

**KITSAP COUNTY DISTRICT COURT  
STATE OF WASHINGTON**

(1) _____, (2) _____ <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> (1) _____, (2) _____ <p style="text-align: center;">Defendant.</p>	No. _____  <b>SMALL CLAIMS DECLARATION OF MILITARY STATUS</b>
---	---

**INTRODUCTION**

A “default judgment” may be entered against a small claims defendant when – (1) the defendant is served with the Small Claims Notice of Claim; and (2) the defendant does not make an appearance in the small claims case.

However, if the defendant is in military service or is a dependent of a service member in military service, state law prohibits entry of a default judgment until the court appoints an attorney to represent the defendant. RCW 38.42.050(4).<sup>1</sup>

In order to protect service members and their dependents, state law requires the court, before entering a default judgment for plaintiff, to require the plaintiff to file a sworn document stating whether the defendant is a service member or is a dependent of a service member in military service.<sup>2</sup>

If Plaintiff wants the Court to enter a default judgment against Defendant in this case, Plaintiff must fully complete this document and file it with the Court prior to a default judgment being entered.

A person who makes or uses this document knowing it to be false is guilty of a class C felony. RCW 38.42.050(8).

---

<sup>1</sup> RCW 38.42.050 is attached to this document. Plaintiff is encouraged to carefully review this statute before completing this document.

<sup>2</sup> This document is the sworn document contemplated by statute. RCW 38.42.050(2).

## DECLARATION

I, \_\_\_\_\_, make the following declaration concerning the military status of –  
\_\_\_\_\_ <sup>3</sup>.

### 1. IS DEFENDANT AN ACTIVE SERVICE MEMBER?

*Select 1.1 or 1.2 or 1.3 and any applicable subpart.*

1.1 \_\_\_\_\_ No. Defendant is not an active service member because –

\_\_\_\_\_ Personally Acquainted. I am personally acquainted with Defendant. I know Defendant is not an active service member in military service.

\_\_\_\_\_ Military Verification Website. On \_\_\_\_\_, the Defense Manpower Data Center Military Verification website, which is hosted by the Director of the Department of Defense Human Resources Activity Defense Manpower Data Center, was accessed at <<https://scra.dmdc.osd.mil/scra/#/home>>. According to the information obtained from this website, Defendant is not an active service member in military service.

File a copy of the Military Verification document with the Court.

1.2 \_\_\_\_\_ I Do Not Know.<sup>4</sup> I do not know if Defendant is an active service member.

1.3 \_\_\_\_\_ Yes.<sup>5</sup> Defendant is an active service member because –

\_\_\_\_\_ Personally Acquainted. I am personally acquainted with Defendant. I know Defendant is an active service member in military service.

\_\_\_\_\_ Military Verification Website. On \_\_\_\_\_, the Defense Manpower Data Center Military Verification website, which is hosted by the Director of the Department of Defense Human Resources Activity Defense Manpower Data Center, was accessed at <<https://scra.dmdc.osd.mil/scra/#/home>>. According to the information obtained from this website, Defendant is an active service member in military service.

File a copy of the Military Verification document with the Court.

---

<sup>3</sup> Hereafter “Defendant”.

<sup>4</sup> I understand the Court cannot enter a default judgment until after the Court appoints an attorney to represent the Defendant. RCW 38.42.050(4).

<sup>5</sup> I understand the Court cannot enter a default judgment until after the Court appoints an attorney to represent the Defendant. RCW 38.42.050(4).

**2. IS DEFENDANT A DEPENDENT OF AN ACTIVE SERVICE MEMBER?**

Select 2.1 or 2.2 or 2.3 and any applicable subpart.

2.1 \_\_\_ No. Defendant is not a dependent of an active service member because –

\_\_\_ Personally Acquainted. I am personally acquainted with Defendant. I know Defendant is not a dependent of an active service member in military service.

\_\_\_ Military Verification Website. On \_\_\_\_\_, the Defense Manpower Data Center Military Verification website, which is hosted by the Director of the Department of Defense Human Resources Activity Defense Manpower Data Center, was accessed at <<https://scra.dmdc.osd.mil/scra/#/home>>. According to the information obtained from this website, Defendant is not a dependent of an active service member in military service.

File a copy of the Military Verification document with the Court.

\_\_\_ Defendant Did Not Respond To Statutory Notice – Notice Served. Defendant did not respond to the Notice provided in RCW 38.42.050(3)(a) which was personally served on Defendant on \_\_\_\_\_ (date).

File a copy of the Notice with the Court.

\_\_\_ Defendant Did Not Respond To Statutory Notice – Notice Mailed. Defendant did not respond to the Notice provided in RCW 38.42.050(3)(a) which was mailed via first-class mail to Defendant on \_\_\_\_\_ (date) to the Defendant’s address at – \_\_\_\_\_.

File a copy of the Notice with the Court.

2.2 \_\_\_ I Do Not Know.<sup>6</sup> I do not know if Defendant is a dependent of an active service member in military service.

2.3 \_\_\_ Yes.<sup>7</sup> Defendant is a dependent of an active service member because –

\_\_\_ Personally Acquainted. I am personally acquainted with Defendant. I know Defendant is a dependent of an active service member in military service.

\_\_\_ Military Verification Website. On \_\_\_\_\_, the Defense Manpower Data Center Military Verification website, which is hosted by the Director of the Department of Defense Human Resources Activity Defense Manpower Data Center, was accessed at <<https://scra.dmdc.osd.mil/scra/#/home>>.

<sup>6</sup> I understand the Court cannot enter a default judgment until after the Court appoints an attorney to represent the Defendant. RCW 38.42.050(4).

<sup>7</sup> I understand the Court cannot enter a default judgment until after the Court appoints an attorney to represent the Defendant. RCW 38.42.050(4).

According to the information obtained from this website, Defendant is a dependent of an active service member in military service.

File a copy of the Military Verification document with the Court.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am the person whose name I typed (or wrote) below.

SIGNED at (city) \_\_\_\_\_, (state) \_\_\_\_\_ on (date) \_\_\_\_\_.

/s/ Signed Electronically

[Note – By typing your name, you intend to sign electronically and agree your electronic signature is the same as a handwritten signature for the purpose of validity, enforceability, and admissibility.]

## **PROTECTIONS FOR SERVICE MEMBERS AND THEIR DEPENDENTS**

State and federal law provide protections to defendants who are in the military service and to their dependents. One protection provided is the protection against the entry of a default judgment in certain circumstances.

A “service member in military service” includes – (1) members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty; (2) National Guard members called to active duty by the President or Secretary of Defense for over 30 days; and (3) commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration. 50 U.S.C. §511.

A “service member” also includes – (1) an active member of the United States armed forces, a member of a military reserve component, or (2) a member of the national guard who is either stationed in or a resident of Washington state. RCW 38.42.010.

A service member “dependent” includes – (1) the service member’s spouse; (2) the service member’s minor child, or (3) an individual for whom the service member provided more than one-half of the individual’s support for one hundred eighty days immediately preceding an application for relief. RCW 38.42.010.

“Military service” means a service member under a call to active service authorized by – (1) the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days; or (2) the Governor under RCW 38.08.040 for a period of more than thirty consecutive days. RCW 38.42.010.

## RCW 38.42.050

### **Protection of service members and their dependents against default judgments.**

- (1) [Applies To Civil Actions] This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.
- (2) [Plaintiff Must File Defendant's Military Status Before Default Judgment] In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:
  - (a) [Plaintiff States Defendant's Military Status] Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or
  - (b) [Plaintiff Unable To Determine Defendant's Military Status] If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.
- (3)(a) [A Method For Plaintiff To Determine Whether Defendant A Military Dependent] To determine whether or not a defendant is a dependent of a service member in the military service under this chapter, the plaintiff may serve on or mail via first-class mail to the defendant a written notice in substantially the following form:

“NOTICE: State and federal law provide protections to defendants who are in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice pertains only to a defendant who is a dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national

guard or reserves, or a national guard member under a call to service authorized by the governor of the state of Washington, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights.”

(b) [If Defendant Fails To Respond To Military Dependent Notice] If the notice is either served on the defendant twenty or more days prior to an application for an order of default or a default judgment, or mailed to the defendant more than twenty-three days prior to such application, and the defendant fails to timely respond, then for purposes of entry of an order of default or default judgment, the court or administrative tribunal may presume that the defendant is not a dependent of a service member in the military service under this chapter.

(c) [Plaintiff May Allow More Time To Respond; Amending Notice] Nothing prohibits the plaintiff from allowing a defendant more than twenty days to respond to the notice, or from amending the notice to so provide.

(4) [If Military, No Default Judgment Unless Attorney Appointed]. If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(5) [Stay Of Proceedings] In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) [Defendant's Presence Needed] There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) [Counsel Unable To Contact Military Defendant] After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. The defendant's failure to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant or that counsel has been unable to determine if a meritorious defense exists.

(6) [Temporary Domestic Violence Orders Are Permitted] No bar to entry of judgment under subsection (4) of this section or requirement for grant of stay under subsection (5) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the

other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(7) [Military Defendant May Request Stay] If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW 38.42.060.

(8) [False Affidavit A Felony] A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(9) [Reopening Default Judgment] If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) [Materially Affected By Military Service] The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) [Meritorious Defense] The service member or dependent has a meritorious or legal defense to the action or some part of it.

(10) [Rights Of Bona Fide Purchaser] If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value.