

Rule 11. Failure to Appear

(a) FAILURE OF RESPONDENT TO APPEAR AT TRIAL OR HEARING.

(1) *At Civil Protection Order Trial.*

(A) *Entry of Respondent's Default.* When the respondent fails to appear at the civil protection order trial, after being served in accordance with Rule 5 with the petition and notice of hearing and order directing appearance, or having signed a notice to return to court, the court may enter the respondent's default.

(B) *Ex Parte Hearing.* After a default has been entered in accordance with Rule 11(a)(1)(A), the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may enter a civil protection order by default.

(C) *Effect of Default Civil Protection Order.* A temporary protection order remains in effect until the respondent is personally served with the default civil protection order or until the default order expires, whichever occurs first. Once the respondent is personally served with the default civil protection order, the respondent must comply with it.

(2) *For Hearing on Petitioner's Motion.*

(A) *Ex Parte Hearing.* When the respondent fails to appear at a hearing on the petitioner's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may grant the motion by default.

(B) *Effect of Default Modification or Extension.* Until the respondent is personally served with a modified or extended order, the respondent must comply with any active orders with which the respondent has been personally served. Once the respondent is personally served with the modified or extended order, the respondent must comply with it.

(3) *For Hearing on Respondent's Motion.* When the respondent fails to appear at a hearing on the respondent's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(b) FAILURE OF PETITIONER TO APPEAR AT TRIAL OR HEARING.

(1) *At Civil Protection Order Trial.* When the petitioner fails to appear at the civil protection order trial, the court may dismiss the petition in accordance with Rule 10 or may continue the trial for a later date.

(2) *For Hearing on Petitioner's Motion.* When the petitioner fails to appear at a hearing on the petitioner's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(3) *For Hearing on Respondent's Motion.*

(A) *Ex Parte Hearing.* When the petitioner fails to appear at a hearing on the respondent's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the respondent is entitled to relief, the court may grant the motion by default.

(B) *Effect of Default Modification.* Until the petitioner is personally served with a modified order, the petitioner must comply with any active orders with which the petitioner

has been personally served. Once the petitioner is personally served with the modified order, the petitioner must comply with it.

(c) BENCH WARRANT.

(1) *In General*. The court may issue a bench warrant without bond if any party fails to appear after:

(A) being personally served with a notice of hearing and order to appear in accordance with Rule 5;

(B) signing a notice to return to court; or

(C) the court sends an order to show cause to the party's last known address.

(2) *Hearing on Bench Warrant*. When a party with an outstanding bench warrant appears before the court, the court must:

(A) quash the bench warrant;

(B) serve the party with any orders previously issued by the court but not served on the party;

(C) if applicable, require the party to sign a notice to return for any subsequent hearing date; and

(D) issue a release order in the civil protection order case.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 5, this rule has been renumbered as Rule 11. This rule has also been modified to provide better notice, to the parties, of the consequences for failing to appear.

COMMENT

Several factors may be considered in determining whether to hold a default hearing on the same day the default is entered or at a later date. These factors include, but are not limited to: (1) whether the relief sought is focused primarily on violence prevention, or whether it also includes more complex issues such as custody and child support; and (2) whether the Court has a reliable address for the respondent, or whether s/he is unlikely to actually receive the notice of a subsequent default hearing.