

## **CAO D INSTRUCTION 1-1**

### **Summary of Steps**

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### **Step 1: Talk to an Attorney, if Possible.**

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. We always recommend you talk to a lawyer about your problem before filing your paperwork. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial half-hour consultation for \$35. Contact the Court Assistance Office for information about resources for low-income people, or visit the Idaho Supreme Court's Self-Help Center at <http://www.courtselfhelp.idaho.gov/>.

### **Step 2: Obtain and Complete the Required Forms.**

You will need to obtain the following forms to file for Divorce:

- Petition for Divorce, CAO D 1-5 (with Minor Child/ren); or Petition for Divorce CAO D 1-6 (No Minor Child/ren)
- Summons, CAO FL 1-3 (with Minor Child/ren)
- Certificate of Divorce or Annulment, HWH-611, available from Court Clerk or at the Court Assistance Office, not available on-line
- Family Law Case Information Sheet, CAO FL 1-1

If you have minor children of this marriage you will also need:

- Order to Attend Divorce Orientation/ Parenting Workshop
- Affidavit Verifying Income (Child Support), CAO FL 1-11
- Child Support Worksheet, CAO FL 1-12 or 1-13
- Parenting Plan, CAO FL-3

If you do not know where your spouse lives, you will also need:

- Motion and Affidavit for Service by Publication, CAO FLPI 1-5
- Order for Service, CAO FLPI 1-6
- Summons by Publication, CAO FLPI 1-4
- Affidavit of Mailing Per Order for Publication, CAO FLPI 2-3

Complete the forms you need. At the top left-hand corner of page 1 of each form fill in your name, address, telephone number, and email address (if you have one). Fill in the county and judicial district in the heading in capital letters (for example, "IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF CASSIA"). Fill in your names in the caption (for example, "John Doe , Petitioner vs. Mary Doe, Respondent"). Fill out

the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

The Child Support Affidavit and Worksheet can be generated for you if you use the "Support" software at the Court Assistance Office, some Divorce Parenting Workshops, or elsewhere. You will need to bring information with you about your family income, work-related childcare expenses, and health insurance premiums.

Make 2 copies of the Parenting Plan so you can attach one to your Petition, and have the original to attach to the decree.

### **Step 3: Make Copies and File with the Clerk.**

Assemble the forms following the instructions with the Petition. Make two copies of each completed set of CAO forms. (You will not need copies of the Certificate of Divorce nor of the Family Law Case Information Sheet.) Place the copies underneath each original.

Go to the window in the Clerk's Office. Give the Clerk the following:

\*Filing fee (visit <http://www.courtselfhelp.idaho.gov/filingfees> for current filing fees), or a

"Motion and Affidavit for Fee Waiver,

CAO FW 1-9", and the original and a copy of a proposed "Order Re: Fee Waiver, FW 1-10".

\*The completed originals and copies of the your forms.

If you have minor children of this marriage the Clerk will 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 Petition. Once your case has been filed, the Clerk will "conform" your copies by stamping and dating them. This will save you paying \$1.00 per page for copies of these documents from the court file later on, and will provide proof of the filing of the documents in case they become misplaced from the court file. The Clerk will hand you the Original Summons and the conformed copies of the Petition packet and Summons.

### **Step 4: Obtain Service on Your Spouse.**

You now need to serve the Summons, Petition (with attachments), (and order to attend parenting workshop, if applicable) on your spouse. There are three different ways you can do this. You only need to serve your spouse one of these ways.

#### **A. If your spouse will cooperate by accepting service:**

1. Fill out an Acknowledgment of Service, form CAO FL 2-1, and make two copies.
2. Take or mail to your spouse the original and one copy of the Acknowledgment of Service, a conformed copy of the Petition, and a conformed copy of the Summons (and parent workshop order, if any).
3. Have your spouse sign and date the original Acknowledgment of Service.
4. Have your spouse return to you the original Acknowledgment of Service. Your spouse is to keep the copy of the Acknowledgment of Service, the conformed copy of the Petition, and the conformed copy of the Summons.
5. Take the original and your copy of the Acknowledgment of Service, plus the original Summons back to the Clerk at the courthouse. Ask to have your copy of the Acknowledgment of Service conformed, the conformed copy will then be returned to you. The Clerk will keep and file the original Summons and Acknowledgment of Service.

#### **B. If your spouse will not cooperate:**

1. Deliver or mail the original Summons plus a copy of the Summons, a copy of the Petition and an original Affidavit of Service to a sheriff, professional process server or other person over 18 in the county where your spouse lives, who will serve the papers. The sheriff or professional process server will need a letter stating where your spouse can be served, a description or photograph of your spouse, a description of the vehicle your spouse usually drives, and any other information that may help the process server locate and identify your spouse.
  2. If using the sheriff or a professional process server, call first to find out what they charge for serving a Summons and Petition in a divorce case, and include a money order or check for the correct amount when you send the papers.
  3. The person who serves the forms will send the completed Affidavit of Service back to you with the original Summons. You should make a copy of the Affidavit of Service for yourself, file the original Affidavit of Service and the original Summons with the Court and have your copy of the Affidavit of Service conformed.
- C. If you do not know where your spouse is:  
There are separate instructions and forms for Service By Publication, CAO FL Instruction 1-4. Follow those instructions.

**Step 5: Wait 21 Days.**

Idaho has a mandatory 20-day waiting period between the time your spouse was served and the time you finalize your divorce; the waiting period is 21 days if your divorce is entered by default. For this purpose, the date your spouse was served was either 1) the date s/he signed the acknowledgment of service form, or 2) the date the process server delivered the papers to your spouse, 3) the last date the papers were published in a newspaper. If you have minor children, you will need to attend the court's Parenting Workshop before you can finalize your divorce. The waiting period and attendance at the parenting workshop (if applicable) are required for you to obtain a default divorce 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 21 days of receiving service, you may finalize your divorce by default (see Finalizing Divorce By Default, CAO D Instruction 7-1).

**If your spouse does respond in writing, follow the steps below:**

**Step 6: Determine if a Reply is Necessary.**

Read your spouse's response carefully. If the document was a "Response", it is not necessary (or proper) for you to file a written reply. However, If your spouse filed a "Response And Counterclaim", you will have 21 days from the date the counterclaim was served (not received by you) to file a written reply. If the document your spouse filed asks for something different from what you asked for in your Petition, it is a counterclaim even if it doesn't say counterclaim in the title and you will have to prepare and file a reply.

**IF YOU DO NOT RESPOND BY THE APPROPRIATE DEADLINE, THE COURT MAY ENTER AN ORDER OF DEFAULT AGAINST YOU AND THE RESPONDENT 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 21-day deadline, you may want to file a Reply to Counterclaim, CAO Cv 3-5. 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, fax or hand-deliver a copy to the Respondent or the Respondent's attorney at the address in the upper left corner of the first page of the Response and Counterclaim. Be sure to complete the certificate of service at the end of the Reply form.

### **Step 7. Comply with Mandatory Disclosures of Information**

#### **Child Support**

If either party has requested a change to child support, you have to provide income information to the other party within 35 days from the day they filed the response. This will include tax returns, W-2 forms, and many other forms, see Instruction CAO FL Inst 5-1 for further details and use forms CAO FLPI 5-1 Petitioner's/Respondent's Mandatory Child Support Disclosures and CAO CvPi 4-5 Certificate of Service.

#### **Property and Debts**

If the other party disagrees in any way on the division of property and/or debts, you must both provide each other with specific property and/or debt information. You must do this within 35 days from the date that they filed a response. Use forms CAO RFLPPi 1-1 Inventory of Property and Debts and CAO CvPi 4-5 Certificate of Service.

### **Step 8: Follow Notice of Status Conference, Scheduling Order or Other Court Orders.**

Ordinarily, you will have a trial within six months if a Response or Response and Counterclaim have 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 all or part of your case.**

### **Step 9: Consider Negotiation, Mediation, or Other Means to Settle Your Case.**

The overwhelming majority of civil cases, including divorce cases, settle before trial. You should attempt to settle your case with your spouse. You can discuss settlement in person with your spouse or his/her attorney, or you may submit a written settlement offer to your spouse or your spouse's attorney. You might also consider mediation. Mediation is a process in which a neutral third party (called a mediator) assists the parties in settlement negotiations. Mediation is often successful in resolving disputes concerning property and debt 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 follow CAO D Instruction 6-1, Finalizing Divorce by Stipulation and complete Sworn Stipulation For Entry Of Decree Of Divorce, CAO D 6-8. Fill

out an appropriate Decree of Divorce, CAO D 8-1 (if you have minor children); or Decree of Divorce CAO D 8-3 (no children). You and your spouse must sign the Decree of Divorce to indicate that it's the one you want the judge to sign. There is room for this after the Clerk's Certificate of Service. Follow the detailed instructions for completing the Decree form. If you have children complete the Child Support Transmittal, CSS 809. You will need to ask the court clerk or court assistance officer whether a hearing will be required by your judge.

**If your case does not settle before trial**, see "Guidelines for Courtroom Behavior", CAO Cv Instruction 4-1, for general information on how to proceed. **The trial will be conducted according to formal rules of evidence and procedure, so you should consult an attorney as to how to comply with those evidentiary and procedural rules and requirements.**

For further information, please ask to see the video "**The Idaho State Court System: Family Law**" at your Court Assistance Office or public library.