

CAO DPi INSTRUCTION 7-3

Finalizing a Divorce by Default on a Response and Counterclaim(With Children)

If you have filed a Response and Counterclaim for Divorce (With Children) using form CAO FL 3-5, and your spouse has failed to file a response within 20 days of service, you may apply for the entry of default and ask for a default judgment from your judge.

Please refer to the procedures outlined in instruction CAO D Inst 7-1 *Finalizing Divorce by Default* for more details. Although those instructions refer to the "Petitioner" getting a default from the "Respondent", the general procedure is the same for a Respondent/Counterclaimant who is getting a default against the Petitioner/CounterRespondent. However, use the specific forms which are listed in the form Packet "Finalizing a Response and Counterclaim for Divorce With Children by Default" instead of the forms for a Petitioner referred to in those instructions.

Before seeking a default, make sure you have:

- Given your spouse three days notices of your intent to obtain a default using form CAO Cv 7-5X.
- Checked with the court assistance officer or court clerk to find out if a hearing will be required or if you can present your testimony using form CAO DPi 7-7C *Affidavit in Support of Default Decree of Divorce (With Children)*
- Obtained and completed form HWH-611 *Vital Statistics Certificate of Divorce* which you can obtain only from a court assistance officer or court clerk
- Have read the *Guidelines for Courtroom Behavior* (CAO Cv Inst 4-1) if a hearing before your judge is required

Note: Defaults are not looked upon with great favor. There is a preference to decide cases after both parties have had an opportunity to present their views. Even though your spouse may not have timely responded to your counterclaim, it may be because s/he is not familiar with legal requirements and procedures. Default judgments on counterclaims are not issued all that frequently because the other party has been participating in the case. Defaults on counterclaims are typically issued when the other party fails to, or decides to stop actively participating in the divorce proceeding.