COMPLAINT FOR DIVORCE

NO KIDS

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 WITH CHILDREN

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 earns 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 A COMPLAINT/PETITION

The forms must be typewritten or [6] ***gibly 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) 423-6080.

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. **NOTE: If Children Are Involved**—UCCJA stands for the Uniform Child Custody Jurisdictional Act. It is a Federal law which dictates the criteria that must be present in order for a Court to have jurisdiction to enter an order regarding custody and visitation of a minor child. **In order for a Court to enter a valid order regarding custody or visitation over a minor child, the child must be a resident of the State of Nevada and must have been physically present in the State for a period of six months prior to the filing of the Complaint or Petition.**

3. The Civil Cover Sheet: Leave the Case and Dept. No. blank, as this will be assigned when the document is filed. Fill in your name, address and phone number under Plaintiff. Fill in the information, if known, for Defendant. Check the appropriate box for the action you are filing. Then sign and date the form.

4. The Complaint or Petition:
   a. Divorce – Be sure you are familiar with the terms and definitions regarding community assets and debts. Pensions and bank accounts are assets. Vehicles and their VIN numbers should be listed as assets in the appropriate columns. Credit cards should be listed as debts and the last four numbers of the accounts should be included, if known.
   b. Child Custody or Visitation – Be sure you are familiar with the terms and definitions regarding child custody and visitation. Also be sure you know how the child support must be calculated according to the Nevada Revised Statutes.

5. **This document must be signed in the presence of a Notary Public.**

6. The Affidavit of Resident Witness: The Affidavit of Resident Witness is **only** used for a Complaint or Petition for divorce. **The Affidavit must be filled in by the person who is going to swear you have been a resident of the State of Nevada for at least six (6) weeks prior to filing any documents.**

7. **This document must be signed by the Resident Witness in the presence of a Notary Public. YOU CANNOT BE YOUR OWN RESIDENT WITNESS.**

8. The Summons: Print your name as the Plaintiff and the other party's name as the Defendant. Fill in purpose in the middle of the form –i.e. divorce, child custody, personal injury, etc. Print your name, address and telephone number in the space at the bottom of the Summons.

9. On the second page of the Summons, if there are other documents to be served along with the Complaint or Petition, list those documents on the lines under the heading. **Do not fill in any other lines;/information at this time. Leave all other spaces blank.**

10. Once the documents have been completed, make two copies of each. Take the original **and copies** to the Court Clerk to be filed, together with the filing fee. The copies will be returned to you, for each of your files.

11. The Court Clerk will "issue" the Summons, meaning complete the remaining portions of page 1. The Clerk will sign and stamp the documents, and return them.

12. Serving the Documents: If the other party is a resident of another State and has never lived in the State of Nevada, and the marriage (in case of divorce) did not take place in Nevada, you must get permission from the Court to personally serve the Defendant outside the State. This is done through the supplemental packet entitled **Motion to Allow Out of State Service.**

13. Service on the other party, either in person or by publication, **MUST BE MADE** within ***one hundred twenty (120) days*** after the Complaint is filed and the Summons issued or the action may be dismissed by the Court.

14. By Personal Service: Staple the **copy** of the Summons to a copy of the Complaint. If additional motions have been filed with the Complaint, a copy of those must also be included. This is the packet of documents that must be personally served on the other party.

15. **Because you are a party to the action, you cannot serve the documents on the other party.** Service may be made:
    a. By the Civil Division of the Sheriff's Office in the county in which the other party lives or works
    b. By a responsible adult over the age of 18 years, such as a friend or relative.
    c. By a private process service.

16. The Sheriff's Office and private process service will charge a fee for service of the documents. Deliver the packet of documents together with the **original** Summons to the individual you have chosen from the above list.

17. After service is made on all parties, the second page of the **original** Summons must be completed and signed in the presence of a **Notary Public** by the individual who served the documents. If the Sheriff's Office completes service, it will complete the Summons and return it to the Court Clerk. If anyone else completes service, it is your responsibility to retrieve this document and file it with the Court. Clerk. Without proof of service on the other party, the Court cannot grant your Complaint. **It is your responsibility to keep track of the service of the documents, regardless of the method chosen**, including filing the completed Summons with the Court Clerk.

18. Service by Publication: If you do not know where the other party is, you will need to supplemental packet entitled **Motion to Allow Publication of Summons** in order to serve the other party by publishing the Summons in the newspaper.

19. Once the other party is served with a copy of the Complaint or Petition, they have **twenty (20) days** after the date of service to respond.

20. If the Defendant Does NOT File an Answer Within 20 Days: You may fill out the appropriate **Default** packet and submit the documents to the Court for a final review and decision by the Judge. Without these documents, your action will not become final and will eventually be dismissed.

21. If the Defendant DOES File an Answer within 20 Days: You should receive a copy of the document by mail or personal service. If the Defendant does not have an attorney, however, they may not send you a copy of the Answer. Therefore, it is important to check with the Court Clerk's Office to see if an Answer has been filed prior to filing any **Default** documents.

22. After Service is Complete: **Nothing automatically happens in a case. It is your responsibility to keep the case moving. It is important to take immediate action if the other party files and serves any kind of document. There are very important time frames in which documents and pleadings must be filed. If those time frames are not met, you may be put at a great disadvantage. However, if an attorney is representing the other party, the attorney may take the lead and steer the procedure.**

23. If the other party challenges the allegations in the Complaint or Petition, the case may become one in which formal discovery is appropriate. **It is your responsibility to be aware of the rules that govern discovery and the time limits and procedures associates with discovery.**

24. Discovery is addressed in the Nevada Rules of Civil Procedure and the Tenth Judicial Court Rules, as well as pre-trial procedures. Your case may be seriously compromised if you do not know and follow the Rules. You are strongly advised to seek the advice and counsel of a private attorney regarding discovery procedures and time lines.

25. If the Defendant Files an Answer and Counterclaim Within 20 Days: All of the above apply, within additional step. You must file **a Reply to Counterclaim** within 20 days of receipt of the counterclaim, if personally served, or within 23 days from the postmarked date if it was mailed to you. **If you do not respond to the counterclaim, the other party may be granted what they ask in the counterclaim.**

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.

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