

THIRD JUDICIAL DISTRICT *PRO SE** DIVORCE INSTRUCTIONS

These instructions will take you step-by-step through the procedure for filing a divorce case and getting a decree of divorce. It is very important that you read this information carefully.

State laws set the steps you must follow. Some of those laws are based on principles of basic fairness from the Idaho and U.S. Constitution. The court clerks and the judge in your case are required to follow those laws, and cannot change them for your case. Although state law sets the general steps, there are some details in those steps that are set by the judges and the court clerks in the county where the divorce case is filed, and there are some differences in the steps in the different counties.

If you need more information, you should talk to a lawyer. Neither the court clerk nor the judge can give you legal advice. The judge is required to be impartial, and cannot help you make your case against someone else any more than the judge could help someone else make a case against you. The judge will not talk to you about your case, except in regularly scheduled proceedings where both parties have the opportunity to be present.

A court clerk can file your papers, can give you information about scheduling hearings and filing fees, and has some forms you can use for the papers that you will need to file. But court clerks cannot tell you what to write on the forms, they cannot give you legal advice, and generally they cannot give you any other information that is not covered in these instructions. Some courts also have courthouse assistance officers who can help you, and there is more information at the end of these instructions about other places you can contact for help or information.

You may represent yourself without an attorney. But when you choose to represent yourself, you are held to the same standards as an attorney. It will be no excuse that you are not a lawyer or that you do not know the law or the rules.

A. FILING YOUR DIVORCE

STEP ONE: Fill out all the documents you will need to take to the court clerk's office to get your divorce started.

NOTE: The documents must be **TYPED**, not handwritten. The court clerk CANNOT accept documents that are handwritten. Do this BEFORE you take the documents to the court clerk's office and CHECK them for accuracy.

* *Pro se* refers to a person who is representing him or herself in court without an attorney.

DOCUMENTS REQUIRED IN EVERY DIVORCE CASE:

Complaint for Divorce
Summons

DOCUMENTS REQUIRED WHEN YOU AND YOUR SPOUSE HAD CHILDREN TOGETHER, AND THE CHILDREN ARE UNDER THE AGE OF EIGHTEEN (18) YEARS:

Affidavit Verifying Income
Child Support Worksheet (Standard Custody OR Shared/Split Custody)

STEP TWO: Sign the documents, have them notarized, and make copies.

- a. Sign the Complaint for Divorce in front of a notary public. If you need to file an Affidavit Verifying Income, sign it in front of a notary public. After you sign the forms, the notary public will sign and seal the forms.
- b. Make two (2) copies of every document you have completed.

NOTE: Attach the copies by paper clip to the original documents. This way, you'll be less likely to get them mixed up. If your papers are in a mess, the court clerk will not sort them out for you.

NOTE: Some court clerk's offices have a notary public, some do not. Some court clerk's offices will make copies for you, some will not. If the court clerk's offices will make copies, the court clerk will charge you a fee for the copies. If you want to have the documents notarized and copied at the court clerk's office, call before you go to make sure the court clerk's office has these services available, and take cash with you to pay the copy fee. If the court clerk's office does not offer these services, then you must have the documents notarized and make the copies **BEFORE** you go to the court clerk's office to file them.

STEP THREE: Take all of your original documents and copies, and the filing fee to the court clerk's office at the county courthouse for filing.

- a. Take the filing fee with you. Some court clerks office will accept a personal check, some will not. If you want to pay by personal check, call before you go to make sure the court clerk's office will accept a check. As of June, 2000, the filing fee for a divorce case is \$118.00. Filing fees are sometimes raised, so you would be wise to call the court clerk's office to check to make sure that is still the correct amount.
- b. Give the court clerk all of your original documents, your copies, and the

filing fee. Ask the court clerk to file the originals, and to “conform” all of the copies. (Conformed copies are copies that have been stamped by the court clerk to show that the original has been filed.) You should keep one set of the conformed copies for your records. You will need the other set for service of process on your spouse, which is in Part B below.

If you cannot pay the filing fee, you can ask for a waiver of the filing fee. Tell the clerk that you do not have the money to pay the filing fee, that you want to ask for a waiver of the filing fee, and ask the court clerk to give you the forms and instructions to ask for a waiver of the filing fee. You will need to follow the instructions and complete the forms to ask for a waiver of the filing fee. Your divorce will not be filed until either: 1) you pay the fee, or 2) your request for a waiver is granted by the judge.

- c. The court clerk will attach a “Joint Preliminary Injunction” to the original Summons and to the two copies of the Summons. If there are children of the marriage under the age of eighteen (18) years, the court clerk will also attach an “Order to Attend Divorcing Parents Class” to the original Summons and to the two copies of the Summons. The court clerk will conform the copies. The court clerk will keep all of the originals, except for the original Summons. The court clerk will give you a receipt for the filing fee, all of the conformed copies, and the original Summons.
- d. Ask the clerk for a Certificate of Divorce form. If you and your spouse had children together, and the children are under the age of eighteen (18) years, ask the court clerk for a Child Support Order Transmittal form. These are forms from the Idaho Department of Health and Welfare that you will need later.
- e. The Joint Preliminary Injunction applies to both you and your spouse. If you and your spouse had children together, and the children are under the age of (18) years, then the Order to Attend Divorcing Parents Class applies to both you and your spouse. Read both the injunction and the order carefully, and follow them.

Your divorce case is now filed. But this is just the beginning. It is now time to get your spouse served with a copy of the Complaint for Divorce and Summons.

B. GETTING YOUR SPOUSE SERVED

You must give notice of your Complaint for Divorce to your spouse. The procedure for giving notice is called “service of process.” There are specific steps that must be followed, and it is very important that they be done correctly. If service of process is properly completed, and your spouse does not file an Answer to your Complaint for Divorce, or otherwise appear in the case, then you can get a default

divorce decree. If service of process is not completed, or is not completed correctly, the judge CANNOT give you a default divorce decree.

Service of process means giving your spouse a copy of the Complaint for Divorce, the Summons, the Joint Preliminary Injunction, and if there is one, the Order to Attend Divorcing Parents Class. It also includes filing the proper documents with the court clerk to show that service of process was correctly completed.

Your spouse MUST be served in ONE of the following ways.

1. You can give the documents to your spouse, and your spouse can sign an Admission of Service, which shows that service of process was completed. (See Alternative #1 below for step-by-step instructions.)
2. The documents can be delivered to your spouse by the sheriff or by a professional process server. The sheriff's deputy will prepare a Return of Service, or the professional process server will prepare an Affidavit of Service, that shows that service of process was completed. (See Alternative #2 below for step-by-step instructions.)
3. The documents can be delivered to your spouse by someone over the age of 18 years — OTHER THAN YOU. The person who serves process will have to do prepare an Affidavit of Service that shows that service of process was completed. (This is not a preferred method of service, but see Alternative #3 below for step-by-step instructions.)
4. If you have tried to locate your spouse, but have not been able to do so, your spouse can be served by publishing the Summons in a newspaper most likely to give your spouse notice of the divorce action, and by mailing the documents to your spouse's last known address. (See Alternative #4 below for more information and instructions.)

ALTERNATIVE #1: If your spouse cooperates — the “Admission of Service”

This is the best way, but it requires the cooperation of your spouse.

- a. Fill out the Admission of Service form (except for the signature of your spouse and the notary public).

There are two Admission of Service forms in your packet. One is an Admission of Service AND Consent to Decree. Use this form if your spouse agrees to entry of a decree as you have asked for in your complaint. The other Admission of Service does not include a Consent to Decree. Use this form if your spouse is willing to accept service of process, but does not agree to entry of a decree as you have asked for in your complaint.

- b. Give your spouse the following:
 - the Admission of Service
 - one (1) conformed copy of the Complaint for Divorce
 - one (1) conformed copy of Summons with Joint Preliminary Injunction attached, and if there is one, the Order to Attend Divorcing Parents Class
- c. Have your spouse sign the Admission of Service in front of a notary public. The notary public will sign and seal the Admission of Service.
- d. Have your spouse RETURN to you the Admission of Service. Your spouse should keep the copies of the Complaint for Divorce, the Summons, with the Joint Preliminary Injunction attached, and if there is one, the Order to Attend Divorcing Parents Class.
- e. Once you have the ORIGINAL signed and notarized Admission of Service from your spouse, make two copies of the Admission of Service.
- f. Take the original Admission of Service and the two copies to the court clerk's office. Ask the court clerk to file the ORIGINAL Admission of Service, and ask the court clerk to conform the copies of the Admission of Service. The court clerk will keep the ORIGINAL Admission of Service. The court clerk will give you the conformed copies. Keep one of the copies for your records, and give the other to your spouse for your spouse to keep.

ALTERNATIVE #2 Service by the Sheriff or by a Professional Process Server

- a. After you file your divorce, take your documents to either the civil department of the County Sheriff's Office or to a professional process server. (You can find professional process servers in the phone book.) If your spouse is in another county in Idaho, you will need to contact the Sheriff's Office or a process server in the county where your spouse will be served.
- b. Give the deputy or the process server the following documents:
 - the original Summons (with the Joint Preliminary Injunction attached, and if there is one, with the Order to Attend Divorcing Parents Class attached)
 - one (1) conformed copy of the Summons (with the Joint Preliminary Injunction attached, and if there is one, with the Order to Attend Divorcing Parents Class attached)

- one (1) conformed copy of the Complaint for Divorce
- c. Pay the deputy or process server the required fee.
- d. The deputy or process server will ask you for information that describes your spouse and where your spouse can be found, including where your spouse lives or works. You must provide information where your spouse can be found -- the sheriff's office will not investigate to find your spouse for you. Some process servers provide investigative services, but the process server will charge you more to find your spouse for you.
- e. The deputy or process server will then serve process on your spouse. After your spouse is served, the deputy will fill out a Return of Service, or the process server will fill out an Affidavit of Service. The Return or Affidavit of Service will say how and when your spouse was served.
 - When you pay the deputy or the process server the fee, you need to ask whether (1) they file the Return or Affidavit of Service and the Summons with the court, and notify you that it has been done, or (2) they give the Return or Affidavit of Service and the Summons to you to file with the court. It makes no difference who actually files the documents with the court, so long as they get filed.
 - The point is this: The original Return/Affidavit of Service and the original Summons MUST be filed with the court clerk where you filed your divorce case before you can get a default divorce decree.
 - If the Return or Affidavit of Service says that the deputy or process server was not able to locate your spouse, then you will need to provide the deputy or process server with more information about where your spouse can be found, or you can serve process by publication (Alternative #4).
- f. What if your spouse is outside the State of Idaho?
 - (1) You can have a sheriff or a process server in another state serve your spouse.
 - (2) Contact the sheriff of the county where your spouse is to be served, or a process server who operates in that county, and mail to them the documents you would have given a sheriff or process server in this state. (See "b" above.)
 - (3) Once your spouse has been served in the other state, the sheriff or the process server will mail back to you the Return/Affidavit of Service and the original Summons. You will have to file the original

Return/Affidavit of Service and the original Summons with the court clerk before you can get a default divorce decree.

ALTERNATIVE #3 Service by a person over the age of 18

The procedure for having a friend or someone else over the age of 18 years serve your spouse is the same as the procedure for having a Sheriff of professional process server do it. This is NOT a preferred method for service of process.

--- Typically, a friend or other person will not know how to properly serve process, or how to properly complete the Affidavit of Service. If the affidavit does not show strict compliance with the rules that apply to service of process, you will not be able to get a default divorce decree. Also, if a question later arises about whether service of process was made, or whether it was made properly, the person who served process may have to testify in court, and a friend may appear to be a biased witness.

--- You cannot deliver the papers to your spouse, and then prepare an Affidavit of Service that says you completed service. If you deliver the papers to your spouse, then service of process is not complete until an Admission of Service, signed by your spouse and notarized, is filed with the court. (See Alternative #1 above.)

• If you choose this method, you must prepare the proper affidavit for your friend or other person to complete, and the person who served process must sign it in front of a notary public. There is an Affidavit of Service form in your packet that you can use. But if the divorce is not a “friendly” one, this method is probably not the one to use.

ALTERNATIVE #4 Service by publication

This procedure can be used only when you have made diligent efforts to serve process on your spouse, but your spouse cannot be located. It is expensive, because you must have the Summons published in a newspaper. You must get permission from the judge before you can serve process by publication. If you want to serve process by publication, ask the court clerk for the forms and instructions to request permission to serve your spouse by publication.

C. SETTING A DATE FOR YOUR DEFAULT DIVORCE HEARING

- STEP ONE:** Wait twenty (20) days. Before you can schedule your divorce hearing, you must wait:
- twenty (20) days after (and NOT counting) the date your spouse signed the Admission of Service ; OR
 - twenty (20) days after (and NOT counting) the date your spouse was served with Summons and Complaint.

NOTE: If your spouse files an Answer with the court clerk before the end of the twenty (20) days, then your spouse is objecting to something you are asking for in your Complaint for Divorce. You cannot schedule a default divorce hearing, and you cannot get a default divorce decree. The court will schedule further proceedings for a contested divorce case. If your spouse files an answer, it is highly recommended that you consult an attorney.

- STEP TWO:** Fill out the following documents:

- Motion and Affidavit for Default
- Order of Default (except the judge's signature)
- Decree of Divorce (except the judge's signature)
- Certificate of Divorce (numbers 1 through 13 on the top, and 22a through 26b on the bottom)

IF YOU AND YOUR SPOUSE HAD CHILDREN TOGETHER, AND THE CHILDREN ARE UNDER THE AGE OF EIGHTEEN (18) YEARS, YOU MUST ALSO FILL OUT THESE DOCUMENTS

- Affidavit Verifying Income
- Child Support Worksheet (Standard Custody OR Shared/Split Custody)
- Child Support Order Transmittal Form

The affidavit and worksheet must be completed FULLY and ACCURATELY. If you need help filling them out, you can contact your local office of the Idaho Department of Health and Welfare.

If you are seeking a child support order based on a Shared/Split Custody arrangement, it is highly recommended that you seek the advice of an attorney experienced in family law before attempting to complete the form.

- STEP THREE:** Sign the documents, have them notarized, make copies, and prepare stamped, addressed envelopes.

- a. Sign the Motion and Affidavit for Default in front of a notary public. ALSO, if you and your spouse had children together, and the children are under the age of eighteen (18) years, sign the Affidavit Verifying Income in front of a notary public. After you sign the documents, the notary public will sign and seal them.

- b. Make three (3) copies of the Decree of Divorce, and make one (1) copy of each of the other documents listed in STEP TWO that you need. Prepare two (2) legal-size envelopes, one addressed to you, and one (1) addressed to your spouse. Put enough postage on the envelope to your spouse to mail a copy of the decree of divorce. Put enough postage on the envelope addressed to you to mail a copy of the order of default and a copy of the decree of divorce.

NOTE: Attach the copies by paper clip to the original documents. This way, you'll be less likely to get them mixed up. If your papers are in mess, the court clerk will not sort them out for you.

NOTE: Some court clerk's offices have a notary public, some do not. Some court clerk's offices will make copies for you, some will not. If the court clerk's offices will make copies, the court clerk will charge you a fee for the copies. If you want to have the documents notarized and copied at the court clerk's office, call before you go to make sure the court clerk's office has these services available, and take cash with you to pay the copy fee. If the court clerk's office does not offer these services, then you must have the documents notarized and make the copies BEFORE you go to the court clerk's office to file them.

STEP FOUR: Take the following to the court clerk:

- Original Motion and Affidavit for Default, and one copy
- Original Order of Default, and one copy
- Original Decree of Divorce, and two copies
- Certificate of Divorce
- Two stamped, addressed envelopes
- If you and your spouse had children together, and the children are under the age of eighteen (18) years:
 - Original Affidavit Verifying Income, and one copy
 - Child Support Worksheet, and one copy
 - Child Support Order Transmittal Form

Ask the court clerk to conform the following copies for you, and keep them for your files:

- Motion and Affidavit for Default
- If there are children of the marriage under (18) years of age:
 - Affidavit Verifying Income
 - Child Support Worksheet

Ask the court clerk to schedule your divorce for a default hearing.

D. THE DEFAULT HEARING

Each judge does default hearings a little differently. Most judges will “walk” a *pro se* plaintiff through the default hearing. Still, you should go to the courthouse and watch the judge in your case do default divorce hearings before the day your hearing is scheduled. This way, you’ll hear the kinds of questions the judge will ask and the kinds of answers you are expected to give, and you won’t be as nervous when it is your turn to appear in court. It is best to go twice, but you should make the effort to attend at least once. You can ask the court clerk for the dates and times when the judge in your case will be doing default divorce hearings before the date of your hearing. (Most judges do them on what they call their “civil motion day.”)

You should make careful note of the date and time for your hearing, and make sure you are on time. You should dress neatly and cleanly - the way you would for any important occasion. Many judges do not allow people to appear in court wearing shorts or crop tops, hats, or gang colors or other gang insignia. You should be courteous to the judge, the court clerks, and the other people in the court room. You should not bring children with you to court unless they are old enough to stay in their seats and sit quietly.

There may be other cases scheduled at the same time as yours, so you may have to wait a short while for your turn before the judge. You may want to bring a book or magazine with you, to have something to do while you wait. While court is in session, you should not visit with people around you, because this can be distracting to other people in the courtroom. Cell phones and pagers are not allowed in the courtroom unless they are turned off. You cannot take pictures or make a tape recording at the hearing, unless you have the judge’s permission. Food or drink is not allowed in the courtroom.

E. AFTER THE DEFAULT HEARING

After the judge signs the Order of Default and the Decree of Divorce, the court clerk will file them. The court clerk will conform your copy of the Order of Default, and certify your copy of the Decree of Divorce. The court clerk will either give them to you after your hearing, or send them to you in the mail. The court clerk will also mail your spouse a certified copy of the Decree of Divorce. Usually, the court clerk will put them in the mail later that day or the next day. The court clerk will mail the Certificate of Divorce to the Idaho Department of Health and Welfare. If there are children involved, the court clerk will mail the Child Support Order Transmittal Form to the Idaho Department of Health and Welfare.

If you and your spouse had children together, and the children are under the age of eighteen, the court clerk will include a Supplemental Order with the Decree. The Supplemental Order applies to both you and your spouse. Read the order carefully, and follow it.

Once the Decree of Divorce is signed by the judge and filed by the court clerk, you are divorced. Your spouse will have forty-two (42) days to file an appeal. After the forty-two (42) days have passed and there is no appeal, either party may ask the court to modify the child support or custody and visitation terms in the Decree of Divorce. The court clerk does NOT have forms you can use to modify child support, custody, or visitation. If you want to ask the court to modify the Decree of Divorce, you should talk to a lawyer.

OTHER LEGAL RESOURCES

The phone numbers and addresses of the court clerks in each county are published on the Idaho Supreme Court web page at www.state.id.us/judicial/. You can find the phone numbers and addresses of the court clerk, sheriff's office, and the office of the Idaho Department of Health and Welfare in your area in your local phone book. You can find the phone numbers and addresses of attorneys and process servers in your area in your local phone book. Many attorneys will do an initial consultation for free.

Idaho Supreme Court Law Library: Phone (208)334-3316
Idaho Supreme Court: Phone (208) 334-2246/2248; Fax (208)334-2146

Idaho State Bar
Lawyer Referral Service
P.O. Box 895
Boise, ID 83701
Phone (208) 334-4500
Fax (208) 334-4515
Web Page www.state.id.us/isb

Idaho Legal Aid
310 North 5th
Boise, ID 83701
Phone (208) 345-0106
Fax (208) 342-2561
E-mail ilasboise@mci.net

Idaho Volunteer Lawyers
P.O. Box 895
Boise, ID 83701
Phone 1-800-221-3295
Fax (208) 334-4515

University of Idaho Supreme Court
Legal Aid Clinic
Moscow, ID 83822-2321
Phone (208) 885-4628

Idaho Council on Domestic Violence
P.O. Box 83720
Boise, ID 83720-0036
Phone (208) 334-6512
Fax (208) 332-7353
E-mail cheady@icdv.state.id.us