

Margaret O. Steinbeck
Circuit Judge, 20th Judicial Circuit
Lee County Justice Center
1700 Monroe Street
Fort Myers, FL 33901
(239) 335-2412

MEMO

To: All Family Law Parties (Counsel and Pro Se Litigants)

Re: Default Judgments in Dissolution Actions

Date: March 1, 2001

IF A DEFAULT IS ENTERED AGAINST THE RESPONDENT AFTER PERSONAL SERVICE, the default operates to admit only the “liquidated” allegations of the petition. If the claims are “unliquidated,” a trial is required with notice to the defaulted Respondent, at which time the Petitioner must prove his/her specific claims. Generally, petitions for dissolution do not specify, or “liquidate,” claims because the claims are uncertain when the case is filed. The specific amount claimed for child support, alimony, or property division must be proven by the Petitioner at a trial. Therefore, you cannot use Special Interrogatories in a case where the Respondent is defaulted after personal service and the petition asks for unliquidated amounts. The case is “contested.” A Notice of Trial must be filed by the Petitioner followed by a Trial Order signed by the judge setting a trial date with at least ten (10) days notice to the defaulted party. See Rules 12.070(c), 12.440 and 12.500.

If the petition indicates the parties entered into a Settlement Agreement and requests that the court enter Final Judgment incorporating the Settlement Agreement and the Respondent has been personally served and defaults, the court can enter a Final Judgment on the Special Interrogatories Procedure, without a trial, provided the Respondent has also filed a Financial Affidavit. **Pursuant to Rule 12.285(a)(1), (last sentence), the court cannot waive the Financial Affidavit requirement.**

NOTE: Under case law, child custody can never be decided by a default. Notice of Trial, a Trial Order, and a trial on the merits is required in all cases where custody is an issue.

IF A DEFAULT IS ENTERED AFTER SERVICE BY PUBLICATION, the court can grant (1) a dissolution and, if there are children, (2) temporary custody until the Respondent is personally served. The court does not have subject matter jurisdiction over child support, alimony, or property division until the Respondent is personally served. The court can reserve jurisdiction over these issues until the Respondent is personally served. **YOU CANNOT USE SERVICE BY PUBLICATION IF YOU CAN MAKE PERSONAL SERVICE under Florida Statute, Section 48.194 (service outside state), or by personal service within Florida, and service by publication can only be used after diligent search**. See Chapter 49, Florida Statutes and Affidavit of Diligent Search and Inquiry, Form 12.913(b).

Margaret O. Steinbeck (electronically signed)

MARGARET O. STEINBECK, Circuit Judge