

The Basic Divorce Process



This section is intended as a brief overview, and is not intended as a guide for performing your own divorce.

Because divorce can permanently affect your rights, you should consult an attorney. If you do not qualify for representation by Rhode Island Legal Services, you can call the Volunteer Lawyer Program or the Lawyer Referral Service to find an attorney you can afford. If you decide to represent yourself, pro se, you will be required to do exactly what an attorney would do. Consider spending time in court watching cases and going to a law library to research how to do a case. The clerks' office does have a written script for presenting your own divorce.

A divorce is filed by submitting to the family court clerk the following forms: a complaint, a DR6, two statements listing the children of the divorce, a family services counseling report form, a report of divorce, a copy of the marriage certificate, the summons, and the filing fee. All of these forms can be obtained at the clerks' office. If you don't have an attorney, you will be responsible for filling out the proper forms yourself. The clerk is not allowed to help you.

If you cannot afford the filing fee, you can file for in forma pauperis status. Ask the clerk for the form and a dr6. If you qualify for in forma pauperis status, your filing fee will be waived.

Once you have given the clerk the above forms, the clerk will give your case a docket number and a first court date, or nominal date. The clerk will give you back the summons and a copy of the complaint and a packet of information that must be served on the Defendant. You are responsible for making sure the Defendant is served. The court does not do this for you. Take this packet to the sheriffs' office in the county where the Defendant lives. Pay the sheriff the service fee. Give the sheriff a good address (an address where the Defendant can be found from Monday to Friday 9:00 A.M. to 5:00 P.M. is best) to serve the Defendant. Once the Defendant has been served, the sheriff will fill out the back of the summons. You must get the summons back from the sheriff (either pick it up from the sheriff's office or leave the sheriff a stamped, self-addressed envelope) after the Defendant has been served. You must then file the completed summons with the clerk so that you can prove the Defendant was served. Keep a copy of all documents for yourself.

If a sheriff is unsuccessful in serving the defendant, you may have to ask the court for permission to serve by alternate service. Forms of alternate service include regular and certified mail, service by publication (publishing in a newspaper), tacking notice to a door, etc. You will be required to file a motion to ask for this permission.

Once the Defendant has been served, the Defendant usually chooses to answer the case and file a counterclaim. This means that the Defendant responds in a written legal document to the statements made in the complaint and then asks for relief in the

counterclaim (this is the Defendant's complaint). The Defendant must file the answer, counterclaim, DR6, and entry of appearance with the clerk. The Defendant must also send copies of these documents to the Plaintiff's Attorney, or to the Plaintiff directly if the Plaintiff is pro se. If a party has an attorney, the other party must communicate about the case through that attorney and not to the other party directly.

In Providence, the plaintiff and the defendant, if the defendant answers the case, must see the parenting video before the case can be heard. This video is show at

the Garrahy Judicial Complex, on the third floor, Room 375, Monday through Friday at 8:30 A.M. and Monday through Thursday at 6:00 P.M. The video is shown in English and in Spanish. Bring your docket number with you so that the clerk can put a paper in your file that says you saw the video.

The first court date is called the nominal date. The divorce will be heard on this date only if the Defendant defaults, or if the parties are in agreement on ALL issues in the divorce. The defendant defaults if he/she fails to file an answer or appear at court after he/she has been properly served. The plaintiff will usually be granted all of the relief he/she has asked for in the complaint. The judge cannot grant an order that was not asked for in the complaint because the defendant was not given notice that that issue would come before the court.

If a defendant defaults, the Plaintiff will testify to the facts that the judge needs to grant a divorce and to the terms of the divorce. The Plaintiff will then have two witnesses testify on his/her behalf. Both witnesses must know and be able to testify that the plaintiff has lived continuously in Rhode Island for at least one year prior to filing the complaint for divorce. One of the witnesses must know and be able to testify that he/she knew about the problems in the marriage and believes the marriage cannot be fixed (for an irreconcilable differences divorce) or that he/she knows you have been separated and not together with the defendant for a space of more than three years (for a separate and apart divorce). The plaintiff must also submit an affidavit of nonmilitary service, which can be obtained from the clerk prior to the hearing.

If both parties are in agreement about ALL of the terms in a divorce, they have a "nominal" divorce. The plaintiff first testifies about the terms of the divorce and all of the facts that allow a judge to grant a divorce, like jurisdiction, date of marriage, etc. The defendant will testify after the plaintiff and will basically affirm the terms testified to by the Plaintiff. The parties need one witness who can testify that at least one of the parties lived in Rhode Island for at least one year continuously prior to filing the complaint for divorce.

If the nominal date arrives and the parties have no agreement, the judge will change the divorce to the "contested" track. The case will then be assigned a case management date, usually at 2:00 P.M. The case management conference is for the attorneys to have a conference with the judge to let the judge know what issues the

parties have not yet agreed upon. The judge will usually offer suggestions to help the parties come to an agreement.

If the parties are still not in agreement on the case management date, the court will assign a pretrial date. At the pretrial conference, the attorneys will usually submit a pretrial memorandum. The pretrial memorandum basically sets out the agreed upon issues, the issues that remain unresolved, the facts a party plans to prove, and the names of the witnesses the party will call to testify at trial. Again, this conference is a chance to work on unresolved issues and come to an agreement.

If an agreement is reached at any time in the process, the court will usually hear a nominal divorce that day or make arrangements for the nominal to be heard on another date chosen by the parties.

If the parties cannot reach an agreement about the issues in the divorce, the case will go to trial. This means that each party will present evidence to support their case and the judge will make a decision as to what terms will be in the divorce decree.

After a nominal hearing or divorce, papers have to be presented to the court to finalize the divorce. You are not divorced on the day that you have your hearing! A Decision Pending Entry of Final Judgment and a Final Judgment must be entered before your divorce is complete. There are different time periods for Irreconcilable Differences divorce and Separate and Apart divorce. You must comply with the time periods. If you do not submit these documents, you will not be divorced!

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