

SIMPLE DIVORCE PROCEDURE

Phillip J. Mohr
Chicago Volunteer Legal Services Foundation
11/1/2017

ABOUT THE AUTHOR

Phillip J. Mohr joined Chicago Volunteer Legal Services in 1991. A DePaul Law grad and former CVLS volunteer, he became the Family Law Director in 1996. Phil has handled cases in a variety of areas of law at CVLS, but has concentrated his practice on family law. With a typically large caseload, he has represented many clients with contested family law matters over the years. In addition to his trial work, he has gained experience with appellate work as well, arguing before the Illinois Supreme Court.

Phillip J. Mohr
Chicago Volunteer Legal Services Foundation
33 N. Dearborn, Suite 400
Chicago, IL 60602
312.332.3528
philmohr@cvls.org

TABLE OF CONTENTS

I.	INTRODUCTION.....	5
II.	PREPARING TO FILE.....	6
	A. DOCUMENTS.....	6
	B. FILLING OUT DOCUMENTS.....	7
III.	FILING.....	8
IV.	SERVING RESPONDENT/ACQUIRING JURISDICTION	8
V.	IF NOT SERVED	9
VI.	SET DEFAULT PROVE-UP	10
	A. DOCUMENTS.....	10
	B. WAIT FOR APPEARANCE AND RESPONSE	10
	C. CONTESTED MATTER – BRIEF DISCUSSION	11
VII.	NOTICE TO RESPONDENT	11
	A. DOCUMENTS.....	11
	B. SPECIFICS.....	12
VIII.	PREPARE FOR PROVE-UP	12
	A. DOCUMENTS.....	12
	B. SPECIFICS.....	12
IX.	PROVE-UP	13
X.	POST PROVE-UP	13
	A. DOCUMENTS.....	13
	B. SPECIFICS.....	13

SAMPLE FORMS

<u>PAGE</u>	<u>FORM</u>
15.	DIVORCE INTAKE QUESTIONNAIRE
17.	PETITION FOR DISSOLUTION OF MARRIAGE
25.	SAMPLE PETITION FOR DISSOLUTION OF MARRIAGE
29.	DOMESTIC RELATIONS COVER SHEET
31.	AFFIDAVIT AS TO MILITARY SERVICE
33.	SUMMONS
35.	AFFIDAVIT FOR SERVICE BY PUBLICATION
37.	ORDER FOR FREE PUBLICATION
39.	CIVIL LEGAL SERVICES PROVIDER FORM
41.	DISCLOSURE STATEMENT
49.	CERTIFICATE AND MOTION FOR DEFAULT
51.	NOTICE OF MOTION
53.	JUDGMENT FOR DISSOLUTION OF MARRIAGE
57.	UNIFORM ORDER FOR SUPPORT
63.	COURT REPORTER INFORMATION SHEET
65.	ORDER FOR FREE TRANSCRIPT
67.	ORDER ON PROVE-UP
69.	NOTICE TO WITHHOLD INCOME FOR SUPPORT
73.	CERTIFICATE AND AFFIDAVIT OF DELIVERY (2)
77.	NOTICE TO WITHHOLD COVER LETTER
79.	PROVE-UP: SUMMARY INSTRUCTIONS
81.	SAMPLE PROVE-UP AND QUESTIONS

I. INTRODUCTION

This guide is designed to assist you with the procedure of a simple default divorce. These types of cases can include those where a spouse cannot be located or where there is a lengthy separation and no kids, property or sufficient incomes to fight over. This guide will assist those who have little, or no, divorce experience with the basic procedures of a default divorce case. It is also a good stepping stone for those interested in learning to practice in this area.

The term “simple divorce” may be an oxymoron. Contested issues can, and do, materialize in the case you thought would be a default. If this happens, please contact CVLS if/when you need additional assistance.

If, after you have met with your CVLS client, you decide to take a simple divorce case, this chapter, and the appended forms, will assist you from start to finish. Although samples of the Petition for Dissolution and Judgment for Dissolution are attached, they need to be tailored to your case. This is general information for a default divorce. It will not necessarily be applicable to all the specifics of your divorce case. If you have any questions, again, please feel free to contact any attorney at CVLS.

- **The “simplest” of the simple divorces:** Before we move on to the substance and procedures of a simple default divorce, keep in mind that some marriages can be dissolved very easily using the Joint Simplified Dissolution procedure. The Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/451) allows for a streamlined, do-it-yourself divorce for cooperative divorcing spouses when there are no contested issues. It is designed for litigants to handle pro-se. After meeting with a potential client, you may want to advise him/her to complete a Joint Simplified Dissolution with their spouse. It usually can be done more quickly, both have to appear in court only one time, and all the paperwork is available from the clerk. They simply need to appear and fill it out. In order to file a joint simplified dissolution, both parties must certify to the following:
 - * Neither party is dependent on the other for support, or each party is willing to waive the right to support;
 - * Either party has been a resident of the State of Illinois for at least 90 days preceding the date they file;
 - * Irreconcilable differences have caused the irretrievable breakdown of the marriage and the parties have been separated 6 months or more;
 - * No children were born to, or adopted by, the parties and the wife is not currently pregnant;
 - * The duration of the marriage does not exceed 8 years;
 - * Neither party has any interest in real property or retirement benefits, unless they are held exclusively in individual retirement accounts and

- the combined value of the accounts is less than \$10,000.
- * The total fair market value of all the marital property, after deducting all encumbrances, does not exceed \$50,000;
 - * The combined gross annual income of the parties does not exceed \$60,000 and neither party has a gross annual income in excess of \$30,000;
 - * The parties have disclosed to each other all assets, liabilities and their tax returns for all years of the marriage; and
 - * The parties have executed a written agreement dividing all assets in excess of \$100 and allocating debt.
 - * The parties have executed a written agreement allocating ownership of and responsibility for any companion animals owned by the parties.

It is rare to find a divorcing client with a cooperative spouse. It is more rare to have a cooperative spouse who will certify, along with the client, to all the above. If it happens, however, consider referring them to 802 of the Daley Center to file this joint petition. It is \$368 (they save the appearance fee) and filing fees can be waived with a Rule 298 petition if their joint incomes are below the federal poverty level for 2 people. It is also fast. They can appear at the clerk's office (802 Daley Center) at 8:30 a.m. to fill out the documents and file the matter. They then may proceed to the assigned judge's courtroom for the prove-up hearing and entry of the Judgment (if the call is full or if parties seek filing fee waiver, the matter may be prolonged a few days). I am not attaching the forms because the parties fill these out on their own at court and they are readily available in room 802 of the Daley Center and on the clerk's website – www.cookcountyclerkofcourt.org.

If you have reviewed your client's matter and decide that it is neither a joint simplified dissolution, nor a contested matter, proceed with the following procedures. All documents referred to in this guide (excluding the *Certificate of Dissolution*) are appended.

II. PREPARING TO FILE:

A. DOCUMENTS

- * *Divorce Intake Questionnaire*
- * *Petition for Dissolution (and 3 copies)*
- * *Certificate of Dissolution (carbon form, no copies needed)*
- * *Domestic Relations Cover Sheet (no copies)*
- * *Affidavit of Military Service (and 2 copies)*
- * *Summons (and 3 copies)*

OR if you can't get personal service

Affidavit for Service by Publication (and 2 copies)

Order for Free Publication (and 2 copies, if fee waiver approved)

* *Civil Legal Services Provider form-when appropriate (and 2 copies)*
(CLSP)

B. FILLING OUT DOCUMENTS

Before preparing the documents for the divorce, make sure you have completely filled out the *divorce intake questionnaire* with your client. The questionnaire is designed to provide you with all the information you will need to prepare the paperwork.

Prepare the *Domestic Relations Cover Sheet*, *Petition for Dissolution* (see next paragraph), *Summons* (if you can get personal service) or *Affidavit for Service by Publication* and *Order for Free Publication* (if you cannot), *Military Affidavit*, and a *Certificate of Dissolution*. The *Certificate of Dissolution* is not appended to this guide because it is a special 5-page carbon form. You can get one from CVLS or the clerk's office in room 802 of the Daley Center. You can also pick one up, and fill it out, when you file the case.

The *Petition for Dissolution of Marriage* is the foundation of your case. Like all Complaints, generally, you can only get what you ask for. You want to prepare, therefore, a complete Petition seeking all the relief your client wishes to obtain – parental allocation, child support, maintenance and division of property and debt. This chapter presumes a simple divorce. In a simple case, your request for relief regarding property or maintenance, then, may simply be to seek that each party be awarded the property in their respective possessions or that both parties be barred from receiving maintenance. Two Petitions follow this chapter – one informational and the other a sample. The informational Petition provides guidance for proper allegations and requests for relief concerning each of the divorce issues (i.e. grounds, parental allocation/visitation, child support, division of property/debt, and maintenance). Please review both Petitions before preparing one for your client.

Make certain that your client reads the Petition carefully before signing. If s/he signs a Petition stating that the marital property has been previously and satisfactorily divided, s/he cannot, at a default prove-up, ask for the car and TV which are in Respondent's possession. You can only be awarded relief that you have, at least generally, asked for.

Once you have your paperwork prepared, have your client sign the *Petition* and *Military Affidavit*. If your client is within CVLS income guidelines then complete the *Civil Legal Services Provider Form* to waive court costs. This form is to be authorized by the volunteer Attorney and does not need to be approved by the

Court. If appropriate, simply fill it out and use it when paying filing fees. Note that the rules have changed regarding the use of the CLSP. Pursuant to new 735 ILCS 5/5-105.5, if a client qualifies for the legal service provider's guidelines, they are entitled to waive fees. If you cannot use a fee waiver your client has to pay the fees of **\$368.00** for filing, **\$60** for service by the sheriff (**\$235** for publication service) and approximately **\$50** for the transcript. You should have your client send CVLS **\$500** by check or money order (**\$675** if publishing). We will then forward to you a CVLS check(s) for the various fees, as needed.

When you are preparing the Petition for Dissolution (as well as the Judgment), keep in mind that the attached samples are for a simple divorce. There are no sample allegations for requesting a restraining order or for the division of significant marital property. If your matter involves these types of issues, which suggest a contested matter, you may need additional assistance. Please contact CVLS as necessary.

III. FILING

Once you have your court costs taken care of, file your *Petition for Dissolution* (with a *Domestic Relations Cover Sheet* attached to Original *Petition for Dissolution* only), *Summons* or *Affidavit for Service by Publication*, *Military Affidavit*, and *Certificate of Dissolution* in **room 802** of the Daley Center. If you can use a Civil Legal Services Provider Form use this for payment of fees. Please note that you can also file online in the Domestic Relations Division. Online filing is also free for any CVLS matters which use the CLSP form. The County requires, however, that any online filing be done by individual attorneys and not firms. An attorney who chooses to file online must establish an account with the Clerk or other approved online filing service. Note also that online filing will be required in mid to late 2018. Have the original plus a few copies for your file as these will also be file stamped.

IV. SERVING RESPONDENT/ACQUIRING JURISDICTION

(if publication service, see "If Not Served" below).

Personal jurisdiction must be obtained over the Respondent whenever possible. This is accomplished by having the Respondent personally served with the *Summons* and *Petition for Dissolution*. If personal jurisdiction is acquired over the Respondent, all issues of the divorce can be adjudicated. With publication service, however, the only relief available to a Petitioner is the dissolution itself, parental allocation issues involving children in the Petitioner's possession, and some marital property issues. With publication service, the court lacks the personal jurisdiction over the Respondent which is required to enter orders concerning money (this includes child support, maintenance and division of some property and debt). With publication service, because of the lack of

personal jurisdiction over the Respondent, the Judgment for Dissolution must state that "these issues are reserved until such time as the Respondent is personally served in this cause." Personal service outside of the state has the same legal effect as publication service unless the Respondent has some minimum contact with Illinois so that Illinois can exercise long-arm jurisdiction. This minimum contact could include: parties maintained a marital residence in Illinois; grounds for dissolution arose in Illinois.

To personally serve the Respondent, ordinarily you will go down to **room 701** to place the *Summons* with the Sheriff for service, immediately after you have filed your case. If you had court costs waived, your *Summons* will be marked "CLSP" and the Sheriff will not charge for service. If not waived, the service fee will be \$60. You will be giving the Sheriff a stamped copy of the *Petition for Dissolution* and the original and 1 copy of the *Summons*.

If you have an out of State/County Respondent, contact the Sheriff in the County you believe Respondent resides. Ask if they have a form, in addition to the *Summons*, they require for setting up service. If not, send just a cover letter with the information on Respondent, a *Petition for Dissolution* and the original *Summons* and one copy. Request that they send you, not the court, the proof of service. Also, ask if they will honor our fee waiver form. If so, include a copy of the CLSP and refer to it in the cover letter. If not, again, client will have to pay the fee.

Once you receive the proof of service from the out of State/County Sheriff, make copies, file the original and file stamp your copies. If you placed the Petition for service with the Cook County Sheriff, they will handle the filing of the proof of service. You can check on the status/result of service on the Cook County Sheriff's website using your case number.

V. IF NOT SERVED

A. **Try again with an Alias Summons** if you believe the Respondent's address was good, the Sheriff just wasn't able to find the person at the times they attempted service, or you have another address for the Respondent. You are required to use diligent efforts to serve the Respondent. The Sheriff does attempt service, but will not go out of their way to wait for the Respondent, or attempt at different times. Additionally, personal service will allow for the complete adjudication of all issues of the divorce. If you think you have a good address but are unsuccessful at service with the Sheriff, you may want to consider a private processor. This would not be a waivable cost and would need to be paid by the client.

-OR-

B. If you cannot locate an address for the Respondent, **prepare the Affidavit**

for Service by Publication. As stated above, your relief will be limited since you will not obtain personal jurisdiction over the Respondent. In order to set up publication service, you will simply complete the *Affidavit*, have client sign and go to the Law Bulletin publication desk in rm. 802 to place for publication service. They will accept the CLSP as payment for the service. You will receive in the mail a proof of service card from the Daily Law Bulletin and your default date. Follow directions below under "**When served**" to default the Respondent.

If Publication is your first choice of service, follow the same directions. You can take care of service on the same day you file the Petition. When you file your Petition, simply go to the Law Bulletin publication desk in room 802 and place for publication service.

VI. SET DEFAULT PROVE-UP

A. DOCUMENTS

** Certificate and Motion for Default (2 copies)*

B. WAIT FOR APPEARANCE AND RESPONSE

Once the Respondent is served, whether personally or by publication, s/he must file an Appearance AND Response within the time allowed (30 days from the personal service date or 30 days from the first publication date which is 5 days from the date placed with the Law Bulletin desk). If the Respondent fails to do so, s/he can be defaulted and the matter will proceed to a default prove-up hearing without his/her participation.

After the 30 days, check to see if the Respondent has filed a Response. Do this by checking your docket on the clerk's website (www.cookcountyclerkofcourt.org), calling the domestic relations clerk at 603-6300 with your case number ready or by going over to Rm. 802 and checking the computers yourself (if checking yourself, use the computers in 802, do not check the file. Filed documents can take several days to weeks to get into the court file. The computer will have that information immediately). A Respondent can be defaulted if they have filed an Appearance but no Response. If no Response has been filed, complete the top 2/3's of the *Certificate and Motion for Default*. When you are ready to set the matter for the default prove-up, go to the motion computers in room 802 of the Daley Center with the *Certificate and Motion for Default* and get a prove-up date. You will need to fill out a motion slip at the motion computers to get the prove-up date. You will receive a printout from the motion counter clerk with your prove-up date and judge. If you choose to e-file you can also obtain a prove-up date on the e-filing system.

YOU ARE ALLOWED TO PICK YOUR PROVE-UP JUDGE IN THE TEAM CALENDARS C, D and E. CALL CVLS IF YOU WANT SOME INSIGHT ON DIFFERENT JUDGES FOR A PROVE-UP IF YOU HAVE ONE OF THOSE CALENDARS. If you have a numbered calendar (i.e. individual calendar system), you may only obtain a prove-up before your assigned judge.

C. CONTESTED MATTER – BRIEF DISCUSSION

Again, this chapter is not designed for contested matters. If the adverse party does in fact file a Response to the Petition, please contact CVLS if you need additional assistance. Briefly, however, if your matter is contested (a Response has been filed), it will be resolved in one of two ways – agreement or trial. Most contested divorces should be (and are) resolved by agreement. If a Response is filed in the matter, however, you should both prepare for a possible trial down the road and begin settlement negotiations. Discovery is often necessary for both purposes. Depending on your case, the scope of discovery can range from the:

- required (exchange of Financial Disclosure Statements and proof of income within 30 days of filing of Appearance – Cook County Circuit Court Rule 13.3.1(b) and 13.3.2)
- to the cooperative and informal (voluntary exchange of additional income and asset documentation with opposing counsel)
- to the formal (interrogatories, notice to produce, depositions, document subpoenas and psychiatric or custody evaluations).

In many low income/small asset cases, you may get most of the necessary information to prepare your case from your client. Your formal discovery may be very limited, or limited to the required exchange under CCR 13.3. For example, you may simply need to obtain the Respondent's income records through a Notice to Produce or Subpoena. Keep in mind that if you need additional discovery through the use of interrogatories or subpoenas, you are required to tender your Rule 13.3 information before you are permitted to propound discovery. Prior to a final resolution of the matter, which can take some time, preliminary motions can, and often should, be filed. For example, you will often want to establish temporary parental allocation and child support, or temporary maintenance, pending the outcome of the matter.

VII. NOTICE OF DEFAULT PROVE-UP TO RESPONDENT

A. DOCUMENTS:

- * *Notice of Motion (2 copies)*
- * *Certificate and Motion for Default*
- * *Judgment for Dissolution of Marriage (with Parental Allocation language or*

a separate Allocation of Parental Responsibilities Order IF you have children)

B. SPECIFICS

In default cases, you must serve the Respondent regarding the Motion for Default and Prove-up at least five (5) business days before the prove-up date. Fill out the *Notice of Motion*. Serve the Respondent, by regular mail, with a copy of the *Notice of Motion* (keep the original), *Certificate and Motion for Default* and a copy of your *Judgment*. You should file the *Notice of Motion*, but it is not required, as long as you can produce the original out of your file at the time of prove-up. Serve the Respondent at the address where he was served with the Summons. There is no requirement to serve a *Notice of Motion* when there has been publication service because you have no jurisdiction over the Respondent anyway.

VIII. PREPARE FOR PROVE-UP

A. DOCUMENTS

- * *Judgment for Dissolution of Marriage (3 copies)*
- * *Court Reporter Information Sheet (no copies)*
- * *Order for Free Transcript - if fee waiver approved (2 copies)*
- * *Order on Prove-up (28-day Order)(2 copies).*

If children and support awarded

- * *Uniform Order for Support (2 copies)*

B. SPECIFICS

The prove-up is a simple hearing where you prove the allegations of your Petition to the judge and request your relief. You will ask your client leading questions to establish the allegations needed for the court to make its findings and enter your Judgment. Have your copies of the *Petition for Dissolution, Certificate and Motion for Default, proposed Judgment, Military Affidavit, Court Reporter Information Sheet, Order for Free Transcript* (if you used a fee waiver form), and *28-day Order* ready for prove-up. If you're new to divorce prove-ups, you may want to prepare your questions in advance, using the sample script attached.

If you have children involved, served Respondent by personal service and requested a child support award, you must also prepare a *Uniform Order for Support*.

Go to your courtroom at the scheduled time on the day of prove-up. Check in with the clerk. The clerk will take your *Certificate and Motion for Default*, fill in the bottom (the bottom third is the Order of Default and assignment) and check you in. The clerk will probably also want copies of all originals you expect to have entered

including the proposed *Judgment (with Parental Allocation Order if relevant), Uniform Order for Support, Order for Free Transcript and 28-day Order*. Your client should be prepared for prove-up by this time, but if absolutely necessary, and you were not the first prove-up to check in, you can usually take a few minutes to additionally prepare the client.

IX. PROVE-UP

Once you've checked in with the Judge, wait for the case to be called. When called, step up with your client, hand the court reporter the *court reporter information sheet*, introduce yourself and the case to the Judge and hand the Judge a copy of your proposed Judgment, if you haven't already given one to the clerk when checking in. Inform the Judge as to how and when Respondent was served, that s/he has failed to file an Appearance and/or Response, that s/he is in default, the grounds of the dissolution and the number of children. A prove-up day *summary instruction* and *sample prove-up* with questions are appended.

Proceed through your prove-up. Make sure at the end of your prove-up you ask for the *Judgment* to be entered instanter and, also, for a free transcript, if appropriate. The Judge will then make findings and award relief.

When done, step over to the clerk. Have copies of your *Judgment, Order for Free Transcript* and *28-day Order* stamped, as well as your *Support Order*, if child support was awarded. **Hand the court reporter an *Order for Free Transcript* before you leave.**

X. POST PROVE-UP

YOU'RE ALMOST DONE!!!!!!

A. DOCUMENTS

- * *Notice to Withhold Income for Support*
- * *Uniform Order of Support*
- * *Certificate of Service*
- * *Notice to Withhold Cover Letter*

B. SPECIFICS

If you were awarded support, and you are withholding support from Respondent's paycheck, you need to serve Respondent's employer with a *Notice to Withhold Income for Child Support*. You can serve it by certified or regular mail, personal service, or by facsimile. You should still use certified mail, however, so that you can verify service for future enforcement issues. Make sure you get the green

card back before closing the file. When filling out the *Notice to Withhold*, you are ordinarily required to have the money sent to the State Disbursement Unit. The State Disbursement Unit was set up to collect child support payments throughout the state, record the payment and forward the money to the obligee/custodian. You can only avoid sending support through the State Disbursement Unit if the court had approved a different plan when support was ordered.

Serve the employer with the *Notice to Withhold*, including a *Cover Letter* and a copy of the *Certificate of Service*. You MUST file the *Certificate of Service* along with a copy of the *Notice to Withhold*. Also, since the *Withholding Notice* will generally not be done in court (even if the Respondent was there), you must serve the Respondent with a copy of the *Notice to Withhold* you sent to the employer. You must also file the *Certificate of Service* for service on the Respondent. Service on Respondent can, and should, be by regular mail.

Finally, after about 20-25 days contact the court reporter (603-8405) to see if the transcript is done. Unless waived by the Judge at prove-up, a transcript of the proceedings has to be filed. If not, your case could be DWP'd (dismissed for want of prosecution). Pick it up when it's ready, make a copy of the transcript, file the original and file stamp your copy. It should be filed with the clerk for the judge before whom you proved-up the matter. If your Judgment or Uniform Order for Support were not entered instanter, take the transcript with you for entry by the Judge when you return to court for entry of the Judgment or Support Order.

CLOSE FILE and RETURN THE CVLS INTAKE SHEET.

You may have specific questions about your case. Please feel free to contact us at CVLS, at any time.