

## FINALIZING DIVORCE BY DEFAULT D Instruction 7-1

**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: Obtain and Complete the Required Forms
- Step 2: Make Copies, File With the Clerk and Obtain a Court Date to Finalize Your Divorce
- Step 3: Finalize Your Divorce

### **Step 1: Obtain and Complete the Required Forms.**

If you have not already done so, you should return the Original Summons and file your proof of service of the Summons and Complaint on your spouse. (See D Instruction 3.)

A default divorce cannot be entered any earlier than 21 days (including weekends and holidays) from the day your spouse was served. You must wait at least 21 days (including weekends and holidays) from the day your spouse was served before you can prepare your default documents. 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; or
- 3.) The last date the papers were published in a newspaper.<sup>1</sup>

You will need to obtain the following forms to have your divorce entered by default:

- Motion and Affidavit for Entry of Default, Ci 7-1
- Default, Ci 7-4
- Certificate of Divorce (Vital Statistics form)
- Decree of Divorce: D 8-1 (with children); or D 8-3 (without children)

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

- A copy of the Parenting Plan, FL 3 you filed with your Complaint **and**
- Child Support Transmittal form, CSS 809.

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<sup>1</sup> Idaho has a statute (I.C. §32-716) that allows either party in a divorce case to apply for reconciliation proceedings within 20 days after service on the Defendant. Thus, the twenty day waiting period is required in a default case. Some judges will allow both parties to swear that they will not apply for reconciliation proceedings in order to move the date of the divorce forward and have a decree entered by stipulation, other judges will not. Please check with your local Court Assistance Officer to find out the local practice and obtain the forms you'll need if you feel you need your divorce entered in fewer than 20 days after service. (Ideally, you should check this out before you file your Complaint.)

If your spouse filed a Notice of Appearance (Ci 3-1), but did not file any other response to the Complaint, you will first need to complete, serve and file a Notice of Intent to Take Default, Ci 7-5X. If at the end of 6 days from service of the notice your spouse has not filed an Answer (or Answer and Counterclaim), you can have your divorce entered by default.

If your spouse filed an Answer or an Answer and Counterclaim, **you cannot take default**. Contact your local Court Assistance Officer for the procedures available to finalize your Divorce.

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

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

Fill in the county and judicial district in capital letters in the heading just as it was on the Complaint you filed (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF ADA").

Fill in your names in the caption ("John Doe, plaintiff v. Mary Doe, defendant") just as they appear in 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.

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

## **Step 2: Make Copies, File with the Clerk and Obtain a Court Date to Finalize Your Divorce.**

Make one copy of each of the completed forms for your records. Make a second copy of the Decree and all attached Exhibits (the second copy is for your spouse after the hearing). If you and your spouse have minor children, make a third copy of the Decree and the attached Exhibits (this third copy is for Child Support Receipting). Place your copies under the originals of each document.

Go to the window in the Clerk's Office. Give the Clerk the completed originals and copies of the following forms:

- Motion and Affidavit for Default
- Default
- Certificate of Divorce
- Divorce Decree (with the attached Exhibits)
- Child Support Transmittal Form (if applicable)

If your spouse will not be attending the default hearing, give the Court Clerk a stamped envelope with your spouse's name and address on it.

The Clerk will file the Notice and Motion and Affidavit, and will put the Default aside for the judge's signature. The Clerk will "conform" your copies of the filed documents 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 place the original Decree (with attached Exhibits) in the court file so it will be available for the judge to review during

your court hearing. The Clerk will hold all of the copies of the Decree, the Vital Statistics Certificate of Divorce and the Child Support Transmittal form, plus any envelopes, for use after your divorce is final.

Obtain a court date from the clerk to finalize your divorce by default. If your spouse filed a Notice of Appearance but did not formally respond to the Complaint, you must allow three days after service of the Notice of Intent to Take Default (plus three additional days for mailing unless the Notice was served in person). If you have minor children, you will need to attend the court's Parenting Workshop (called "Divorce Orientation" or "Mediation Orientation" in some districts) before the hearing date. The parenting workshop attendance is required even if you **and your** spouse agree on all the issues in your divorce.

**Optional Step:** If you have not already seen it, you may wish to contact the Court Assistance Office to schedule watching the 12:45 minute video called "The Idaho State Court System: Family Law" and learn more about what to expect at Court. This video is also available at your public library.

### **Step 3: Finalize Your Divorce.**

You are the only person who needs to come to court to finalize your divorce. You can use the appropriate hearing narrative script, D Instruction 10 (with children); or D Instruction 11 (without children) to give your oral testimony. We recommend that you sit in on several divorce hearings at the courthouse prior to your scheduled divorce hearing, so that you can become familiar with the procedure. The clerk will be able to give you the times when default divorce hearings are held. (Some judges allow your testimony to be submitted in writing. You can ask the Court Assistance Officer or Clerk if this is allowed. The testimony forms are D 7-6 (with children); or D 7-7 (without children). These **must** be signed in the presence of a Notary Public. )

On the day of the hearing, make sure you go to the correct courtroom. Bring your copy of all the documents you filed with the court. Dress neatly and address the judge as "Your Honor." The judge will call the name and the number of your case. Go to the clerk's table by the judge's bench. Then the clerk will swear you in and you will take a seat at the witness stand and give your testimony of the things you stated in the Complaint. If what you are asking the judge to give you is in any way different from what you've asked for in your Complaint, then you must have a signed agreement with your spouse (called a Sworn Stipulation, D 6-8). The judge may ask you questions. If the judge has no questions, you are finished. The judge will tell you if the divorce is granted. (For more information about court see Ci Instruction 2).

At the Clerk's office after your hearing, the Clerk will "conform" the extra copies you provided. The judge will not sign these copies, but the Clerk will stamp the judge's name on them. One of the conformed copies is for you. The other is for your spouse. If your spouse is not present, you will need to supply a stamped, addressed envelope for the clerk to mail a conformed copy to your spouse. The third copy is for Child Support Receipting and is necessary if you have minor children even if the guidelines child support amount is \$0. The Court Clerk will send the third copy to Child Support Receipting. In all cases the Court Clerk will send the Divorce Certificate to Vital Statistics.

If you need additional copies, you can purchase regular or certified copies of your final documents any time after your final hearing from the Clerk's Office. However, there is a charge of \$1.00 per page for such additional copies. That is why it is important for you to supply at least two copies to be conformed by the clerk after the hearing. To have a copy certified you will be charged \$.50 per page plus \$1.00 for the seal if you provide the copy, otherwise the Clerk will have to charge \$1.00 per page, plus \$1.00 for the seal.

If for some reason you cannot make your court date or if you will be late, call the court clerk to ask for an extension of time and a new court date.