

Guide to Starting a Divorce

When You Have Kids



TWENTY-FIRST JUDICIAL CIRCUIT: Kankakee County
First Edition, 2017

TO THE PETITIONER:

You are using this guide because you and your spouse agree how to share responsibility for your children. **If you and your spouse cannot work out an agreement on these issues, you should get advice from a lawyer.** These guides cannot help with cases where spouses disagree about children.

This guide does not give *legal advice*. Only a lawyer licensed to practice in Illinois can do that. This guide also does not create a lawyer-client relationship or promise confidentiality.

This guide cannot address everything you will need to know during your divorce, but it can help you get started and know what to expect.

Welcome to the Kankakee Courthouse!

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What Is Dissolution of Marriage?

A **dissolution of marriage** is the same thing as a divorce. **Petitioning for dissolution** starts a divorce lawsuit. The marriage is officially ended when a judge signs the divorce **order** (also called the **final judgment** or **decree**).

Who Is Involved?

The **petitioner** starts a divorce. The **respondent** is the other person. Together, the petitioner and respondent are the **parties** to the lawsuit.

How Does The Divorce Process Start?

The petitioner starts a divorce by filing a **petition for dissolution** at the courthouse. A copy of the **petition** and a **summons** are delivered to the respondent by a sheriff or other authorized person. This is called **service of process**, or just **service** for short.

All **issues** must be resolved before the marriage is over. For example, the parties may not agree how property should be divided or how their children should be cared for. These issues are part of the case that the judge hears.

What are the Summons and Petition For?

The summons has two purposes: (1) to tell the respondent that a divorce case has begun, and (2) to call the respondent to appear in court. The petition lists all the issues that need to be discussed and how the petitioner hopes the issues will be decided.

What Do I Do?

As the petitioner, you start the divorce by filing the petition with the court.

When Will the Divorce Be Over?

The divorce process will be over when the judge has entered a **final judgment order**. Some divorces take just a few months. Others can take more than a year. The amount of time depends on the facts of your case and how many issues there are.

What If I Can't Afford the Filing Fee?

Filing documents with the court costs money. In 2016, filing a petition for dissolution cost \$262.00.

If you cannot afford the filing fee, you can ask the court to **waive** your fee. You do this by filing a **request for a fee waiver**, also called an **Application to Sue as Indigent Person**. You can get this form at the circuit clerk's office.

After you fill out the waiver and leave it with the circuit clerk, a judge reads it and decides whether to grant it. This may take a few days. The circuit clerk will call you to tell you whether your waiver has been granted or not.

If it is granted, you can return to the circuit clerk's office to finish filing and serving your petition. You will keep the waiver throughout your divorce. Every time you come to the courthouse to file papers, you show it to the clerks and they will not charge you a filing fee. If it is not granted, you will have to pay the filing fee.

You can ask the court to waive your fees either **before** you file your petition or **at the same time** you file your petition. It is recommended to do it before filing.

Where Do I Get the Forms?

You can find forms on Illinois Legal Aid Online (ILAO). ILAO was designed to help people representing themselves in court without a lawyer.

Note: The Illinois Supreme Court's website and the Kankakee Circuit Clerk's office also offer some divorce forms. Circuit clerks cannot give legal advice, so you have to know the name of the form you need ahead of time.

What Do I Need to Know Before Filling out the Petition?

Personal Information

- Know your current address and your spouse's address (if possible)
- Know your date of marriage and your date of separation (if you are living apart now)
- Know your children's full names, dates of birth, and where they have lived
- If you have any other court cases going on that involve the children, know the case numbers

Property

- Know what property is **marital property** (owned by both you and your spouse)
- Know what property is **individually owned** (property belonging to just one spouse)
- Know how much debt you have, individually and with your spouse

TIP: You'll have space in the petition to list your property. This is important because **marital property** has to be divided fairly between you and your spouse. **Individual property** is kept by whichever spouse it belongs to.

List all the items you want to keep, including those of monetary value and those of sentimental value to you. You want to do this so the items get discussed in front of the judge. That way, there will be no question of ownership after the divorce is over. The final judgment will say who gets to keep which items.

Finding the Petition on ILAO

<p>Step 1. Go to https://www.illinoislegalaid.org</p> <p>Mouse over the Legal Information tab at the top of the page.</p> <p>In the drop-down options, click Family & Safety.</p>	 <p>The screenshot shows the ILAO website with the 'Legal Information' tab selected. A red arrow points to the 'Family & Safety' option in the dropdown menu. Other options in the menu include 'House & Apartment', 'Money & Debt', 'Health & Benefits', and 'Business & Work'.</p>
<p>Step 2. On the next page, click Divorce.</p> <p>In the drop-down options, click Divorce With Children if you have kids or Divorce Without Children if you don't.</p>	 <p>The screenshot shows the 'FAMILY & SAFETY' page with 'Divorce' selected. A list of divorce-related topics is displayed:</p> <ol style="list-style-type: none">1. Getting a divorce2. Divorce with children (Easy Form)3. Divorce without children (Easy Form)4. Getting parental duties for a child (custody)5. Changing child support payments6. Can I leave my children alone at home after school?

Step 3.

Take a few minutes to read the next page.

When you are ready, click **Begin**.

DIVORCE WITH CHILDREN

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Average: 5 (1 vote)

This program will help you prepare your court forms. It will ask you questions and you will enter your answers. At the end of the program, you will get a completed set of court forms with instructions that you can save and print.

Form completion time: 45 minutes to 90 minutes
You will be able to stop and save your work in the middle of the program.

[Begin: Divorce with children program](#)

QUALIFICATIONS

NOTE: If you do not have children with your spouse, use the [Divorce without children](#) program instead.

INFORMATION NEEDED

To complete this program, you will need to know:

1. Information about personal property that you and your spouse got during

From this point on, ILAO will guide you through the program.

Print and Sign the Forms

When you are finished, **print** your documents. You will probably get a number of documents, which you can use throughout your divorce.

To **file**, you need the **Petition for Dissolution of Marriage** and the two copies of the **Summons**.

Read through them one last time to make sure there are no mistakes.

Then sign your name in the space provided at the end of the Petition. Do not write anything on the Summons forms.

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Petitioner (Jane Doe)

Name: Jane Doe
Address: 1000 Sunset Blvd
Kankakee, IL 60901
Telephone: (815) 111-1111

Make two copies of the documents. You will then have:

- **One original** of each document (the clerk keeps these in the court file)
- **One copy for you**
- **One copy to serve on your spouse**

Filing and Serving the Petition and Summons

Bring to the Circuit Clerk's Office	
1. Filing Fee or your court-approved Fee Waiver (Application to Sue as Indigent Person)	<ul style="list-style-type: none"> • \$262.00 (Cash or cashier's check only)
2. Petition for Dissolution of Marriage	<ul style="list-style-type: none"> • 1 original • 2 copies of the original
3. Summons	<ul style="list-style-type: none"> • 1 original • 1 Respondent's Copy
<p>Note: The clerk will also ask you to fill out a Certificate of Dissolution when you file – this is for court statistics. ILAO documents include this form, or you can get one from the clerk's office.</p>	

1. Take your filing fee (or fee waiver) and all copies of your forms to the clerk's office, Room 209, on the second floor of the courthouse.
2. Tell the clerks that you are filing for divorce and give them your documents.
3. The clerk will certify your summons by stamping it.
4. The clerk **file-stamps** your petition and gives your case a unique **case number**. Write this number down so you always have access to it.
5. The clerk also stamps a **case management date** on your petition. This date is about 45-60 days in the future, and it is usually the first time that both you and your spouse will be required to appear in court regarding your case. Write this date and time in your calendar.
6. The original copy of the petition stays in the courthouse, and you get two copies back – one to keep and one to serve on your spouse.
7. The clerk will give the third copy of the documents back to you to **serve** on your spouse. Typically, you take this copy to the Kankakee County Sheriff's Office and request a process server.

If the process server cannot locate your spouse (all attempts to find his or her home address or work address are unsuccessful), you will need to do **Service by Publication**.

REMINDER: Call the circuit clerk in a week or two to ask if service was completed.

Once your spouse receives the petition and summons, he or she has 30 days from the date of service to **answer and file an appearance**. If your spouse does not do so in time, they risk a **default judgment**. **Default** means that because the respondent did not answer, the court's final judgment would favor you, the petitioner. However, even if a respondent misses the deadline, they can still ask the court to allow them to appear and represent themselves.

What Happens Next?

Usually, the next court date is the **case management date**. This is the date stamped on your petition.

At the case management date, you, your spouse, and the judge will discuss where the case stands. You will discuss the issues that still need to be resolved and what you'll need to do to prepare for the next court date.

There are some things you can do to prepare for your appearance in court on the case management date:

1. **Get your Financial Affidavit ready.** This is the information your judge needs to help you decide issues including child support, spousal support, and property division. You should bring the finished version to the case management date. (See separate Financial Affidavit guide for instructions.)
2. **Begin a Parenting Plan.** Because you and your spouse agree on child care responsibilities, you will work on a **Joint Parenting Plan** together. (See separate Parenting Plan guide for instructions.) By law, the petitioner's finished Plan is due 120 days after the petition for dissolution is filed.
3. **Attend the Class for Parents.** Each parent must successfully complete this class before the divorce judgment is entered. Information is available in the circuit clerk's office. If you aren't able to complete this before the case management date, the judge will give you the information at that time.

Final Judgment Order

A marriage is officially ended when a judge signs the final judgment order. This order specifies how property will be divided between spouses. If there are children, the order will also specify how each spouse is responsible for the children.

Completing an ILAO petition for dissolution also creates a number of other documents, one of which is a judgment order. You and your spouse can use this now. Handwrite any new information and cross out information that no longer applies.

If you or your spouse no longer has the copy of the ILAO Judgment Order, you can find a blank copy online at the Illinois Supreme Court's website:
http://www.illinoiscourts.gov/forms/approved/divorce/Divorce_No_Children_Suite_Aproved.pdf

(Or search online for **Illinois Supreme Court forms**. Once on the **Standardized State Forms** page, you'll click the **Approved Statewide Forms** button; then choose **Divorce**; finally, choose **Dissolution of Marriage/Civil Union (Divorce No Children) Suite**.)

Be as specific as you can when listing property. Write down any item you would regret losing. If an item is not written out in the order, the judge cannot enforce ownership of it in the future.

Child care will be set out in the Parenting Plan, so you don't need to restate those terms in the order.

Agreed Issues

You and your spouse can fill out an **Agreed Judgment Order** together if you agree on how to divide everything and how to care for the kids.

No Agreement

If you don't agree, you will first discuss the issues with the judge at the case management date. The judge will set those issues for pretrial, and you will continue to discuss the issues then. The judge can also order mediation. If there is still no agreement, the issues may be set for a hearing. At any time, if you find you have worked out the issues, you and your spouse can fill out a judgment order. If not, the judge ultimately decides how the issues will be resolved.

Presenting the Order in Court

Any time you and your spouse come to an agreement, you can fill out a judgment order and bring it to your next court date. The judge will read through it and direct you to make any necessary changes. If the judge finds that the order is ready, he or she will sign it. The judge's clerk will scan it into the filing system and make copies for you and your ex-spouse. Your marriage will then officially be ended.