The Idaho State Court System: Family Law

Following are the general instructions and information you will need to file for a divorce or respond to a divorce complaint. It is important to realize that specific practices may vary by county. More detailed information is available from the Court Assistance Offices. See the inside of this brochure for information on how to contact these offices.

General Information

To file for a divorce in Idaho, you must have lived in the state for at least six weeks prior to the filing. There is no legal significance as to whether the husband or the wife files a Complaint. The fact that your spouse has filed first has no effect on the ultimate outcome of your case. Idaho has a "no fault" theory as grounds for divorce. This is characterized as the grounds of "irreconcilable differences". The traditional grounds of adultery, cruelty, drunkenness, etc., are still part of the Idaho Code.

Idaho has adopted community property principles in determining rights to property acquired during a divorce. What this means to you and your spouse is that generally all property acquired during the marriage is presumed to be community property. Generally, community property will be divided equally by the judge. The judge can make unequal division, if the s/he finds good reason to do so. It is helpful if you and your spouse can agree on property division on your own.

Filing for a Divorce

Step 1: Talk to an Attorney, If Possible

It is advisable to hire an attorney to ensure your legal rights are protected. If you cannot afford to hire an attorney to represent you throughout the entire proceeding, an attorney can look over your paperwork, give you advice on how to present your evidence, and tell you whether this type of action is right for you for a lesser cost. If you need a lawyer, contact the Court Assistance Office for their *Legal Services Directory* or roster of local attorneys, or call the Idaho State Bar Lawyer Referral Service at (208) 334-4500.

Step 2: Obtain and Complete the Required Forms

You will need to obtain the necessary forms to file your divorce. These forms include a Complaint for Divorce and a Summons. If you have minor children of this marriage you will **also** need a Child Support Affidavit, a Child Support Worksheet and a Parenting Plan. If your spouse lives out of state, and will **not cooperate** by voluntarily accepting service, you will **also** need an Affidavit and Motion for Personal Service Outside the State, or by Publication; and Order for Personal Service Outside of State. If you do not know where your spouse lives, you will **also** need an Affidavit and Motion for Service by Publication; Motion for Service by Publication and Order for Service by Publication. Your attorney, Court Assistance Office or other legal assistance program can provide the forms to you.

Step 3: Make Copies and File with the Clerk

Go to the window in the Clerk's Office. Give the Clerk the filing fee or a Motion for Fee Waiver, Affidavit for Fee Waiver, and a proposed Order for Fee Waiver and the completed originals of the Complaint for Divorce, Summons and Service Motion, Affidavit, and Order, if applicable. The clerk may give you an Order to Attend a Parenting Program, which may be called "Divorce Orientation", "Mediation Orientation" or "Parenting Workshop", depending on the district you are in. You will need to serve this Order on your spouse, along with the Summons and Complaint.

Step 4: Obtain Service on Your Spouse

You now need to serve the Summons, Complaint, (and Order to Attend a Parenting Workshop, if applicable) on your spouse. Deliver or mail a copy of the Summons, a copy of the Complaint and the original Affidavit of Service of Summons and Complaint to a sheriff, professional process server or other person over 18 in the county where your spouse lives, who will serve the papers. If you do not know where your spouse is you can serve by publication with permission of the court.

Step 5: Wait 20 Days

Idaho has a mandatory 20-day waiting period between the time your spouse was served and the time you finalize your divorce. For this purpose, the date your spouse was served was either 1) the date s/he signed the admission of service form; or 2) the date the process server delivered the papers to your spouse; or 3) the last date the papers were published in a newspaper.

If ordered to do so, you will need to attend the court's Parenting Workshop before you can finalize your divorce. The twenty-day waiting period and the Parenting Workshop attendance (if applicable) are required even if you and your spouse agree on all the issues in your divorce. If your spouse does not respond to the court in writing within 20 days of receiving service, you may finalize your divorce by default.

Step 6: Determine Whether a Reply is Necessary

If your spouse does respond in writing, read your spouse's response carefully. If your spouse's response was an "Answer", it is not necessary (or proper) for you to file a written reply. HOWEVER, If your spouse filed an "ANSWER AND COUNTERCLAIM", you will have 20 days from the date the counterclaim was served (**not** received by you) to file a written reply. IF YOU DO NOT RESPOND BY THE APPROPRIATE DEADLINE, THE COURT MAY ENTER AN ORDER OF DEFAULT AGAINST YOU AND THE DEFENDANT MAY RECEIVE EVERYTHING REQUESTED IN THE COUNTERCLAIM.

If you agree with the Counterclaim, and do not object to the terms of the divorce proposed by your spouse, it is not necessary for you to take any action before the deadline. The court will send you a copy of the Divorce Decree after it has been entered. But if you disagree, or are unsure about any of the allegations or terms in the Counterclaim, you should consult an attorney as soon as possible to learn what your rights are and what course of action to take.

If you will be unable to see an attorney before the 20-day deadline, you may want to file a Reply to Counterclaim. This will at least prevent the entry of an Order of Default against you. Make two copies of your reply, file the original with the court clerk, and mail a copy to the defendant's attorney or the defendant at the address in the upper left corner of the first page of the Answer and Counterclaim. Note the mailing on the certificate of service at the end of the Reply Form.

Step 7: Follow Notice of Status Conference, Scheduling Order or Other Court Orders

Ordinarily, you will have a trial within six months if an Answer or Answer and Counterclaim has been filed. In the meantime, you will receive various notices and orders from the court concerning your divorce. If you have minor children, you will have already been served with an order to attend a parenting class. Other important papers you will receive may include Notice of Status Conference or Pre-trial Conference, Scheduling Order, or a Notice of Trial Setting. Read all court notices and orders carefully, and note the deadlines and hearing dates contained in them. **Failure to meet court deadlines or to appear at scheduled conferences, hearings or at trial may result in punishment for contempt of court or in other sanctions. Such failure may also cause you to lose your case in whole or in part.**

Step 8: Consider Negotiation, Mediation, or Other Means to Settle Your Case.

The overwhelming majority of civil cases, including divorce cases, settle before trial. Unless you have been a victim of domestic violence, you should attempt to settle your case with your spouse. You can either discuss settlement in person with your spouse or his/her attorney, or you may submit a written settlement offer. Mediation is a process in which a neutral third party (called a mediator) assists the parties in their settlement negotiations. Mediation is often successful in resolving disputes concerning property division, parenting schedules or child support. Your attorney, the court clerk or court assistance officer can give you a list of local mediators and more information about the mediation process. There are other alternative means to settle your case without trial. These include arbitration and appointment of a special master. If negotiation or mediation does not resolve your case, you should consult an attorney about these alternative dispute resolution mechanisms.

If you do settle your case before trial, fill out a Stipulation for Entry of Decree of Divorce, and attach an appropriate decree. Also fill out the Certificate of Divorce or Annulment, and (if you have minor children) a Child Support Transmittal Form. You will need to ask the court clerk or court assistance officer whether a hearing will be required by the judge.

Step 9: Prepare for Your Trial Date

You may want to visit the courtroom in advance to learn more about the court process. Dress in a business-like manner on your trial date. Arrive at the courthouse early, find the courtroom and organize your paperwork. Practice standard court courtesy. Stand when the judge enters and leaves the courtroom. Take a seat in the back of the courtroom until your case is called. Always ask permission to approach the bench and address the judge as "your honor". When taking the stand, the court clerk will ask you to repeat an oath to tell the truth. It is important at all times to speak to the judge and only address the opposing party through the judge.

If the divorce is not contested, a default divorce will be granted. You will be required to give your testimony which is outlined in the Complaint. If what you are asking the judge to give you is in any way different from the Complaint, you must have a signed agreement from your spouse. If the divorce is contested, both sides will be given an opportunity to present their case. The judge will make a decision either that day, or later, after further research. A judgment will be entered and delivered to both parties.

Responding to a Divorce Complaint

Step 1: Determine your Response Deadline and Whether to Respond

Review the Summons you received. It should advise you that you have twenty days from the day you were served to file your response. If you also were served with an order to attend a parenting program, which may be called "Divorce Orientation", "Mediation Orientation" or "Parenting Workshop", depending on the district you are in, note the deadline for attendance. IF YOU DO NOT RESPOND BY THE APPROPRIATE DEADLINE, THE COURT MAY ENTER AN ORDER OF DEFAULT AGAINST YOU AND THE PLAINTIFF MAY RECEIVE EVERYTHING REQUESTED IN THE COMPLAINT.

If you agree with the Complaint, and do not object to the terms of the divorce proposed by your spouse, it is not necessary for you to take any action (other than to attend the court's parenting workshop, if ordered to do so) before the deadline. The court will send you a copy of the Divorce Decree after it has been entered. But if you disagree, or are unsure about any of the allegations or terms in the Complaint, you should consult an attorney as soon as possible to learn what your rights are and what course of action to take.

Step 2: Talk to An Attorney, If Possible - See Step 1 in Filing for A Divorce

Step 3: Obtain and Complete the Required Forms

If you are going to respond on your own, you will need to obtain the necessary forms. Determine whether to use the Answer or the Answer and Counterclaim form to respond. If you simply wish to have the court dismiss the Complaint, or if property division is the only dispute you have with the terms of the Complaint, the Answer form may be all that you need. If you want the court to grant a divorce, but want to propose different grounds, or a different parenting plan or support for yourself or your minor children, you should use the Answer and Counterclaim form. If you have minor children of this marriage you may also need a Child Support Affidavit, a Child Support Worksheet, and a Parenting Plan.

Step 4: Make Copies and File with the Clerk, and Have Your Spouse Served

Go to the window in the Clerk's Office. Give the Clerk the filing fee or a Motion and Affidavit for Fee Waiver and a proposed Order for Fee Waiver and the completed original of the Answer, or Answer and Counterclaim. Serve one copy of each document you filed by mailing them to your spouse's attorney, if your spouse is represented by an attorney, or to your spouse at the address in the upper left corner of the Complaint. Note the fact you mailed each document in the Certificate of Mailing at the end of each document. If you spouse does not file a written reply to your Counterclaim within twenty days, you may obtain a Decree of Divorce by default.

Follow Steps 7 – 9 in Filing for a Divorce

Motion for Modification

At some point in the future, one or both of the parties may wish to change the terms of the divorce. This is done by filing a Motion for Modification with the court clerk. Your case will then be reopened and, if contested or the court feels it is necessary, scheduled for a hearing.

WARNING: These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action. If you need a lawyer, contact the Court Assistance Office for their *Legal Services Directory* or roster of local attorneys, or call the Idaho State Bar Lawyer Referral Service at (208) 334-4500.

Court Resources

Court Assistance Offices
Court Assistance Offices serve as a one stop clearinghouse to access legal services and other resources for litigants involved in civil matters.

Court Assistance Offices are located in selected court houses throughout the state. Please call the Clerk in your county to learn about the Court Assistance Office nearest to you.

Clerk of the District Court
The phone numbers and addresses of the Clerks in each county are published on the Supreme Court web page www.state.id.us/judicial/. You can also find this information in your local phone book.

Idaho State Law Library
Phone: (208) 334-3316

Idaho Supreme Court
Phone: (208) 334-2246/48
Fax: (208) 334-2146

Other Resources

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

Idaho Volunteer Lawyers Program
PO Box 895
Boise, ID 83701-0895
Phone: 1-800-221-3295
Fax: (208) 334-4515

Idaho Legal Aid
310 N. 5th
Boise, ID 83701
Phone: (208) 345-0106
Fax: (208) 342-2561
Email: ilasboise@rmci.net

University of Idaho – Legal Aid Clinic
Moscow, ID 83844-2321
(208) 885-4628

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

Please copy this brochure if the information will be helpful to you in the future!

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Developed by The Idaho Supreme Court Committee to Increase Access to the Courts

The Idaho State Court System: Family Law

The purpose of this video and accompanying instructions is to provide information about family law cases in the Idaho Courts. The viewer will also learn about resources available to them if they are involved in a family law dispute.