

## HOW TO PROCESS A DIVORCE CASE

### DOCUMENTS NEEDED:

1. Affidavit of Inability to Pay Costs (AIP) - completed by client and notarized  
A word of caution: advise your client that you need good, true figures for income and expenses on the AIP. This Affidavit includes the attorney's IOLTA certificate.
2. Original Petition for Divorce (with complete signature block)-*Use married surname for woman*  
attorney signs petition; attachments as needed:
  - ▶ If your county has a standing order affecting divorce, attach a copy of the standing order.
  - ▶ For divorces with child, attach the Parenting Plan.
  - ▶ Affidavit for Citation by Publication (if address of spouse is unknown and No Children)
  - ▶ Summary for Notice by Posting (if address of spouse is unknown and No Children)
  - ▶ UCCJEA Affidavit ONLY if there are Children AND any party lives outside of Texas
  - ▶ Also file Information on Suit Affecting Family (aka the **Austin form**) Texas Family Code 6.410
3. Health Insurance Availability form -for divorces with children - file with Original Petition.
5. Waiver of Service - used if spouse will agree to divorce, signed **AFTER** filing of petition;  
No specific waiting period after Waiver filed
6. If no Waiver is obtained, respondent spouse must be personally served with notice of divorce.  
This cost is usually covered by Affidavit of Inability to Pay.
7. Soldiers & Sailors language in Waiver OR an Affidavit is required
8. Final Decree of Divorce - have additional documents ready as needed:
  - ▶ Affidavit of Name Change if a name change is requested - client signs
  - ▶ Statement of Evidence if spouse was served by publication / posting
  - ▶ Certificate of Last Known Address - when spouse defaults (no answer or appearance) after personal service of citation
9. Order/Notice to Withhold Income for Child Support- for divorces with children plus information form for the child support office

### GENERAL REQUIREMENTS OF DIVORCE:

The party must have lived in Texas for 6 months AND in the County for 90 days preceding filing of divorce petition.

If there are children, inquire for Court of Continuing Jurisdiction BEFORE filing petition for divorce. If there is such a court of continuing jurisdiction, that case must be transferred to and consolidated with the divorce case. See your local legal aid office for forms.

### **60-day waiting period between filing and proving up divorce.**

If Respondent/spouse was personally served with divorce petition, answer deadline is the Monday after the expiration of 20 days. (60-day waiting period and 20-day service run concurrently)

### HOW TO FILE PETITION FOR DIVORCE:

Make 3 copies of the Affidavit of Inability to Pay Costs (AIP) and 4 copies of the Original Petition for Divorce and any attachments [2-hole punch only the originals]

File the AIP and Original Petition, Austin form, [health insurance information (if applicable)] with District Clerk.

At filing, the case will be assigned a case number and, randomly, a court number.

Service of Process: Ask for Citation to be issued at the time of filing Original Petition if spouse's address is known and NO agreement is anticipated [See Serving the Respondent below.]

#### WAIVER OF SERVICE:

Use this form if client and spouse/Respondent are in complete agreement about the divorce and children, if any. The Waiver can be mailed to Respondent with a copy of the file-stamped Petition or the client can take both to the spouse. Respondent executes the Waiver by signing in presence of a notary public. Make a copy to keep of the Executed Waiver and file original Waiver with the court.

**There is no specific time requirement for Waiver to be on file prior to proving up the divorce.**

#### SERVING THE RESPONDENT:

If Respondent/spouse lives in your County, the constable's office will serve. District Clerk will determine appropriate constable precinct. The Process desk will issue citation and forward citation to appropriate constable's office. If constable has problems serving Respondent, attorney may be contacted at information provided in petition's signature block OR you may have to follow up with the constable's office.

Respondent outside of the County will be served by the sheriff's office of the appropriate county where Respondent resides. Ask the clerk to hold citation for pick up by you, the attorney.

Determine county of Respondent's residence and contact sheriff's office to get address to send request for civil service. Citation is then mailed to sheriff by certified mail, return receipt requested with a file-marked copy of Affidavit of Inability to Pay and a self-addressed stamped envelope for return of executed citation.

Once executed citation is received, make 2 copies of front and back for filing at the district clerk's office. **Citation must be on file at least 10 days prior to proving up the divorce.**

#### POTENTIAL SERVICE PROBLEMS:

Respondent lives at address used in divorce Petition but is never home when constable visits. Ask constable to furnish an affidavit for Rule 106 alternative service. Attach affidavit to a Motion for Alternative Service and prepare an Order. File the motion, get a judge to sign the order and fax the order to the constable. Constable can then affix citation to the residence door or give it to anyone there who is 16 years or older. See your local legal aid office for motion and order.

If Respondent files an Answer to the divorce, contact Respondent or Respondent's attorney and inquire whether there is agreement. If there is agreement, will Respondent sign an Agreed Decree of Divorce. Once Agreed Decree is signed, divorce may be finalized (proved up) if 60 days have run.

#### FINALIZING DIVORCE (PROVING UP):

After 60 days have passed and Respondent has been served (and not filed an Answer) OR has signed a Waiver of Service OR Agreed Decree of Divorce has been signed, divorce can be proved up. You will then prove up the required elements of the divorce with the client in front of the judge. See prove-up script provided.

CONGRATULATIONS!! YOU'VE LEARNED HOW TO DO A SIMPLE DIVORCE.

#### **FOR DIVORCES WITH CHILDREN - PLEASE NOTE THE FOLLOWING:**

Other requirements or disclaimers:

1. Any domestic violence - might affect type of custody and the access provisions by other parent
2. Parenting plan must be filed at least 30 days in advance of trial(default prove up) TFC 153.603
3. UCCJEA Affidavit may be required showing where child has lived for previous 5 years  
ONLY in divorce with Children AND any party lives outside of Texas
4. Residency restrictions may be required depending on the court
5. Child Support and health insurance provisions are required. Withholding order is required - All child support payments must go through the State Disbursement Unit in San Antonio.
6. Child born during the marriage BUT not the husband's requires particular forms/provisions as to that child's paternity.
7. CAUTION – if you request Temporary Orders with mutual injunctions (over the persons), you may invoke the Violence Against Women Act (federal prohibition against possession of firearms) and expose your client to the risk of criminal liability. USC Title 18, Crimes and Criminal Procedure,  
Part I, Crimes, Chapter 44, Firearms, Section 922, Unlawful acts, (g) 8.

MENTORING ATTORNEY WILL PROVIDE FORMS AND GUIDANCE IN THE CASES OF DIVORCES WITH CHILDREN.

#### ***FYI -----Just because these things happen even if unplanned:***

*Keep in mind that you are attorney of record on this case. If you leave your current law firm, you should take the case with you UNLESS arrangements have been made for another attorney at the firm to SUBSTITUTE in. OR if the need arises for you to withdraw from representing a client, please inform your local Legal Aid office and provide an order of withdrawal for their file. Don't forget to change address with the district clerk if you move your office. FINALLY, BE SURE TO FILE A MOTION TO BE REMOVED AS ATTORNEY OF RECORD IN DIVORCES WITH CHILDREN AFTER DIVORCE IS GRANTED.*