

Motion and Order to Set Aside Dismissal Forms and Instructions Packet Number 18B

Instructions

The attached forms are to be used by a Petitioner in an original Dissolution, or other family law case who wants to reinstate a Petition that was dismissed by the court because the Petition was not served, the defendant was not defaulted or other appropriate action was not taken within a reasonable period of time. Do not use this form for post-judgment Motions to Modify.

I. General Instructions

A. Use black ink and print or type when you fill out your forms.

B. Always file the original forms with the clerk. Be sure and make yourself an extra copy of any document before you file it with the clerk.

C. Case heading. On each document, fill out the case caption exactly as it appears in the original case filing, including the case number.

D. Completing the affidavit. Explain in clear detail why you did not serve the petition, default the defendant or take whatever other action that was required by the court.

E. Signing your forms. The affidavit in this packet has to be notarized, or signed in the presence of a court clerk. Wait to sign the affidavit in front of the notary or court clerk, and bring picture ID with you. Many local banks provide notary services.

F. Address information. On most pages you are asked for your address and telephone number. You must give a contact address and telephone, which may be your own. However if you do not wish the other side to know your address, you may give the address of some person who can be relied upon to get mail and messages to you promptly.

G. Representing yourself. We strongly recommend that you seek legal advice and representation to protect yourself. If you are unable to hire an attorney, an explanation of the process you will go through is described below.

II. Completing the form

Fill out the Motion, Affidavit, and the case heading on the Order.
Make a copy of the documents for yourself.

III. Review of Document

You may schedule an appointment for the Family Court Specialist to review your documents by calling 682-4302.

IV. Completion

You will need to attend an Ex parte hearing to have a judge make a decision on your motion. Ex parte takes place Monday through Friday from 8:30 to 8:50 a.m., it is a hearing where judges are available to sign documents and you do not need to have any appointment to attend. Check in first with the civil/domestic cashiers on the second floor of the courthouse.

If the judge grants your motion to set aside the Judgment of Dismissal, your case will be reopened at the point at which it was dismissed. You will need to take action to bring your case to a conclusion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Marriage of:)
)
_____,) Case No. _____
Petitioner,)
and) MOTION TO SET ASIDE
) DISMISSAL
_____,)
Respondent.)

Comes now Petitioner _____ and, based upon the following Points and Authorities and the attached Affidavit, moves the court for an Order setting aside the judgment of dismissal entered on the _____ day of _____, 20__ in the above captioned case, on the grounds of mistake, inadvertence, surprise or excusable neglect.

DATED this ___ day of _____, 20__.

Petitioner, pro se

STATEMENT OF POINTS AND AUTHORITIES

ORCP 71B(1) allows the court to relieve a party from a judgment or order for mistake, inadvertence, surprise or excusable neglect when accompanied by a pleading containing an assertion of a defense. In the case of an involuntary dismissal for failure to prosecute, a party should be able to meet the intent of that rule by submitting the next appropriate pleading.

I certify that: (check all that apply)

- I selected this document for myself.
- I was provided this document by an attorney.
- I completed this document without paid assistance.
- I paid or will pay money to _____ for assistance in preparing this document/form.

(signature)

Submitted by:

(signature) Petitioner, pro se

(print name)

(mailing address)

(street address)

(city, state, zip code)

(area code/phone)

1 The facts stated in this Affidavit are true and correct to the best of my knowledge and belief.

2 DATED _____

3 _____

4 (signature) Petitioner, pro se

5 (print name)

6 (mailing address)

7 (street address)

8 (city, state, zip code)

9 (telephone)

10 SUBSCRIBED AND SWORN TO before me by _____, Petitioner herein,
11 this ____ day of _____, 20____.

12 _____
13 Notary Public for Oregon / Court Clerk
My Commission Expires: _____

14 [Notary Seal]

15

16

I certify that: (check all that apply)
17 I selected this document for myself.
18 I was provided this document by an attorney.
19 I completed this document without paid assistance.
 I paid or will pay money to _____ for assistance in preparing this document/form.

20 _____
21 (signature)

22

23

24

25

26

FORM 3

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

In the Matter of:)	
)	
_____)	Case No. _____
Petitioner,)	
and)	ORDER ON MOTION TO SET ASIDE
)	DISMISSAL
_____)	
Respondent.)	

Based on the motion and affidavit of Petitioner, and good cause appearing therefore,

IT IS HEREBY ORDERED AND ADJUDGED that: Petitioner's Motion to Set Aside Dismissal be the same is hereby GRANTED.

Petitioner has _____ days to file a completed proof of service or this case will be dismissed without further notice.

Petitioner has _____ days to have the defendant file an appearance or take a default against the defendant or this case will be dismissed without further notice.

Petitioner must provide Respondent with a copy of this Order and 10 day written notice of intent to take a default per ORCP 69 and provide proof thereof to the Court.

MOTION DENIED.

DATED this _____ day of _____, 20____.

CIRCUIT COURT JUDGE

I certify that: (check all that apply)

I selected this document for myself and completed it without paid assistance.

I paid or will pay money to _____ for assistance in preparing this document.

(signature)

Submitted by:

Petitioner, Print Name

Address or Contact Address

City, State, Zip

Telephone or Contact Telephone