

RESPONDING TO DIVORCE COMPLAINT

D Instruction 3-1

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. 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.

Summary of Steps

- Step 1: Determine your Response Deadline and Whether to Respond
- Step 2: Obtain and Complete the Response Forms
- Step 3: Make Copies and File with the Clerk
- Step 4: Have your Spouse Served
- Step 5: Follow Notice of Status Conference, Scheduling Order or Other Court Orders
- Step 6: Consider Negotiation, Mediation, or Other Means to Settle Your Case

Step 1: Determine Your Response Deadline and Whether to Respond.

The Summons you received should state that you have twenty days from the day you were served to file a written response with the Court. 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 BY 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 file a written response** (you are required to attend the court’s parenting workshop, if you received an order to do so). The court will send you a copy of the divorce Decree after it has been entered. *In an uncontested (default) divorce, the Decree of Divorce signed by the judge must have exactly the same property and debt settlement and custody and child support provisions as those requested in the Complaint.* (Although it is unusual, you can file an Answer admitting to the Complaint if you choose. You will be charged a filing fee for filing the document, and the Divorce can then be entered “based upon the pleadings” instead of by default. Consult an attorney if you wish to follow this procedure.)

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. If you will be unable to see your attorney or to complete the necessary response form (Answer or Answer and Counterclaim) on your own before the deadline, you may want to file a Notice of Appearance (Cv 3-1). This will prevent the entry of a Default against you without prior notice to you. However, if you do receive notice that a

default will be entered after your Notice of Appearance is filed, you may then only have an additional three days to respond. If a Default is filed, the judge is notified that you were served and you did not respond to the contents of the claim in the time allowed.

Step 2: Obtain and Complete the Required Forms.

If you are going to respond on your own to propose a different property or debt division, parenting plan or support for yourself or your minor children, you will need to obtain the Answer and Counterclaim form, FL 3-3 (with children); or FL 3-4 (without children), and the Vital Statistics Certificate of Divorce or Annulment. If you have minor children of this marriage you may **also** need:

- Income Affidavit, FL 1-11 if you disagree with the income figures used by your spouse
- Child Support Worksheet, FL 1-12 or FL 1-13, if you disagree with the child Support calculations
- Parenting Plan, FL 3 if you disagree with the parenting arrangements (**make 2 copies** of the Parenting Plan so you can use one as your proposed plan attached to your counterclaim, and one as your final plan attached to the decree.)

An Income Affidavit and Child Support Worksheet can be prepared on the computer (which will do the calculations), if you use the “Support” software at the Court Assistance Office, Divorce Parenting Workshop, or elsewhere. You will need to bring information about your income, work-related childcare expenses, and health insurance premiums.

Complete the forms you need by typing or printing neatly in **black ink**.

At the top left-hand corner of page 1, fill in your full legal name, address, and telephone number.

Fill in the county and judicial district in capital letters in the heading (for example, “IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF ADA”) exactly as in the complaint.

Fill in your names in the caption (John Doe, Plaintiff and Mary Doe, Defendant”) also as they appear on the complaint.

Fill out the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions. At the end of the document is a Certificate of Service where you fill in your spouse’s (or their attorney’s) name and address as they appear in the upper left corner of the most recent document filed by or on behalf of your spouse (the Complaint or Amended Complaint), and indicate how and when a copy will be delivered.

Some of the forms **must** be signed in the presence of a **notary public**. You can often locate a Notary at a bank, insurance, real estate or payroll offices, or at the courthouse.

Step 3: Make Copies and File with the Clerk.

Make two copies of the completed form/s (you do not need to make a copy of the Vital Statistics Certificate of Divorce). Place the copies of the court forms underneath the original(s). Go to the window in the Clerk's Office. Give the Clerk the following:

- Filing fee (\$58 for an Answer), or a Motion and Affidavit for Fee Waiver, FW 1-9, and a proposed Order Re Fee Waiver, FW 1-10 (See D Instruction 1).
- The completed original of the Answer and Counterclaim with all attachments (Parenting Plan, Income Affidavit, Child Support Worksheet) and copies.

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 the copies back to you, one for your file and one for you to serve on your spouse.

Step 4: Serve a Copy of Your Response.

You are required to deliver a copy of any document you file in this case to your spouse (or his/her attorney if s/he is represented by an attorney). Because your spouse has already appeared in the case, you are able to serve your response by mailing, hand-delivery or fax. Deliver the copy in the way you indicated in the Certificate of Service at the end of the Answer and Counterclaim.

If your spouse does not file a written reply to your Counterclaim within twenty days (allow three extra days for service by mail), you may obtain a Decree of Divorce by Default. Follow the same procedure outlined for Finalizing Divorce by Default in D Instruction 7-1. Remember that D Instruction 7-1 was written for the Plaintiff to take default. You are the Defendant, but you will generally follow the instructions for the Plaintiff, for this default only. You are still the Defendant in this case. Instead of the form Cv 7-1 listed in D Instruction 7-1, you will use Cv 7-3, Motion and Affidavit for Entry of Default on Counterclaim.

Step 5: Follow Notice of Status Conference, Scheduling Order or Other Court Orders.

Ordinarily, you will have a trial within six months if you have filed an Answer and Counterclaim. 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 6: 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, submit a written settlement offer, or consider mediation to resolve your dispute. 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, follow D Instruction 6-1 to finalize your divorce by SWORN STIPULATION FOR ENTRY OF DECREE OF DIVORCE, D 6-8. Fill out an appropriate DECREE: D 8-1 (if you have minor children); or 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", 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.