

**CAO FL INSTRUCTION 3-4
COMPLETING FAMILY CASE RESPONSE AND COUNTERCLAIM
(NO MINOR CHILDREN)**

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.

You may be responding to (answering) a Petition, Counterclaim, Motion to Modify or a document with some other name. The procedure for responding is the same. To simplify these instructions, we will use the term "Petition" in referring to the document you are answering.

Before you begin: Use this form only if you disagree with the division of property and debts, the support calculations or the parenting schedule proposed by your spouse in the Petition.

Note: If you want the court to order different grounds for the divorce or if you want to request spousal maintenance (alimony), or you want to divide retirement accounts, you should contact an attorney. Because of their complexity, the Court Assistance Office forms do not deal with these issues and possibly others you may want to discuss with an attorney.

Instructions.

Fill in the forms by typing or by printing neatly and legibly in **black** ink. Fill in "N/A" or "none" if a section does not apply. The documents have a boldface "**or**" at the start of optional sections. If the section does not contain a boldface "**or**" it is necessary and you should type in the appropriate information (which might be the word "none"). Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, 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 the court heading the same way they are on the Petition you were served.

The Caption. Fill in the names of Petitioner and Respondent exactly as they are in the Petition. **The Case No.** Write in the case number shown on the Petition.

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

Review the Petition, you must admit or deny each paragraph in the Petition individually, using paragraphs 1-5 of the Response form. If you only agree with some of the facts in any paragraph, you must state specifically which facts you admit and which facts you deny. There is a **prayer** portion of the Petition that you do not have to specifically answer. It usually starts with "Wherefore Petitioner prays for judgment as follows:" You **do not** have to answer any of the numbered paragraphs in the prayer of the Petition.

After filling in your name, complete the next blank by filling in the name of the document you are answering.

Note: There are several options for answering the document.

Paragraph 1: Decide the numbered Petition paragraphs you completely agree with. Fill in those paragraph numbers, letters, or Roman numerals (as used in the Petition). If you can only admit some of the facts in any numbered paragraph, you must use paragraphs 2 and 3.

Paragraphs 2 & 3: If you disagree with only a portion of a paragraph in the Petition, state the paragraph number, letter or Roman numeral (as used in the Petition) plus specifically what you admit.

Paragraph 4: Decide the paragraphs of the Petition you don't have enough information to answer. Fill in those paragraph numbers, letters, or roman numerals (as used in the Petition). If the information is something you can easily find out, you should try to find out before you deny it.

Paragraph 5 is a general denial of any statements made in the Petition that you did not specifically admit.

Paragraph 6 gives you the option of asking that the Petition be dismissed. Check the box if that is what you want.

Affirmative Defense(s) Paragraph: Rule 208(C) I.R.F.L.P. lists the following affirmative defenses: accord and satisfaction, arbitration and award, assumption of risk, contributory or comparative negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or affirmative defense. You can use a legal dictionary to find out what the terms mean. You should talk to an attorney to determine whether any of these affirmative defenses are available to you. Fill in those affirmative defenses that apply to your case, listing each as a separate numbered paragraph.

Completing the COUNTERCLAIM Portion of the Form

1. Residence of the Parties.

Fill in the state where you live and the state where your spouse lives.

2. Marriage of 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.

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.

This paragraph states the parties have no children. If you and your spouse do have a child/ren, you should not be using this form. Use form CAO FL 3-5 Family Case Response and Counterclaim (With Children).

5. Wife's Child/ren, born or Conceived During this Marriage.

If a child was born or conceived during the marriage, you must provide the information about the child which is requested in this paragraph. A child born or conceived during a marriage is presumed to be the child of the husband. To overcome this presumption, you may be required to submit a genetic test confirming the husband is not the biological father of the child/ren, or submit a sworn statement signed by the mother, biological father, and husband, all confirming husband is not the biological father of the child. If you are facing these circumstances whether you are the mother, biological father, or husband, you are strongly urged to consult with an attorney. If the paternity of the child is not properly handled, there can be possible long term legal consequences and obligations created which may be irreversible.

Paragraphs 6, 7, and 8

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 (staple) 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.

6. 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 Husband and/or an order that Husband's separate property, now in the possession of the Wife, be returned to the Husband, check the second box and describe the property in the first section of **Exhibit A**.
- If you want the court to order that specific separate property belongs to the Wife and/or an order that Wife's separate property, now in the possession of Husband, be returned to the Wife, check the third box and describe the property in the first section of **Exhibit B**.
- If you are listing financial accounts, list only the last four digits of the account number. If you must list the entire account number you must either attach a reference list or file a redacted and unredacted version of the Petition.

7. Community Real Property.

- If you have not acquired community real property during the marriage, check the first box.
- If you have acquired community real property during the marriage, check the second 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).

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.

- Check one of the first three boxes to indicate what will be done with the community real property and any equity, and fill in the blanks **or**
- Check the fourth 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 insure the payments are made.

8. 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 **and/or**
- If you want the court to order that specific property be given to the Husband and the property is already in Husband's possession, check the third box and list the property in the second section on **Exhibit A** (Husband's Property) **and/or**
- If you want the court to order that specific property be given to the Wife and the property is already in Wife's possession, check the fourth box and list the property in the second section on **Exhibit B** (Wife's Property).

- If there is property that the Husband should have given to him which is still in the possession of the Wife, check the third box **and** list the property in the third section on **Exhibit A** (Husband's Property).
- If there is property that the Wife should have given to her which is still in the possession of the Husband, check the fourth box **and** list the property in the third section on **Exhibit B** (Wife's Property).

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).

- If you are listing financial accounts, list only the last four digits of the account number. If you must list the entire account number you must either attach a reference list or file a redacted and unredacted version of the Petition.

Paragraphs 6, 7, and 8 Reminder.

If you have listed any property on **Exhibit A** or **Exhibit B**, the Exhibits must be attached (stapled) to every copy of the Petition. Initial and date the Exhibits on the lines at the bottom. Make an extra copy of the Exhibits to attach (staple) to the Decree of Divorce.

9. 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 Husband should be ordered to pay, check the second box and list each creditor.
- If there are debts the Wife should be ordered to pay, check the third box and list each creditor.
- If you are listing financial accounts, list only the last four digits of the account number. If you must list the entire account number you must either attach a reference list or file a redacted and unredacted version of the Petition.

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.

10. 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.

11. Name Change.

Check the box if either party wants to stop using the last name of the 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 where indicated certifying that the information is true and accurate, subject to the penalty of perjury if it is not.

Certificate of Service: You are required to deliver a copy of any document you file in this case to your spouse (or her/his attorney if s/he is represented by an attorney). Because your spouse has already “appeared” in the case by filing the Petition, you can serve him/her your response by mailing, hand-delivery or fax.

- Fill in the name and address for the other party (or his/her attorney) exactly as it appears in the upper left corner of page one of the Petition. If you are going to serve the Response by fax or personal delivery, write in the address you will use.
- Check the box to indicate how you are getting a copy to the other party (or his/her attorney).
- Fill in the date and sign the Certificate of Service.

Note: A copy of every document you file with the court in this case must be sent to the other party, either directly or through the attorney if s/he has an attorney.

Make your copies.

Serve one copy on the person named in the upper left hand corner of page 1 of the Petition by the method specified in your Affidavit of Service.

File your Response and Counterclaim. Take the original (the one you signed) and your copy (with the required filing fee) to the court clerk. The original will be kept in the court’s file and you can ask that the clerk “conform,” or stamp your copy. (See CAO D Instruction 3-1 “Responding to a Divorce Petition” for complete instructions).