

Rule 306. Default**Rule 306.01 Scheduling of Final Hearing**

Except when proceeding under Rule 302.01(c) by Joint Petition, Agreement and Judgment and Decree, to place a marriage dissolution matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a Default Scheduling Request form developed by the state court administrator and shall comply with the following, as applicable:

(a) Without Stipulation-No Appearance. In all default proceedings where a stipulation has not been filed, an Affidavit of Default and of Nonmilitary Status of the defaulting party or a waiver by that party of any rights under the Servicemembers Civil Relief Act, as amended, shall be filed with the court.

(b) Without Stipulation-Appearance. Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least 14 days before the final hearing of the intent to proceed to Judgment. The notice shall state:

You are hereby notified that an application has been made for a final hearing to be held on _____, 20__, at __:__.m. at _____ [a date not sooner than 14 days from the date of this notice]. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing. You should contact the undersigned and the District Court Administrator immediately if you have any defense to assert to this default judgment and decree.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

If the case is to proceed administratively without a hearing under Minnesota Statutes, section 518.13, subdivision 5, then the notice shall be sent after the expiration of the 30-day answer period, but at least 14 days before submission of a default scheduling request as required by this rule, and shall state:

You are hereby notified that an application will be made for a final judgment and decree to be entered not sooner than 14 days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the Petition. You should contact the undersigned and the District Court Administrator immediately if you have any defense to assert to this default judgment and decree.

(c) Default with Stipulation. Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed with an affidavit of nonmilitary status of the defaulting party or a waiver of that party's rights under the Servicemembers Civil Relief Act, as amended, if not included in the stipulation.

In a stipulation where a party appears as a self-represented litigant, the following waiver shall be executed by that party:

I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

(Amended effective January 1, 1993; amended effective January 1, 2004; amended effective January 1, 2006; amended effective January 1, 2008; amended effective May 1, 2012; amended effective July 1, 2015; amended effective March 1, 2024.)

Family Court Rules Advisory Committee Commentary*

This stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

**Original Advisory Committee Comment-Not kept current.*

Advisory Committee Comment - 1992 Amendment

Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of Family Court Procedure.

The default scheduling request required by Rule 306.01, as amended in 1992, serves the purpose of permitting the court administrator's office to schedule the case for the right type of hearing. It is not otherwise involved in the merits. The affidavit of default is a substantive document establishing entitlement to relief by default.

Advisory Committee Comment - 2003 Amendment

Rule 306.01 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

Advisory Committee Comment - 2006 Amendment

Rule 306 is amended to clarify the role of the notice required to be given to parties who are in default but who have "appeared" in some way. A party is not entitled to prevent entry of judgment if that party is in default by not serving and filing a timely written answer to the Petition. Nonetheless, the court may, in its discretion, consider some appropriate measures to prevent the case from being decided on a default basis and to obviate a motion for relief from the default judgment and decree. Accordingly, the rule is amended to afford more useful notice as to the request for a default.

The rule does not define how a party might appear either by "a pleading other than an answer," or "personally without a pleading." Both conditions should be limited to some actions that approach responding to the Petition despite the fact they may be insufficient as a matter of law to stand as a response. Sending a letter that responds to a Petition might suffice for the first condition, as might a letter to the court. Appearing at a court hearing despite having not answered would certainly meet the "appeared personally" condition. When in doubt as to other circumstances, the party seeking a default should, to comply with Rule 306.01(b), provide the required notice, with the expectation that many of these responses that fall short of an answer will not prevent entry of judgment.

The Soldiers' and Sailors' Civil Relief Act of 1940 was amended and renamed in 2003, and the rule is amended to use the new name as a matter of convenience. See Servicemembers Civil Relief Act, Pub. L. No. 108-189, section 1, 117 Stat. 2835, 2840-42 (2003) (to be codified at 50 U.S.C. app. section 521). The former rule would still apply, however, because it included the "as amended" extension of the citation.

Advisory Committee Comment - 2012 Amendment

Rule 306 attempts to make clear the role of notice required to be given to parties who are in default but who have "appeared" in some way in marriage dissolution proceedings. A party is not entitled to prevent entry of judgment if that party is in default by not serving and filing a timely written answer to the Petition. Nonetheless, the court may, in its discretion, consider some appropriate measures to prevent the case from being decided on a default basis and to obviate a motion for relief from the default judgment and decree. Accordingly, the rule is amended to afford more useful notice as to the request for a default. Defaults in other types of family proceedings are governed by Rule 55 of the Minnesota Rules of Civil Procedure.

The rule does not define how a party might appear either by "a pleading other than an answer," or "personally without a pleading." Both conditions should be limited to actions that approach responding to the Petition despite the fact they may be insufficient as a matter of law to stand as a response. Sending a letter that responds to a Petition might suffice for the first condition, as might a letter to the court. Appearing at a court hearing despite having not answered would certainly meet the "appeared personally" condition. When in doubt as to other circumstances, the party seeking a default should, to comply with Rule 306.01(b), provide the required notice, with the expectation that many of these responses that fall short of an answer will not prevent entry of judgment.

Rule 306.02 Preparation of Decree [Abrogated]

(Amended effective January 1, 2004; abrogated effective May 1, 2012.)

Task Force Comment - 1991 Adoption

This rule is derived from existing Rule 5.03 of the Rules of Family Court Procedure.

Advisory Committee Comment - 2003 Amendment

Rule 306.02 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

Advisory Committee Comment - 2012 Amendment

Rule 306.02 is abrogated because it sets forth procedures that do not need to be established by rule and in practice individual judges deal with the preparation of a decree in different ways. The court may still require the submission of proposed findings of fact, conclusions of law, order for judgment, and judgment and decree in advance of the hearing.