

DIVORCE ANSWER
AND COUNTERCLAIM
(WITHOUT CHILDREN)

IMPORTANT

THIS PACKET IS IN NO WAY INTENDED TO SUBSTITUTE FOR THE ADVICE OF A PRIVATE ATTORNEY

Private Counsel Is Always Recommended For Legal Matters

The law allows any person to represent themselves in a legal action. However, filing an action with the Court and representing yourself in the courtroom can be a complicated legal procedure and this packet does not attempt to address all the legal issues involved in bringing your matter before the court. This packet is created to help you access the legal system without the assistance of an attorney.

When representing yourself, you are responsible for understanding the law that governs your case and for filing the proper legal documents. The laws and rules are set out in the Nevada Revised Statutes, the Rules of Civil Procedure, and the local rules governing the jurisdiction in which you are filing your documents.

When you sign these documents and present them for filing with the court, it is assumed by the Court that you have carefully read the documents, that you understand all the terms in the documents, that you agree with all the provisions in the documents, and that you are aware of all the consequences those provisions may produce.

Before filling in any portion of the following documents, read all the materials included in this packet regarding custody, visitation, child support and definitions of terms.

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SOME DEFINITIONS and EXPLANATIONS OF TERMS USED IN FAMILY CASES

The following definitions and explanations are only to be used as general guidance. In no way are they intended to cover all the legal significance and importance of the terms. You are advised to seek a full explanation of the terms, definitions, and explanations from a private attorney licensed to practice law in the State of Nevada.

Alimony or Spousal Support: Alimony, or Spousal Support, is the amount paid to one spouse by the other for a period of time after the marriage is over, usually to assist the spouse in being able to maintain a lifestyle to which that spouse is accustomed, until that spouse can get back on firm financial footing. Spousal support may be for a limited amount of time, such as months or years, or may be permanent such as for a lifetime or until remarriage, whichever occurs first. If the spouse that is receiving support remarries, unless otherwise agreed upon, the spousal support stops. There is no formula for spousal support and either party may receive spousal support. The factors governing spousal support are complicated and if you have any questions regarding spousal support, ***they should be discussed with a private attorney.***

Assets: Generally, ***anything*** acquired or purchased during the time of the marriage is considered a community asset and, therefore, community property, and it usually does not matter if one name is on the property or both names are on the property. Nevada is a community property State and the law in Nevada is that community assets are equally divided at the time of a divorce. ***There are some exceptions, and those should be discussed with a private attorney.*** The term “community assets” includes: the income of both parties during the marriage and anything purchased with either income, any interest acquired in real property, any retirement funds earned during the marriage, vehicles purchased during the marriage (even if in only one name), furniture purchased during the marriage, etc. In many cases, it does not matter in whose name these things are purchased. Sole and separate property is not ***usually*** considered community property ***unless*** it was given as a gift to the community or the community has acquired an interest in it in another way. If one party wastes community assets or gives community assets away without the other party’s knowledge or consent, that party may have to reimburse the community for the wasting of assets. If there is a question of wasted assets, ***those should be discussed with a private attorney.***

Community Property: Any assets acquired or purchased during the marriage are usually considered “community property” no matter whose name they are in. That is the starting point for the division of property of the marriage. Nevada is a community property State and it is the law that the division of community property start with an equal division. ***However***, there are important deviations and exceptions to equal community property distribution. See “Assets” above. ***A private attorney should be consulted regarding division and distribution of community property.***

Debts: Generally, any bills or debts acquired during the marriage are considered community debts and are equally divided at the time of the divorce. ***There are exceptions.*** Debts that are incurred for such things as gambling or for purchasing things that are not for the

benefit of the community may be considered sole and separate debts. ***Such debts should be discussed with a private attorney.***

Residency Requirement: One of the “Petitioners” must be a resident of the State of Nevada and that person is known as the “resident petitioner”. In order to establish residence in the State of Nevada, that person must have physically lived and physically been here in the State for at least six (6) weeks immediately prior to filing the Joint Petition. If both people are residents of the State of Nevada, only one is actually designated as the “resident petitioner” for purposes of the filling out and filing of the Affidavit of Resident Witness Form.

A child, or the children, MUST be a resident, or residents, of the State of Nevada for a period in excess of six (6) MONTHS before the State of Nevada can enter any orders regarding custody, or visitation, of the child or children. This is FEDERAL LAW. If the child, or children, are not residents of the State of Nevada for a period of more than six (6) months immediately prior to the filing of the Petition, the State of Nevada has no jurisdiction over orders regarding the children. THERE ARE EXCEPTIONS, but those should be discussed with a private attorney. The parties ***cannot*** automatically agree to waive the jurisdiction issue.

Resident Petitioner: The Petitioner, or party, on whose behalf the Affidavit of Resident Witness is going to be filed. If both Petitioners are residents, only one will be the “Resident Petitioner”.

Resident Witness: A person that will swear in the Affidavit of Resident Witness that one of the Petitioners has been physically present in the State of Nevada for a period of at least six (6) weeks immediately prior to the filing of the Joint Petition. The Resident Witness may be a friend, a family member, or a co-employee.

Sole and Separate Property: Sole and separate property are those things Husband and Wife owned prior to the marriage, and it ***may*** also include a personal injury settlement received during the marriage by one of the parties, ***if*** the proceeds were kept entirely separate from the community. Sole and separate property remains the property of the individual who owned it prior to the marriage. ***There are exceptions, such as a home or other real property.*** The community may acquire an interest in a home or real property during the time of the marriage even if it belonged to one party prior to the marriage. If there is a question regarding such an interest, and what percentage the community may have acquired, ***you are urged to see a private attorney.***

GENERAL INFORMATION ABOUT FILING AN ANSWER

The forms must be typewritten or legibly handwritten in black ink.

There will be a filing fee to file this document with the Court. The fee may change from time to time, and it is recommended that you contact the Court Clerk's office to check on the current fee prior to presenting the documents for filing.

If you are indigent and cannot afford the filing fee, you may request the fee be waived by filing the packet entitled **Request for Waiver of Fees and Costs**. The Court will examine your financial status and determine whether a full or partial waiver can be granted, or if the request will be denied.

There are facilities for copying your documents at the Court Clerk's office at the charge of **\$.025 per page**. Therefore, it is recommended that you make any copies of the documents you may want, or need, prior to going to the Court Clerk's office. You will need **two** copies of each document to be filed unless told otherwise. If exhibits are attached to the original document, a copy of the exhibits must be attached to each copy.

Location of the Court Clerk's Office

The Court Clerk's Office for Churchill County is located at 73 N. Maine Street, Suite B, Fallon, NV, 89406, on the second floor. The phone number is (775) 423-6088.

If you are mailing the documents to the Court Clerk's office for filing, OR if you have submitted an Order of Decree for the Judge to sign, **it is strongly suggested that you provide a self-addressed, stamped envelope when you file your documents. A copy of the file-stamped documents will then be mailed to you.**

FILLING OUT THE DOCUMENTS

1. **For All Documents:** Fill in the spaces on lines 9 through 13, **exactly** as they appear in your other documents. This is the "heading" of the document and it is always the same. If you are the Plaintiff in the original document, you will remain the Plaintiff; if you are listed as the Defendant in the original document, you will remain the Defendant. The Case No. and Dept. No. are always the same.
2. **IMPORTANT NOTE:** This form provides you with the basic form to protect your interests in the legal matter, so long as it is filed within the time frame of twenty (20) days after you have been served with the Complaint and Summons, or a Petition and Summons, or an Answer and Counterclaim. If you do not file within that time period, the other party may take a "default" against you and be awarded all they ask for in their pleadings.

3. **This form does not make provisions for you to file a counterclaim with your answer. To file a counterclaim, use the Answer and Counterclaim supplemental packet.**
4. **Be aware** that additional motions that may have been filed with the Complaint or Petition and served on you with that document are not answered through this form. If you have been served with additional motions, you must answer those motions on other forms. If you do not formally answer those motions, the other party may submit those motions and may be granted all they request. If you have questions regarding motions that have been served on you, immediately seek counsel with a private attorney.
5. The Answer: Carefully review the Complaint or Counterclaim. Make a note on the side as you review of all paragraphs with which are **agree**. Also note all paragraphs with which you **disagree**. Make sure the **whole paragraph is correct when you decide to agree with it**. If you agree only with one part of the paragraph and disagree with another, you must **disagree with the whole paragraph**.
6. Enter the numbers of the paragraphs with which you agree under Section I. Enter the number of the paragraphs with which you disagree under Section II. Enter the number of the paragraphs, if any, which require no answer or that you do not understand under Section III.
7. Complete the Counterclaim (if applicable) as to the allegations you wish to bring against the other party.
8. **This document must be signed in the presence of a Notary Public.**
9. The Certificate of Service: The opposing party must be personally served with a copy of the documents. Service may be made by mail or be personal service. After the documents have been completed, place an “X” on the appropriate line indicating the method of service. The Certificate is to be filled out and signed by the person who actually mails or personally serves a copy of the documents on the other party or their attorney.
10. Once the documents are completed, make two copies of each. Serve **one copy** as noted in the Certificate of Services. If there are multiple parties, make enough copies for yourself and each party. Take the original **and one copy** to the Court Clerk to be filed. The copy will be returned to you and your file.’
11. **If an Answer is filed, pursuant to Tenth Judicial District Court Rule 24, you have ten (10) days after the Answer is filed in which to file a financial declaration with the Court.**

12. REMINDER: If other motions have been served on you, you must answer those motions with other responsive documents.

If you need guidance in filling out the forms or in the procedure of the case, seek the advice of a private attorney.

NOTE: YOU MAY NOT USE THESE FORMS IF YOU ARE PRESENTLY REPRESENTED BY AN ATTORNEY IN THIS MATTER.

If you are requesting that the Court waive the filing fee, the filing procedure is different than above. Complete the Request for Waiver of Fees and Costs packet and following those directions.