

ALBUQUERQUE DIVORCE LAWYER BLOG

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Default Divorce in New Mexico

What happens if you file a Petition for Dissolution of Marriage in New Mexico asking the court for a divorce and your spouse never responds? Generally, if a party to a civil case does not respond within the prescribed period of time the Court will award what's called a default judgment granting the petitioning the party the relief it has requested.

However, the New Mexico courts do not favor default judgments because it denies the opposing party its day in court. This is especially true of the Second Judicial District family law courts in Albuquerque and Rio Rancho. Often, even if a default order is entered, the court will overturn that order when an opposing spouse finally shows up to protest.

So what should you do in this situation? Even though the New Mexico courts don't like default judgments, filing for a default may be your only option if the opposing party simply refuses to respond. Filing a request for default can also have the added bonus of showing the opposing party that you are serious about pursuing your divorce case and prodding that party into action. Finally, the civil rules of procedure are binding on family law courts just as any other court and those rules do not favor setting aside a default more than a year after the default has been entered. Thus, if the opposing party fails to respond within a year of default, even the family courts will be extremely reluctant to set the default aside absent fraud or other wrongful behavior.

Before the court will grant a default, you must show that the opposing party has been properly notified of the pending divorce action. Without proper service, the Court lacks jurisdiction. This can be done by filing an affidavit (a sworn statement) from the sheriff, or process server, that personally served the opposing party, which gives the court proof that the party was served. If you have been unable to personally serve the opposing party because you don't know where he or she is or because they are purposely avoiding service, you can ask the court to allow you to publish notice of the divorce lawsuit in the local paper, which must be done for multiple, consecutive weeks.

After providing proof to the court that notice was either served or published, there are several documents that must be filed to obtain the actual default, including an affidavit that the opposing party is not currently serving in the military, a petition explaining the details of the relief you are requesting and a certificate from the court clerk assuring the judge in your case that the opposing party has not responded. Given the many documents that must be filed to properly obtain a default order, it is important to consult an attorney before beginning that process.

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