

INSTRUCTIONS FOR Dissolution of Marriage (Divorce) (CHILDREN) *Confederated Salish & Kootenai Tribal Court*

**THE FOLLOWING INFORMATION IS NOT LEGAL ADVICE AND
CANNOT REPLACE THE ADVICE OF A LAWYER OR ADVOCATE.**

These instructions provide legal information and resources only. Legal advice depends on the specific circumstances of each situation. The information contained in this document is not guaranteed to be up to date. The information cannot replace the advice of an attorney or advocate licensed to practice law. **If you choose to represent yourself, you are bound by the same rules and procedures as an attorney or advocate.**

Instructions have been developed to assist you with processing the **Petition for Dissolution of Marriage (Divorce)** case. Read the instructions first to determine which forms you may need, based on your personal circumstances, as it may not be necessary to complete all forms listed below.

GENERAL INFORMATION

- ◆ **For additional information**, please review CSKT Laws Codified (2013) and other applicable laws and ordinances at <https://csktribes.org/judicial/cskt-laws-codified>.
- ◆ **Tribal Court Forms** can be found at <http://cskctcourt.org> by clicking on the “FORMS & FILINGS” tab.
- ◆ **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-406-444-3636 or by email at mtlawlibrary@mt.gov.
- ◆ **CSKT Tribal Defender’s Office Civil Division** offers legal assistance to Tribal members in certain civil matters. To find out if you qualify, call (406) 275-2897. <https://csktribes.org/judicial/tribal-defenders>.
- ◆ **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

COMMON TERMS

- ⇒ **Petitioner:** The person filing the Petition with the Court. The Court *does not* refer to Co-Petitioner or Joint-Petitioner. If you plan to file jointly, then designate one person the Petitioner and the other the Respondent.
- ⇒ **Respondent:** The person served a Petition who must respond to the allegations of the Petition in order to have his/her desires considered.
- ⇒ **Parenting Plan:** This term includes both parenting time and decision-making responsibilities regarding the children. The Court no longer refers to “custody and visitation” but uses parenting time and decision-making responsibilities instead.

- ⇒ **Service of Process:** The official means by which a party is notified that a document has been filed against him/her and provided a copy of the document and a description of the person's rights and obligations as a party to the case.
- ⇒ **Diligent Efforts:** Efforts to locate an individual to complete personal service; including contacting friends, family, business associates; completing an internet search; and attempting personal service by a process server, law enforcement department.
- ⇒ **Hearing Date:** The date that the Petitioner and Respondent must appear in Court.
- ⇒ **Mediation:** A confidential process whereby a trained neutral third-party assists the disputing parties to reach their own solution.
- ⇒ **Parenting Plan Determination:** Means a judgment, decree, or other order of a court providing for allocating parental responsibilities and decision-making with respect to a child or providing for parenting time, or grandparent visitation with respect to a child.

If you do not understand this information, please contact an attorney or advocate.

FEES

A filing fee is required when filing a **Petition for Dissolution of Marriage (Children)**. Please check with the <http://csktcourt.org> by clicking on the "FEE SCHEDULE" tab to determine what the current fee schedule is for filing Petitions. If you cannot afford the filing fees, you may ask the Tribal Court Clerk to apply for a Fee Waiver [TCF-0008] and the Court will determine if you qualify.

FORMS

Please note that the forms referenced in these Instructions are available with <http://csktcourt.org> by clicking on the "FORMS & FILINGS" tab.

- [TCF 0037] DR-Dissolution of Marriage-PETITION (**CHILDREN**)
- [TCF 0038] DR-Dissolution of Marriage-Proposed Property Distribution Agreement
- [TCF 0006] DR-Proposed Parenting Plan
- [TCF 0039] DR- Dissolution of Marriage-RESPONSE (**CHILDREN**)
- [TCF 0021] DR-Sworn Financial Statement
- [TCF 0022] DR-Sworn Financial Statement -Supporting List
- [TCF 0008] CV-Application for Waiver of Fees
- [TCF 0005] C-Waiver and Acceptance of Service
- [TCF 0010] DR-Motion for Interim Parenting Plan
- [TCF 0011] DR-Response to Motion for Interim Parenting Plan
- [TCF 0041] DR-Dissolution of Marriage-Pre-Trial Statement
- [TCF 0009] CV-Request for Hearing

STEPS TO FILING YOUR CASE

Step 1: Complete Forms

Selecting these instructions indicates that you are planning on filing a case for the Court to determine a parenting plan. The Court *does not* refer to Co-Petitioner or Joint-Petitioner. If you plan to file jointly, then still designate one person the Petitioner and the other the Respondent. **Keep a copy of each form for your own records and make a copy to provide to the other party.**

The following caption needs to be completed on all forms filed:

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE
FLATHEAD RESERVATION, PABLO, MONTANA

In re the Marriage of: _____ Minor Child(ren). Petitioner(s): _____ and Respondent(s): _____	Cause No. _____ <i>Insert Name of Form</i>
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- [TCF 0037] Petition for Dissolution of Marriage (Children)**
 - Petitioner must **complete all applicable sections on the form.**
 - Petitioner must sign this form in the presence of a Court Clerk or Notary Public.

- [TCF 0021] Sworn Financial Statement**
- [TCF 0022] Sworn Financial Statement -Supporting List**
 - You must provide true and complete information to the Court about your assets, debts, and income. You can be assessed a fine or jailed for providing false information. In addition, your case can be reopened due to fraud.
 - Complete and file with the Court a **[TCF 0022]** Supporting List, only if applicable to your case. The form must be signed by the party completing it.
 - Each party must complete their own Financial Statement and all sections must be completed.
 - The Financial Statement must contain current personal and financial information to determine whether the Property Distribution Agreement is fair to each party. Failure of a party to file a Sworn Financial Statement may result in a refusal by the Court to enter a Final Decree or the Court may impose sanctions against the party who does not file the required paperwork.

- ❑ **[TCF 0006] Proposed Parenting Plan**
 - Petitioner must **complete all applicable sections on the form** and submit it when filing the Petition.
 - **Please complete all sections of this form and make sure all issues are addressed.** If any unique situations exist, identify them in the “Other Terms” section. The Parenting Plan should identify only those parties who will have court-ordered parenting time and decision-making responsibilities. Day care/babysitting arrangements do not need to be specifically identified on this form.
 - Please indicate if this is a full or partial parenting plan.
- ❑ **[TCF 0010] Motion for Interim Parenting Plan**
 - **Complete all sections on this form** if you intend to request the Court to adopt an Interim Parenting Plan pending the Court’s final decision and include a proposed **Parenting Plan [TCF 0006]** if it is different than the Proposed Parenting Plan you file with the Petition.
 - Submit a **Request for Hearing [TCF 0009]** on the Motion for Interim Parenting Plan when you file the Motion with the Court.

Step 2: File Papers with the Court

Provide the Court with the documents completed as described in **Step 1** above and pay the filing fee. You may receive a hearing date from the clerk at the time of filing your paperwork or you may need to contact the clerk later to obtain the hearing date.

Step 3: Serve the Petition, Other Documents, and Summons

It is important that you have the other party served as quickly as possible. When you file your Petition and other required pleadings, the Court will provide you with a signed **Summons [TCF 0004]** to serve the other party (Respondent) with a blank **Return of Service**.

SERVICE OPTIONS

- ❑ **Waiver and Acceptance of Service**
 - This is the easiest way to serve the other party. However, the other party must be willing to accept the Petition and other required pleadings to use this method.
 - Have the other party complete the form **Waiver and Acceptance of Service [TCF 0005]**. Make sure the other party signs and dates the Waiver and Acceptance of Service before a Court Clerk or Notary Public.
 - File the signed original with the Court.
- ❑ **Personal Service: Rule 9(1), CSKT Rules of Practice**
 - Select the law enforcement department, a private process server, or someone you know over the age of 18 who is not involved in this case and who knows the rules of service to serve Respondent.

- Provide the process server with the Petition, the Summons and other required pleadings.
- The process server will need to return the completed Return of Service attached to the Summons to the Court for filing or return it to you to bring and file with the Court.

Service by Mail— Rule 9(2), CSKT Rules of Practice

- If, after diligent search and inquiry, the Respondent cannot be personally served and you know Respondent’s address, then process may be served by mail.
- Service by mail shall be by restricted certified mail with return receipt requested.
- The Respondent MUST sign the return receipt.
- All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering of a default judgment and shall be supported by affidavit from the Petitioner.
- The Respondent must receive all documents filed with the Court and the **Summons**, at least 15 days before the time set for the hearing.
- Petitioner must file with the Court an **[TCF 0025] Affidavit of Due Diligence and Proof of Service by Mail** which shall include the original return receipt signed by the Respondent, a description of the documents served on the Respondent, and a statement that a diligent search and inquiry was made in an effort to serve the Respondent personally.
- If the address of the Respondent is unknown, you must publish the Notice of Hearing in the newspaper. Service by Publication instructions are below.

Service by Publication— Rule 9(3), CSKT Rules of Practice

- You must make diligent efforts to locate the other party before selecting this option for service. Service by publication is an option of last resort and should only be pursued if all other methods to serve the other party have failed.
- Service by publication requires a long process of filing more documents with the Court and may include additional expenses required by the newspapers you are ordered to publish notice in. The following forms include more details of the requirements for service by publication.
 - [TCF 0026] Affidavit of Due Diligence & Requesting Service by Publication** to be completed by Petitioner.
 - [TCF 0028] Summons for Service by Publication** to be issued by the Clerk of Court.
 - [TCF 0029] Proof of Service by Publication** to be filed with the Court.
- After receiving the Affidavit, the Clerk of Court will issue a Summons by Publication authorizing service by publication which shall be valid for 40 days from the date of issuance, and thereafter void. Then, you will be able to proceed with service by publication.

- Note that at the time of trial or entering of default judgment, Petitioner shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.

Step 4: Respondent files Response

Respondent may file a response to the Petition. A filing fee may be required. The purpose of the response is for the Respondent to state in writing if they agree or disagree with the information identified in the Petition and mail a copy to the other party. All fees paid are non-refundable.

- [TCF 0039] Response to Petition for Dissolution of Marriage (CHILDREN)**
 - Complete all sections of this form and make sure all issues are addressed.
- [TCF 0021] Sworn Financial Statement AND**
- [TCF 0022] Sworn Financial Statement -Supporting List**
 - You must provide true and complete information to the Court about your assets, debts, and income. You can be assessed a fine or jailed for providing false information. In addition, your case can be reopened due to fraud.
 - Complete and file with the Court a [TCF 0022] Supporting List, only if applicable to your case. The form must be signed by the party completing it.
 - Each party must complete their own Financial Statement and all sections must be completed.
 - The Financial Statement must contain current personal and financial information to determine whether the Separation Agreement is fair to each party. Failure of a party to file a Sworn Financial Statement may result in a refusal by the Court to enter a Final Decree or the Court may impose sanctions against the party who does not file the required paperwork.
- [TCF 0006] Proposed Parenting Plan**
 - Complete all sections of this form and make sure all issues are addressed. If any unique situations exist, identify them in the “Other Terms” section. The Parenting Plan should identify only those parties who will have court-ordered parenting time and decision-making responsibilities.
 - Indicate if this is a full or partial parenting plan.
- Respondent must file the original copies with the Court and mail copies to Petitioner.

Step 5: Setting Status Conference and Hearing Dates

Once the time for the Respondent to respond has expired, you can request a hearing to finalize your divorce. You will complete and file these forms and submit to the Clerk of the Tribal Court:

- [TCF 0009] Request for Hearing -OR-**
- [TCF 0023] Request Hearing and Default Ruling.** This applies if the other parent did not respond to your petition. You may request a default judgment on this form. Which means

you are asking the Court to consider only what you have filed in making a decision.

The Court will notify you regarding **the date of the scheduling conference** where the Court will set a time for when the **Pre-Trial Statement for Dissolution of Marriage [TCF 0041]** and **Proposed Property Distribution Agreement [TCF 0038]** is due and a final hearing date. s due.

Step 6: Complete Proposed Property Distribution Agreement Identified in the Scheduling Order

The documents listed below must be filed by Petitioner and Respondent as identified in the scheduling order.

- [TCF 0038] Proposed Property Distribution Agreement.** The purpose of this form is to identify in writing what issues you and the other party have settled on regarding maintenance (spousal support) for either party and for the disposition of property and debt. The Court must follow the separation agreement as it pertains to the parties themselves and to property, unless the Court finds the agreement unconscionable, in which case it may order the parties to submit a revised agreement.
 - Complete all sections of this form either together or individually depending on the level of agreement and make sure all issues are addressed. If any unique situations exist, identify them in section 5 – “Other Terms”.
 - Please indicate if this is one party’s proposal, full or partial agreement.
 - **If this is one party’s proposal or a partial agreement you and the other party must complete Pre-Trial Statements.**
- [TCF 0041] Pre-Trial Statement for Dissolution of Marriage.** The purpose of this form is for you and the other party to identify to the Court the issues that have not been resolved and may be filed jointly or separately.

Step 7: Determine the Court’s Procedure for Interim Parenting/Temporary Orders

Temporary Orders are optional for parties. You may request the Court to make temporary decisions about property, debts, parenting plan, child support, and spousal support/maintenance, if applicable, by requesting a Temporary Orders Hearing.

Step 8: Court Hearing

- You will follow the timelines and requirements of the **Scheduling Order** issued by the Court.
- If the Court sets the case for a hearing, the Court may order the parties submit and exchange **Pretrial Statements [TCF 0041]** and **Proposed Property Distribution Agreement [TCF 0038]** as explained in the **Scheduling Order** before the hearing and at the hearing both parties will have the opportunity to appear and address the Court.

- The Judge will grant your divorce by entering an Order/Decree as to division of property, debts, parenting time, child support, and maintenance, if any.
- You will receive a copy of the Final Decree and Support Order following the hearing.

Preparing for the Hearing

- Have available your stamped copies of the papers you filed with the Court.
- Dress like you were going to an important job interview.
- Be prepared to explain your position and answer any questions the judge might have.
- Address the Court and staff respectfully.

If you do not understand this information, please contact an attorney or advocate.