

Completing Form D 1-2: Petition for Divorce
[With Minor Child/ren]
ADA COUNTY

Talk to an Attorney, if Possible.

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, or visit the Idaho Supreme Court's Self Help Center at <http://www.courtselfhelp.idaho.gov>.

You will be signing a sworn statement that you have read the Petition, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions

Fill in the forms by typing or by printing neatly and legibly in **black ink**. Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1 you will fill in your full legal name, mailing address, telephone number and email address (if you have one).

The Court Heading. Fill in the county and judicial district in capital letters (for example, "In The District Court Of The FOURTH Judicial District, In And For The County Of ADA").

The Caption. Fill in Your Full Legal Name on the line above Petitioner and Your Spouse's Full Legal Name on the line above Respondent.

The Case No. The case number will be assigned by court personnel when you file the Petition. You should write or type in the case number on all other documents.

The **Court Heading, Caption** and **Case Number** will be the same on all other documents you prepare for this case.

1. Residence of the Parties.

You must have lived in Idaho for at least six weeks. Fill in the state where your spouse lives.

2. Marriage of the Parties.

Fill in the city and state (or country if you were married outside the USA) and the month, day, and year of your marriage.

3. Grounds for Divorce.

This paragraph states the reason for the divorce is irreconcilable differences. If you want to state other grounds for the divorce, you should talk to an attorney.

4. Minor Child/ren of the Parties.

Fill in the name and date of birth for each minor child and the current address where each child lives.

- Check the first box if Wife is **NOT** now pregnant **or**
- Check the second box if Wife **IS** now pregnant with Husband's child **and**
 - Fill in the expected date of birth for the child. *(A separate custody case may need to be filed after the birth of the child to establish custody and child support.)*

5. UCCJEA Jurisdiction.

Paragraph 5a: Fill in the persons' name and the city and state where each child has lived with for the last five years. **WARNING:** If any of your children have not resided in Idaho for at least six uninterrupted months before the filing of the Petition (or for their entire lives if they are less than six months of age), the Idaho court may lack authority ("jurisdiction") to determine custody of that child. In that event you should talk to an attorney to determine if there may be other grounds for jurisdiction under Idaho's laws.

You are required to let the court know if there have been any other cases involving your child/ren in any other court or if there are any other people claiming custody or visitation rights with the child/ren.

In paragraphs 5b, c and d, check the appropriate box and fill in all requested information.

Case information for most Idaho cases is available online at: mycourts.idaho.gov

6. Legal Custody.

"Joint legal custody" means the parents are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will award joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to share decision-making rights.

- Check the first box if both parents are fit persons to share decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren, **or**
- Check the second box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
 - Write in the name of the parent who should be awarded sole legal custody **and**
 - State why the other parent should NOT be allowed to share decision-making.

7. Physical Custody.

"Joint physical custody" means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if both parents should be given physical custody of the child/ren **and either**
 - Mark the second box and complete the **Parenting Plan**.
 - If needed, write **Schedule A** on the bottom of the first page of the Parenting Plan and attach (staple) it to the Petition. **IMPORTANT: A copy of the Parenting Plan must be attached to make it a part of the Petition.** (A copy of the Parenting Plan will also be attached (stapled) to the Decree of Divorce.) **or**
- Check the fourth box if you are asking the court to award sole physical custody of the child/ren to only one parent **and**
- Write in the name of the parent who should be awarded sole physical custody **and**
- State why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision.
 - If you want the court's order to give the other parent restricted or conditional time with the child/ren, write in the parent's name **and** write in the terms and conditions of the other parent's time with the child/ren.

8. Child Support. Existing Child Support Orders.

8a. Existing Child Support Orders:

If there is NOT a child support order, check the first box and skip ahead to section 9.

Or

If there is already an order signed by a judge, for example in a different case filed by the Department of Health & Welfare, that sets child support, check the second box then fill in all requested information, **and**

8b. Change in Child Support:

- If you want that order to continue and control child support instead of getting a new order, check the first box. Then make a copy of that Order, Judgment or Decree, mark it as **Schedule B** and attach (staple) it to the back of the Petition. Then proceed directly to Section 10 of the Petition.

Or

- If you believe there are substantial and material reasons why the child support set in the other case should be changed by an order issued in this case which would control future child support payments, check the second box, **and** under **8c** check any boxes that apply.

WARNING: You should be aware that jurisdiction as to child support is a complicated issue and having a child support order in a separate case can create problems for enforcement and future modifications of the order. If the child support order is in a different case and you want to change it, your case must be consolidated. Even if you want child support to be controlled by the separate order, your judge may require you to consolidate that case with your divorce case and serve the Petition for Divorce and the Summons to the Department of Health and Welfare. Also, your judge may require you to join the Department of Health and Welfare as a party in this case, or consolidate the two cases, before a new child support order can be issued in this case.

9. Child Support. New Child Support Amount.

Note: You will first need to complete an **Affidavit Verifying Income and a Child Support Worksheet**. In Ada County, Family Court Services (phone: (208) 287-7600; email: fcs@adacounty.id.gov) may help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section. If you want the court to enter a support amount that is different from the Idaho Child Support Guidelines amount, you may need to come to court for a court hearing and persuade a judge why that is in the best interests of your children and meets their financial needs.

- In paragraph **9a**, write in the name of the parent who will pay child support and from the child support worksheet, insert the adjusted child support total. **Or**, if you want to request a different child support amount fill in the next section and explain why the judge should order it.
- In paragraph **9b**, select the month you want the payments to start.
- In paragraph **9c**, if you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is no longer eligible for support under Idaho law. These calculations are provided if you have used a computer program to calculate child support. In Ada County, Family Court Services may help you with these calculations if you do not have them.
- If needed, write **Schedule B** on the bottom of the first page of the **Affidavit Verifying Income** and **Child Support Worksheet** and attach (staple) it to the back of the Petition, behind the Parenting Plan (if applicable). **IMPORTANT: A copy of the Affidavit Verifying Income and Child Support Worksheet must be attached to make it part of the Petition.**

WARNING: If you are the parent paying child support (the “obligor”) you should be aware the Decree will provide for collection of child support from your wages and from your real estate or personal property. The Decree will also provide that if you move to another state, the child support can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

9d. Extended Visits.

In paragraph 9d, check the first box if the child/ren will be living in the home of one parent at least 75% of the time under your proposed Parenting Plan. If you do not check this box, go directly to paragraph 9e.

Otherwise,

- Check the second box in paragraph 9d if you want the court to order a reduction in child support when the parent paying child support has physical custody of the child/ren for 14 or more overnights in a row. Next, check the appropriate box to indicate if the reduction should be 50% or some other percentage.
- Check the next box if you have more than one child, but the parent paying child support will have some, but not all of the children for a period of 14 overnights in a row. If this box is selected, the reduction of support will be applied only to the child/ren who are actually with the parent paying child support during those 14 overnights in a row.

Note: If the child/ren reside(s) with each parent more than 25% of the time (overnights), this is considered shared physical custody and certain adjustments are made in the calculation of child support. Section J(5) of the Idaho Child Support Guidelines, Rule 126 of the Idaho Rules of Family Law Procedure, describes “Shared Physical Custody” and computation of child support with that parenting arrangement. The reduction of child support for extended visits is not permitted if child support has been calculated with a shared physical custody adjustment. You can get a copy of the Child Support Guidelines online at <http://www.isc.idaho.gov/irflp126>.

9e. Work-Related Child Care Expenses.

Work related child care costs are separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income.

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage fill in the next section and explain why the judge should order it.
- **Note:** Under this section you are asking the court to require each parent to pay their share directly to the care provider if permitted by the provider, otherwise, the parent who pays the costs must be reimbursed within ten days after the other parent receives a copy of the bill and proof of payment.

9f. Medical Insurance.

The cost of medical, dental and/or optical insurance for the child/ren is separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income.

A. Pro Rata Share

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage, fill in the next section and explain why the judge should order it.

B. Insurance Currently Provided

- Check the first, second or third box to indicate how health insurance for the child/ren is now being provided. If you select the first paragraph, write in the name of the parent(s) currently providing health insurance.

C. In Addition to or Included in Monthly Child Support

- Check the appropriate box indicating how insurance costs should be paid.

WARNING: The Decree will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of

Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

9g. Out-of-Pocket Health Care Costs.

The actual cost incurred for health care expenses for the child/ren not paid in full by insurance is separate from the basic monthly child support amount and is also prorated between the parents in proportion to their Guidelines income.

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage, fill in the next section and explain why the judge should order it.

9h. Income Tax Exemption.

Both parents are entitled to share in the benefits of income tax credits and exemptions for the child/ren regardless of which parent actually claims those benefits in a tax return. (If you do not agree otherwise, the parent with the most income will claim the children.) Note: The child support calculation must reflect the same designation.

- Check the first box; **and**
- Check the second box if the Petitioner will claim some or all of the child/ren as dependent/s on their income tax return(s).
- Check the third box if the Respondent will claim some or all of the child/ren as dependent/s on their income tax return(s).

10. Other Minor Child/ren, NOT of Both Parties.

Complete this paragraph only if any child/ren born or conceived during the marriage was not fathered by the Husband.

Paragraphs 11, 12, and 13

WARNING: The rules of separate property (owned by only one of you) and community property (owned by both of you) can be extremely complex and technical. The following general principles may not apply to your situation. For example, some separate property may have been improved with community funds (or vice versa). Also, interest or other income from separate property is considered to be community property. If you have a lot of property or have any questions about whether it is separate or community property, please talk to an attorney.

Separate property is property either of you owned before the marriage or received during the marriage by gift or inheritance or in exchange for other separate property.

Community property is property acquired by one or both of you during the marriage unless the property was given to either of you separately as a gift, inheritance or in exchange for other separate property.

Real property or real estate is land with or without buildings. If the property you list is real estate, include legal descriptions from the deeds to the property. It is important that your description be exactly the same as that in the deed. If the legal description is lengthy, you may want to photocopy the deed, cut out the legal description and paste it on a separate sheet of paper to use as an exhibit. Attach the exhibit to the Petition and refer to the exhibit in the Petition.

Personal property is all property that is not real estate. Personal property includes furniture, clothing, vehicles, cash, bank accounts, securities and debts owed to you. It also includes retirement accounts; but, if either of you have retirement accounts you definitely should talk to an attorney before proceeding.

11. Separate Property.

- If you do not want any order about ownership of separate property, check the first box.
- If you want the court to order that specific separate property belongs to the Petitioner and/or an order that Petitioner's separate property, now in the possession of the Respondent, be returned to the Petitioner, check the second box and describe the property in the first section of the **Property and Debt Schedule**.
- If you want the court to order that specific separate property belongs to the Respondent and/or an order that Respondent's separate property, now in the possession of Petitioner, be returned to the Respondent, check the third box and describe the property in the first section of the **Property and Debt Schedule**.

12. Community Real Property.

- If you have not acquired community real property during the marriage, check the first box, **or**
- If you have acquired community real property during the marriage, check the second box **and in the Property and Debt Schedule**:
 - Check the first box and fill in the residential address of the property (house number and street name),
 - The name of the city and county, and
 - The legal description for the property (use the legal description in the deed).
 - Check the second **or** third box to indicate what will be done with the community real property and any equity, and fill in the blanks **or**
 - Check the last box and write in your own words what will be done with the property and any equity in the property.
 - Note: If the amount of the equity payment is large and will be spread out into periodic payments, you should talk to an attorney about the right way to ensure the payments are made.

Disposition of Real Property. A "**lien**" is a legal right or interest that a creditor has in another's property (for example the mortgage loan). The mortgage loan and any other lien against the property should be listed in the Debt Section of the Petition. We recommend you discuss your mortgage loan or any other lien on your property with your lending institution or lien holder and talk to an attorney before proceeding. As long as both of your names are on the loan, you will both continue to be responsible for payment until the loan is paid in full. If the payment isn't paid by the one assigned to make it, the creditor may collect from either of you. Also, if the property is foreclosed, both of you could be held responsible for any deficiency in paying off the loan after foreclosure sale. "**Equity**" is the difference between the value of the property and all encumbrances (liens) upon the property.

13. Community Personal Property.

- If you have not acquired any community personal property, check the first box **or**
- If you have already divided your community personal property and each of you has the property in your possession, check the second box **or**
- If you want the court to order that specific property be awarded to the parties as their sole and separate property, check the third box and list the property in the **Property and Debt Schedule**.

Note: The Decree of Divorce can be used to transfer titles or deeds; but only if the description of the property is first listed in the Petition and is complete and accurate (example: for vehicles, include all identifying information on the title; for real property, include a legal description of the property from the deed and not just the residential address of the property).

Paragraphs 11, 12, and 13 Reminder:

If you have listed any property on the **Property and Debt Schedule**, the Schedule must be attached (stapled) to the back of every copy of the Petition.

14. Debts.

Generally, separate debts are debts incurred by either of you prior to marriage, or during marriage if incurred to improve or maintain separate property (see the description of community and separate property above). Community debts are all other debts incurred during marriage.

- If you do not know of any unpaid debts, check the first box **or**
- If there are debts the Petitioner should be ordered to pay, check the second box and list each creditor and amount to be paid on the **Property and Debt Schedule**.
- If there are debts the Respondent should be ordered to pay, check the third box and list each creditor and amount to be paid on the **Property and Debt Schedule**.

Note: If both of you are going to pay a part of the same debt, also put in the amount each of you should be ordered to pay.

Note: A divorce is between you and your spouse. Your debts are between you and your creditors and, if a bill doesn't get paid, the creditor may be able to collect from either of you, especially if both of your names are on a loan contract. However, if the debt is listed in the divorce papers and either of you is assigned and ordered to pay a debt and does not make payment, the other party may have some remedy before the court; however, if the bill doesn't get paid, the creditor may be able to collect from either of you.

15. Debts Incurred Since Separation.

If you want the judge to order that each party will pay any debt incurred by them after the separation date, check the box and fill in the date you stopped living together.

16. Name Change.

Check the box if either party wants to stop using the last name of their spouse and go back to using their former last name (any name legally used). Fill in the current name of the person wanting the name change and fill in the former last name. (Accurate spelling is very important.)

Signature Sign and date the form certifying that all of the information is true and accurate, subject to the penalty of perjury if it is not.

Make two more copies of the Petition with Schedules attached.
Remove page 11, the instructions sheet before making copies.

Continue referring to CAO D Instruction 1-1, "Filing for Divorce," for complete instructions to file your Petition.