

## **NOTICE TO THE BAR**

### **ENTRY OF DEFAULT JUDGMENTS WITHOUT PERSONAL APPEARANCES IN DISSOLUTION (FM) PROCEEDINGS IN THE COUNTY OF MIDDLESEX**

The Family Part of Superior Court in Middlesex County, with the approval of the Supreme Court, is instituting a procedure permitting the entry of default judgments without personal appearances in certain dissolution proceedings. Specifically, this procedure will be available for cases as follows:

1. Where the relief requested is limited to the dissolution of the marriage.
2. Where the relief requested is limited to the dissolution of the marriage and the incorporation in the Judgment of Divorce of a written Property Settlement Agreement executed by both parties resolving all issues.
3. When the relief requested is the dissolution of the marriage and the continuation of final Orders entered in other proceedings resolving all issues of custody, visitation and support and where no other issues are presented.
4. In any of the circumstances noted above, relief may also be requested, by either party to permit that person to resume/assume the use of a prior or other name, pursuant to N.J.S.A.2A:34-21.

For a copy of the procedure, please contact the Middlesex Family Intake Office at (732) 981-3221.

Glenn Berman, Presiding Judge  
Family Part, Superior Court  
County of Middlesex

**PROCEDURES FOR ENTRY OF DEFAULT JUDGMENTS  
WITHOUT PERSONAL APPEARANCES IN DISSOLUTION (FM) PROCEEDINGS  
IN THE COUNTY OF MIDDLESEX**

**INTRODUCTION**

With the approval of the N.J. Supreme Court, the Superior Court, Family Part, County of Middlesex has developed a procedure permitting the entry of default judgments without personal appearances in certain divorce proceedings. Specifically, this procedure will be available for cases as follows:

1. Where the relief requested is limited to the dissolution of the marriage.
2. Where the relief requested is limited to the dissolution of the marriage and the incorporation in the Judgment of Divorce of a written Property Settlement Agreement executed by both parties resolving all issues.
3. When the relief requested is the dissolution of the marriage and the continuation of final Orders entered in other proceedings resolving all issues of custody, visitation and support and where no other issues are presented.
4. In any of the circumstances noted above, relief may also be requested, by either party, to permit that person to resume/assume the use of a prior or other name, pursuant to N.J.S.A. 2A:34-21.

**PROCEDURES**

The request for the entry of a Judgment of Divorce based upon the defendant's default must be in writing directed to the Calendar Coordinator associated with the Case Code as listed below. The address is: Middlesex County Family Courthouse, 3<sup>rd</sup> Floor, Room 312; 120 New Street; P. O. Box 2691; New Brunswick, New Jersey 08903.

<b><u>Case Code</u></b>	<b><u>Judge</u></b>	<b><u>Calendar Coordinator</u></b>
C	Rosenberg	Sharonda O'Neil
D	Happas	Lillian Alix
E	Lerner	Tina Long
F	Ferencz	Cheryl Byrom
G	Berman	Carmen Gornowicz
H	Kieser	Chevie Brown

The request must be accompanied with the following documentation:

1. An original and one copy of a Request to Enter Default with an appropriate supporting certification confirming that service has been made in accordance with the Court Rules, that the defendant has failed to respond to the Complaint, and that the time for a responsive pleading has expired. (Where default has previously been entered, it is sufficient to submit a copy of the filed Request to Enter Default).

2. An original and one copy of an Affidavit or Certification confirming that the defendant is not in the military service. (R 1:5-7).
3. An original and two copies of the proposed Judgment of Divorce. The Judgment must be prepared to indicate that it has been entered following the entry of the defendant's default, based upon the court's review of the materials filed. Obviously, the Judgment should provide for the specific relief requested in the Complaint. To the extent the proposed Judgment of Divorce incorporates the provisions of a written Property Settlement Agreement, that Agreement must be referred to as an exhibit attached to the Judgment of Divorce. One original and two copies of the Agreement must be included with the proposed Judgment of Divorce.
4. Appropriate proofs must be submitted through the submission of a sworn statement, either in the form of a Certification or an Affidavit, establishing the plaintiff's right to the relief requested. Notably, a copy of the Verified Complaint for Divorce may be sufficient, assuming it is appropriately drafted and deals with the plaintiff's right to the specific relief requested. In the alternative, it may be necessary for the plaintiff to submit a supplemental Certification or Affidavit. Depending upon the relief requested, the matters noted below should be addressed either in the original Verified Complaint or the supplemental Certification or Affidavit:
  - A. In all cases, the material submitted must include a statement, under oath, identifying all prior and pending proceedings either in this state or in some other jurisdiction. The materials submitted should indicate the full caption including whatever docket number may have been assigned, together with a brief indication of the status of the proceedings.
  - B. In all cases, where child support or alimony is a relief requested the materials submitted must include a statement, under oath, indicating whether or not either of the litigants are receiving public assistance. If that is the case, specific information should be provided as to the nature of the assistance being received. The plaintiff should also identify any agencies which might be interested in the proceedings. If child support is a relief requested, a completed *Confidential Litigant Information Sheet* must be submitted.
  - C. To the extent plaintiff is requesting the incorporation of a Property Settlement Agreement, the Complaint or separate Certification should confirm that the parties have entered into the Agreement knowingly and willingly, that it resolves all of the issues presented, that the parties consider the Agreement fair and appropriate, that the parties waive trial, that the parties are satisfied with the legal services provided and that the plaintiff specifically asks that the Agreement be incorporated in the Judgment of Divorce. In the Final Judgment of Divorce it should be specifically stated that the Agreement is incorporated into the Judgment, it being understood that the court did not take testimony on the Agreement nor is it ruling on the merits thereof.
  - D. To the extent the plaintiff is requesting the incorporation of final Orders entered in separate proceedings dealing with custody, visitation or support, the complaint or separate Certification should identify the Orders in question.

If there are prior FD (non-dissolution) Orders or FV (domestic violence) Orders still in effect, with the exception of the no-contact provisions, weapons prohibition, UIFSA, and/or public assistance provisions, the Orders will be vacated at the time the Judgment of Divorce is entered. Any relief sought in the Judgment of Divorce on issues contained in such Orders, including custody, visitation, and support, must be specifically set forth in the proposed Judgment of Divorce.

- E. Assuming the plaintiff is not requesting the incorporation of a Property Settlement Agreement or the continuation of prior Orders dealing with custody, visitation or support, the Complaint or separate Certification should confirm that there is no property or debt to be distributed between the parties, that there are no claims to be addressed regarding the issues of custody, visitation or support, that plaintiff is unaware of any circumstances which might require the court to address those issues, and that the plaintiff is aware he or she is waiving any right to ask the court to deal with those issues.
- F. In cases where alimony is a relief requested or specifically waived, to fulfill the requirements of Crews vs Crews, 164 N.J. 11 (2000), the material submitted must include a stipulation that specifically describes the standard of living at the time of separation and that the parties agree that the standard of living can be maintained. In the event that there is disagreement either about the standard of living and/or whether the standard of living can be maintained, then a court hearing will be necessary and personal appearances required.
- G. In cases where child support is a relief requested, to fulfill the requirements of Ordukaya v. Brown, 357 N.J. Super. 231 (App. Div. 2003), the materials submitted must include a completed child support guidelines worksheet and, if the proposed child support award differs from the award calculated under the child support guidelines, the worksheet must state the reason for the deviation and the amount of the award calculated under the child support guidelines.
- H. To the extent either party is requesting permission to resume the use of a prior name or assume another name, the Complaint or Certification should confirm that the party has not been convicted of a crime, is not the subject of any criminal investigations or prosecutions, is not contemplating the filing of a bankruptcy petition, and that the use of the prior or another name will not impact on any obligations due to third parties. The requesting party's social security number and date of birth must be included for a name change.
- I. Either the Complaint or a separate Certification will have to contain facts establishing that the parties were married, that the plaintiff has a cause of action for divorce, and that all jurisdictional and venue requirements have been satisfied. The complaint or certification must present specific facts establishing the cause of action in question, consistent with the general allegations of the complaint. For obvious reasons, it will be essential to offer specific facts.

- J. If a cause of action presented is adultery, a certification or affidavit of compliance must be submitted confirming that a Notice to Correspondent was served in accordance with Rule 5:4-2(b)(2) and that the correspondent has not moved to intervene or otherwise responded to that notice.

It is essential that the relief requested in the Complaint be specific and identical to the relief being sought when the proposed Judgment of Divorce is submitted. To the extent there is a discrepancy in the relief requested in the Complaint and the relief outlined in the proposed Judgment of Divorce, it may be necessary to require personal appearances.

5. Stamped, self-addressed 9" x 12" envelopes should be provided to permit court staff to return a conformed copy of the Judgment of Divorce and filed copies of the other materials to counsel, and to forward an additional conformed copy of the Judgment of Divorce to the defendant.
6. The materials submitted will be reviewed by court staff. If the materials are in order, the entire case record will be forwarded to a judge for review. It is anticipated a judge will be able to act on the materials submitted almost immediately. If the judge is satisfied that the material is appropriate, the proposed Judgment of Divorce will be executed and filed and conformed copies will be circulated. If there is a deficiency in the materials filed, a hearing will be scheduled and personal appearances will be required.

### **CLOSING REMARKS**

This procedure is entirely optional. Court staff will continue to schedule formal hearings, requiring court appearances, whenever that is requested. There are also a variety of circumstances where it will be essential to require court appearances. For example, a hearing will be necessary whenever there is a question as to the proofs presented in the documentation submitted. Formal hearings will also be required whenever the matter is proceeding based upon the service of a Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief, pursuant to Rule 5:5-2(e).

This procedure is effective July 1, 2003. We welcome any comments by attorneys on the procedure both now and as it is being implemented.

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GLENN BERMAN  
Presiding Judge, Family Part  
County of Middlesex