine County Supplemental Packet

The other party has 30 days to respond to your **Motion** in accordance with **ORS 107.135(14)**. The time starts running from the day after the date of service. The response must be in writing and must be filed with the court and mailed to you. If the other party does not file a response within 30 days, you may request an **Order of Default**.

Default means that you are asking the judge to award you what you asked for in your Motion because the other party did not file a response. Look at Oregon Rules of Civil Procedure (ORCP) Rule 69 for more detailed information.

- NOTE: If the other party has given you written notice that he or she intends to appear, you must give written notice that you intend to apply for a default order at least 10 days before you file your motion. See Uniform Trial Court Rule 2.010 for the form your notice must be in. File your notice with the court and mail it to the other party.

The judge may not grant a default if the other party is incapacitated, a minor, a financially incapable person, a protected person, or a respondent in a fiduciary protective proceeding, as defined by ORS 125.005.



You must also show that the other party is not in active military service before the court can enter an order of default. This is part of the Ex Parte Motion for Order of Default & Declaration in Support. If the other party is in active military service, you cannot get an order of default unless the servicemember waives protection under the Servicemembers Civil Relief Act (SCRA). This law has strict rules about what “active military service” means. This protection does not apply to all servicemembers at all times.

If the other party is in the military, you should see a lawyer before trying to get an order of default. If a default is not done properly, the respondent can re-open the case after returning from service. Be aware that if you knowingly make false statements about the respondent’s status, you may face both federal and state penalties. If you know the other party is not in the military, you must state facts that explain how you know.

Requesting a Default - fill out the following forms:

- Ex Parte Motion for Order of Default and Declaration in Support
- Order on Motion for Default
- Supplemental Judgment Modifying a Domestic Relations Judgment

Read your original Motion carefully. The information in the Supplemental Judgment must be exactly what you requested in your Motion.

You may file the forms with the court any time after 30 days from the date of service.

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

Case No: _____

Petitioner

and

Respondent

**EX PARTE MOTION FOR
ORDER OF DEFAULT and
DECLARATION IN SUPPORT**

Motion

Based on the attached *Declaration*, Petitioner Respondent requests that this court grant an *Order* entering the default of Petitioner Respondent and directing entry of judgment.

Statement of Points and Authorities

ORCP 69 requires the court or clerk to enter an order of default on a showing by affidavit or declaration that a party against whom a judgment is sought has been served with Summons or is otherwise subject to the jurisdiction of the Court and has failed to plead or otherwise defend within the time set by law.

Declaration

Petitioner Respondent was served with the *Motion, Order to Show Cause* and other documents required by law in _____ County, State of _____, on (date) _____ and has not made an appearance within the time required by law.

Petitioner Respondent has not provided me with written notice of intent to appear.

or

Petitioner Respondent provided me with written notice of intent to appear **and** I filed and served written notice of intent to apply for default at least 10 days before filing this motion, or fewer days as permitted by the court.

Respondent is not now, and was not at the time of the service of the *Motion and Order to Show Cause*, incapacitated, a minor, a financially incapable person, a protected person, or a Respondent in a fiduciary protective proceeding, as defined by ORS 125.005,

and (check one of the following):

The Petitioner Respondent **is not** now, and was not at the time of service of the *Motion and Order to Show Cause*, in active military service of the United States. *Provide facts supporting this statement:* _____

The Petitioner Respondent **is** now, or was at the time of service of the *Motion and Order to Show Cause*, in active military service of the United States. Respondent has waived his or her rights under the Servicemembers' Civil Relief Act, as shown by the attached waiver, labeled Exhibit _____ .

I am unable to determine whether or not Petitioner Respondent is now, or was at the time of the service of the *Motion and Order to Show Cause*, in active military service of the United States. *Provide any facts you do know:* _____

I request the relief specified in the Supplemental Judgment that I am filing herewith.

Costs and fees are allowable under ORS 107.105(1)(j) or 107.490(4).

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

Date

Signature

Name (printed)

Contact Address

City, State, ZIP

Contact Phone

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

Case No: _____

Petitioner
and

Respondent

**ORDER ON MOTION
FOR DEFAULT**

Based on the motion and declaration of the Petitioner Respondent in this case,

The court **GRANTS** the *Ex Parte Motion for Order of Default* and directs entry of judgment because the court finds that:

- 1) The responding party was properly served with the *Motion and Order to Show Cause* and other necessary documents and has not filed a response within the time permitted by law,
- 2) The responding party is not now and was not, at the time of service of the *Motion and Order to Show Cause*, incapacitated, a minor, a financially incapable person, a protected person, or a Respondent in a fiduciary protective proceeding, as defined by ORS 125.005, **and**
- 3) The responding party:
 - Is not now and was not, at the time of service of the *Motion and Order to Show Cause*, in active military service of the United States, or
 - Is in active military service of the United States and has waived protection against default judgments under the Servicemembers Civil Relief Act.

The court **DENIES** the *Ex Parte Motion for Order of Default* because:

- The responding party was not properly served with the *Motion and Order to Show Cause*, or other necessary documents, or no proof of service has been filed with the court.
 - The responding party has filed an appearance.
 - The responding party is now or was, at the time of service of the *Motion and Order to Show Cause*, in active military service of the United States and has not waived protection under the Servicemembers Civil Relief Act.
 - The responding party is now, or was, at the time of service of the *Motion and Order to Show Cause*, incapacitated, a minor, a financially incapable person, a protected person, or a Respondent in a fiduciary protective proceeding, as defined by ORS 125.005.
 - Other: _____
- _____

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

Judge Signature:
