



## The Supreme Court of the Northwest Territories

To: Members of the Northwest Territories Bar

July 29, 1996

### **CLERK'S PRACTICE DIRECTIVE NO. 4**

#### **DEFAULT PROCEDURE - RULE 160**

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Rule 160 states that a plaintiff may note in default by filing a direction in Form 10 where the defendant fails "to deliver" a statement of defence or appearance within the time limited therefore. The term "deliver" means "file and serve" (Rule 1). Hence, the ability to note in default can be due to failure to file or serve or both. Therefore proof in default of either filing or service is sufficient and the plaintiff need not prove both.

Therefore the following steps are required to note in default:

1. If the default is in failing to file, the plaintiff need only provide (a) proof of service of the statement of claim; and (b) the direction in Form 10. There is no need to file an "affidavit of no defence" since the failure to file will be self-evident.
2. If the default is in failing to serve (but yet the pleading has been filed), the plaintiff must provide (a) proof of service of the statement of claim; (b) the direction in Form 10; and, (c) an affidavit attesting to non-service of the defendant's pleading.

These are the steps impliedly required by the new rules.

This procedure also applies to noting in default under Rule 20(1) of the Divorce Rules.

Clerk of the Supreme Court