

## Instructions: How to respond to a petition for legal separation with children

**Domestic Violence:** Domestic violence can be part of any marriage. Domestic violence includes physical violence such as hitting, slapping, pushing or kicking or threats of physical violence directed against you and/or your children and/or verbal abuse used to control you and/or your children. Your spouse does not need to have been convicted of domestic violence or assault for you to be a domestic violence victim. You do not need to have sought medical care or been admitted to a hospital to be a victim of domestic violence.

Court documents request your address and phone number. If you are a victim of domestic violence, and you do not want your address to be known to protect yourself or your children from further violence, you must file a "Request for Protected Address" and ask that your address not be disclosed on court papers. With that Order, you do not need to put your address and phone number on your legal separation papers. Just write "protected" in the space on the form where you are asked for this information. You must tell the Clerk of Superior Court your address and phone number as soon as possible so the court can get in touch with you. The court will keep your address protected.

Completing your written response to the petition:

Most court documents can be filed electronically. For more information about eFiling, read the eFiling instructions first: <https://superiorcourt.maricopa.gov/media/7448/dref93i.pdf>.

- Type or print with black ink only.
- Make sure your form is titled Response to Petition for Legal Separation with Minor Children.
- In the top left corner of the first page, fill out the following: Your name; address (if not protected); city, state and zip code; telephone number; and your ATLAS number, if you are receiving or have received AFDC from the Arizona Department of Economic Security. Then state whether you are representing yourself or whether an attorney represents you.
- Fill in the name of Petitioner / Party A and Respondent / Party B exactly the same way as it looks on the Petition. Do this for every document you file with the court regarding this case from now on.
- Use the case number that is stamped in the upper right-hand corner of the Petition. Do this for all documents you file with the court regarding this case from now on.

Statements made to the court under oath:

General information:

1. About my spouse. Fill in your spouse's name, address (if not protected), date of birth, occupation, and length of time domiciled (lived) in this state. This is basic information about your spouse.
2. About me. Fill in your name, address, date of birth, occupation, and length of time domiciled (lived) in this state. This is basic information about you.
3. About our marriage. This is general information about your marriage. Fill in the date that you were married, and the city and state where you were married. Read the 3 paragraphs and decide if any of them are true. Place a mark in the box in front of the paragraph if it is true. Also, if the Petition states anything about your marriage that you believe is false or different, write your understanding of it on the lines provided.

\* To have a "Covenant Marriage", both Party A and Party B would have had to:

1. sign papers requesting to have a covenant marriage or to convert to a covenant marriage,
2. attend pre-marital counseling (unless converting an existing marriage to a covenant marriage, AND
3. Your marriage license would say "Covenant Marriage."

"Irretrievably broken" means that your marriage is broken beyond repair and there is no chance of getting back together with your spouse.

If you still have questions about whether you have a "covenant" marriage, contact a lawyer for help.

If you have a covenant marriage, you should file a motion to dismiss, and then petition the court for a legal separation of a covenant marriage. If you have a covenant marriage, attach a copy of the marriage license to show that you have a covenant marriage.

4. About the legal separation. Check one box only to inform the judge whether you want to be legally separated, you do not want to be legally separated, or you want to be divorced. Note: If you or your spouse have lived in Arizona for more than 90 days prior to filing the Petition for Legal Separation" the judge has the discretion to change the "Petition for Legal Separation to a Petition for Dissolution of Marriage (Divorce) if one of the parties believes the marriage is over and wants a divorce instead of a legal separation.
5. Residency Requirement. This tells the Court that you and/or your spouse have not lived in Arizona, or been stationed here while in the Armed Forces, prior to the date your spouse filed the divorce papers. If it is true, the case must be dismissed. You or your spouse can file a "Motion to Dismiss," then once either party either lives in Arizona or is stationed in Arizona while a member of the Armed Forces, you or your spouse can refile the legal separation papers.

6. Property and debts: The information you give in this section informs the Court about your property and debts and how you think property and debts should be divided. Community property is any property you and your spouse purchased during your marriage or that was paid for during the marriage, regardless of who uses the property or who actually paid the money. Unless property was a gift or inheritance, all property acquired during the marriage is community property, and both you and your spouse are entitled to a roughly equal share of this property. Community debts also belong to both people, regardless of who spent the money. If you have questions, or have a lot of community assets, you may want to consult an attorney regarding issues of community property and debts before filing your Response and other papers.

It is very important that you be specific in your responses about the property and debt. Describe the property and debt that should go to or be paid by you in detail and describe the property and debt that should go to or be paid by your spouse in detail. Never list an item and check both Party A and Party B box.

- a. Community Property. (Property Acquired During the marriage). If you and your spouse do not have any community property from the marriage, mark the first box. If you had property together, check the second box. If you checked the second box, you will then tell the Court what property should go to you and what property should go to your spouse. Generally, the Court will try to divide the property 50-50, unless there are good reasons not to. Realize that it is unlikely that the Court will give most or all of the property to either spouse, so try to put some thought into what you think would be a fair split before answering this question.

First, you will list the property that you want the Court to award to Party A. Next you will list the property that you want the Court to award Party B. Put a mark in the boxes corresponding to which property you want to go to which person. You should describe the property as thoroughly as you need to for identification purposes. You can use the brand name and model where applicable, as well as serial numbers.

Types of property include:

- Real estate (property or home). Mark who you want to get the property. You can ask the Court to give you the home, to give it to your spouse, or to sell the home and divide the proceeds. You should write the complete address of the property under "Real estate located at." Most property also has a legal description such as "LOT 77, PINE TREE ACRES, according to Book 111 of Maps," etc. You should use this description, which will appear on your deed papers, if you have it. Cemetery plots are also considered real property.
- Household furniture. This includes sofas, beds, tables, etc.
- Household furnishings. This generally includes other things in the house other than furniture, e.g., dishes, small appliances, rugs, etc.
- Other items (explain). List the things that you specifically want to go to one person

or another that have not already been listed.

- Pension/retirement fund/profit sharing/stock plan. You and your spouse each generally have a right to a one-half interest in any spouse's plan; ONLY for the number of years you were married. The longer you have been married, the greater your financial interest in a spouse's plan, up to 50 percent if you have been together the whole period of the plan. Mark this box if you want to divide your interest in a retirement or profit sharing/retirement/401K plan. If you mark this box, you should see an attorney about a document called a Qualified Domestic Relations Order or QDRO. A QDRO is a very specialized legal document that requires a professional's assistance to prepare. To find out what the actual cash value and present-day value of the pension plan is, you may want to consult with an accountant experienced in valuing pension plans.
  - Motor vehicles. List the vehicle identification number, the year and make of car (Ford, Chevrolet) and the model (Mustang, Camaro), etc.
- b. Separate property. (Property Acquired Before the Marriage). If Party A does not have any separate property, mark the first box. If Party B does not have any separate property, mark the second box. If Party A has separate property, check the third box. If Party B has separate property, check the fourth box. Then describe the property and who should get the property. Separate property is usually property an individual had prior to the marriage. Separate property also includes gifts, devises, and inheritances. There are other times that property can be separate property, so it is always a good idea to talk to a lawyer before you fill out this or any court papers.
- c. Community debts. If you and your spouse do not owe money on any debts from the marriage, mark the first box and go on. If you did have debt, mark the second box. If you mark the second box, tell the Court first which debts Party A should pay and then which debts Party B should pay. Generally, the Court will attempt to make a fair split of the debts, and if you get the property that money is owed on, you probably will also be given the debt. It is unusual that the Court will order one person to pay all the debts. Think about what is a fair split of the debts before answering this question. Put enough information to identify the specific debt.

If you and your spouse have been separated and have acquired new debts on your own before filing for legal separation or divorce, you may want the Court to Order that each of you pay for any new debts you have gotten after the date you separated. You can make this request on the page of your Response under "Community Debts."

- d. Separate debts. If you and your spouse do not have separate debt, check the first box. If Party A has separate debt, check the second box. If Party B has separate debt, check the third box. Then describe the debt and who should pay for it. Separate debt is usually debt acquired prior to the marriage. Then state to the Court what you are requesting regarding property and debts that is different from what your spouse asked for in the Petition.

7. Tax returns. Mark the box that shows how you want to handle income tax refunds. If you want some other arrangement, write that in instead. It is always a good idea to talk to a lawyer and an accountant about your taxes.
8. Spousal maintenance/support. Spousal maintenance/support is the term used to describe money paid from one spouse to the other spouse as part of a Divorce or Legal Separation Agreement or Order. You may know the term as alimony. The money is designed as a safety net for a spouse who cannot provide for his or her needs or who meets other requirements listed. The idea behind spousal maintenance/support (alimony) is that accomplishments during your marriage, including increases in earning potential and living standards are shared and earned by both parties to a marriage. Look at the list of boxes to see if any of the statements apply to you or your spouse. If so, you can decide to make a request that spousal maintenance/support be awarded to the appropriate party or that spousal maintenance/support not be awarded at all. Mark as many boxes as apply to your situation. If none apply, go on with the form. Spousal maintenance is paid separate from child support and is not a substitute for or a supplement to child support. Then state to the Court what you are requesting regarding spousal maintenance that is different from what your spouse asked for in the Petition.
9. Pregnancy. Mark the box that tells the Judge whether Party A or Party B is pregnant or not and fill in the required information if either Party is pregnant. Then state to the Court what you are asking for about pregnancy that is different from what your spouse asked for or stated in the Petition.
10. Domestic Violence. This tells the Court if domestic violence was in the marriage and affects a request for joint legal decision-making (joint legal custody), (if you intend to ask for joint legal decision-making). If you are not sure what domestic violence means, see the first page of the document entitled “Helpful Information: How to Respond to a Petition for Legal Separation with Minor Children.” Then, mark the box that applies to your situation. If domestic violence has not occurred and your spouse agrees with you, go to paragraph 11. Because you are responding to what your spouse asked for in the Petition, you should now summarize for the Court how Domestic Violence is different from what your spouse said about Domestic Violence.
11. Drug / alcohol conviction within last twelve months. Drug and alcohol convictions are important to the Court to determine legal decision-making (legal custody) and parenting time. Mark the box if either you or your spouse were convicted of drug/alcohol abuse within the last twelve (12) months. If convicted, write explanations for the issues on the lines provided.
  - A conviction of any drug offense within 12 months of filing of the petition for legal decision-making creates a rebuttable presumption that awarding either joint or sole legal decision-making to that parent is not in the child's best interest. This is because the court considers evidence of drug and alcohol convictions as being against the best interest of the child A.R.S. § 25-403.04.
  - If the court finds evidence of a conviction of any drug/alcohol offense within 12 months of filing of a petition for legal decision-making has occurred, the court shall make arrangements for parenting time that best protect the child.

12. Children common to the parties who are less than 18 years of age. Mark the box that best describes your situation and whether the Court has jurisdiction to enter orders regarding legal decision-making. If you and the minor children involved in this case have lived in Arizona for the past 6 months or longer, mark the first box. Your residence and your child's residence in Arizona over 6 months is a requirement for the Court to order a decision about legal decision-making and parenting time for the child. If you have questions regarding this requirement or other reasons why the Court may not have jurisdiction, see a lawyer for help. Write the names of any children under age 18 born to you and your spouse during your marriage or adopted by you and your spouse. Include the child's birth date, and current address. If you do not have any minor children, you should be using the Response Packet without Minor Children. Because you are responding to what your spouse asked for in the Petition, you should now summarize for the Court how your statements regarding children common to the parties is different from what your spouse said about children common to the parties.
13. Child support and other expenses. Arizona law states that every person has the duty to provide all reasonable support for that person's natural and adopted minor, unemancipated children - regardless of the presence or residence of the child in this state A.R.S. § 25-501.
- Place a mark in the boxes that best describe your situation.
  - Write in the dates if there is already a child support order in place.
  - If you disagree with the child support statements in the Petition, summarize the differences by writing your explanation on the lines provided.
  - Title IV-D program or Temporary Assistance for Needy Families (TANF) recipients  
Note: Mark the box if you or the other party are involved in the TANF or Title IV-D programs. In Part 4, you must obtain the written approval and signature of the Attorney General or county attorney assisting you on your TANF or IV-D case. You must include or attach the signature to the Final Decree before filing it. (A.R.F.L.P. Rule 45 (c) (3))
14. Written Agreement. Mark the box to show whether you and your spouse have a written agreement regarding legal decision-making, parenting time and child support that both of you signed before you filed the Response to the Petition for Legal Separation. If you have only discussed these issues and do not have a written agreement, do not check this box.
15. Summary of what I asked for that is different from what my spouse asked for in the petition. Say is different. Since you are responding to what your spouse asked for in the Petition, you now need to summarize for the Judge what you say is different from what your spouse said in the Petition.
16. Parent Information Program: The Superior Court in Maricopa County offers a parent information program that offers information for parents to provide information to parents who are divorcing, or parents who are involved in other domestic relations actions, regarding what their child / a (s) may be feeling emotionally difficult during this time (Per Arizona law (ARS § 25-351: "Domestic Relations Education Regarding Juvenile Matters
- Completing the parent information program is a requirement for all parents involved in divorce, legal separation, or paternity cases in which one party is requesting that legal

decision-making, parenting time, or child support be established. juvenile. At the discretion of the court parties involved in other types of domestic relations cases, such as modifying or enforcing an order of legal decision making or parenting time, as well as child support cases may be required to take the class. information for parents.

- Both Party A and Party B must complete this class within 45 days from the date is the Petition is served. (A.R.S. § 25-352). Both spouses must register for and complete the course whether a “Response” or “Answer” to the Petition/Complaint is filed.
- Please be advised that a Certificate of Completion will be e-filed with the Maricopa County Clerk of Superior Court by the approved class provider upon your completion of the class. This certificate will be available to the court within 5 to 7 business days after your successful completion of the class.
- Approved Parent Information Program classes are offered by a number of community-based providers at various locations throughout Maricopa County as well as online.
- The fee for the Parenting Information Program class is a maximum of \$50.00 per person payable to the community-based provider. For more information about the Parent Information Program in Maricopa County, please call (602) 506-1561.
- Check the box that answers whether you have completed the Parent Information Program.

17. General Denial: This tells the Court that even if you did not answer each and everything said in the Petition, you deny what you did not address. This is extra protection for you.

#### Requests to the Court:

This section of the Response formally requests the Court to grant or not grant you and your spouse the legal separation, and tells the Court other requests you are making:

- A. Legally separate or change to divorce. This is your request to be legally separated from your spouse, or if you do not want to be legally separated but want a divorce from your spouse instead. See a lawyer for help on this, if you are not sure.
- B. Paternity and minor child(ren)’s names. Only write in this section if you and your spouse have minor child(ren) that was/were born before the marriage and both parties are the legal parents of the minor child(ren). Check which party you want the Court to declare as the legal parent of the minor child(ren) born prior to the marriage and write the name(s) of those minor child(ren).
- C. Spousal maintenance/support (alimony). Mark the box you prefer. This tells the Court that you or your spouse should pay money to the other spouse monthly to help with living expenses. If you do want one party to receive spousal maintenance, check Party A or Party

B box, the monthly amount, and the time period. If you do not want spousal maintenance ordered, do not mark anything, go on.

(You can only mark a box here if you marked the same box in the section above). If you request spousal maintenance, choose what you believe to be a reasonable monthly amount and tell the Court how long the money should be paid. Base the amount of any request based on the receiving party's need and the income of the spouse paying this money. Remember, spousal maintenance is not a substitute for, or a supplement to, child support that may be ordered.

D. Community property. This tells the Court that your requested division of the property is fair, and that the Court should divide the property as requested by you in your Response.

E. Community debt. This tells the Court that your requested division of the debts is fair, and that the Court should divide the debts as requested by you in your Response. If you have been separated from your spouse for enough time that you or your spouse may have additional debts, write the date of separation on the line provided if you want each of you to pay the debts you caused after you separated.

F. Separate property and debt. This states you want you and your spouse to keep property you each owned before you were married or that is separate property, and to pay debt that was acquired before you were married or that is separate debt.

G. Primary Residence, Parenting Time, and Legal Decision-Making (Legal Custody)

1. Primary Residence: The physical place where the child is cared for, supervised, and sleeps overnight. If you want your residence to be the place the child sleeps overnight the majority of the time, check the box that applies to you. The write in the name(s) of the child(ren). This tells the court whether you want the primary residence of the minor child(ren) to be with you or your spouse.

2. Parenting Time: means the schedule of time during which each parent has access to a child at specified times. Each parent during their scheduled parenting time is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child's care.

Note: (If you want to know more about primary residence and parenting time, refer to "Planning for Parenting Time: Arizona's Guide for Parents Living Apart." The Guide is available for purchase at all Superior Court Law Library Resource Center locations or may be viewed online and downloaded for free from the State Courts' web page.

- Check only one of the first three boxes. You can ask that the non-primary residential parent (the parent having parenting time with the minor child less than 50% of the time) have one of the following types of parenting time.

- Reasonable parenting time. This suggests an amount of parenting time appropriate to the age of the child(ren). The Court offers suggested amounts of parenting time, but the amount can vary by agreement of both parents.
- Supervised parenting time to the non-primary residential parent. You should request supervised parenting time if the non-primary residential parent cannot adequately care for the minor child(ren) without another person present. You may request this if the parent whose home is not the primary residence has a problem with drugs or alcohol; is violent or abusive; or does not have the parenting skills to care for the minor child(ren) without another adult present. Remember, supervised parenting time is not intended to punish the parent, but to protect the minor child(ren).
- No parenting time to the non-primary residential parent. You should mark this option only if the non-primary residential parent has seriously harmed, abused, or otherwise is a serious danger to the minor child(ren)'s physical and/or emotional health, or if there is a criminal court order stating no contact between the minor child and the parent whose home is not the primary residence of the children. You may use this as a last resort to protect the minor child.
- Write in the name of a person you would like to supervise the child-parent visit. Also, mark the box that shows who you think should pay for the supervisor.

3. Legal Decision-Making: "Legal Decision-Making" means the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purposes of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of the United States, legal decision-making means legal custody A.R.S. § 25-401.

In the context of legal decision-making, "sole" means one parent, "joint" means both parents. First, place a mark in the box to show if you want sole or joint legal decision-making. Then, mark the Party (A or B or both) you want to be awarded the authority for legal decision-making.

(For the Court to order joint legal decision-making, there must have been no "significant" domestic violence or find it in the best interests of the child(ren) despite any such violence according to Arizona law, A.R.S. § 25-403.03).

#### H. Child Support:

1. Tell the Court who you think should pay child support. The income of the parties may determine the amount of the support according to Court guidelines. Mark only *one* box.
2. Past Support is child support after a couple has separated but before any paperwork is filed or Court orders issued. Mark the party who owes past child support, if any is owed.

- I. Insurance and health care expenses for children: Mark the box(es) to request to the Court which parent should provide insurance for the minor children.
- J. Tax exemption: Decide how you and your spouse will declare the tax dependency exemptions, for which minor children, for which years. Federal Tax law also determines this for you. Mark the box that best describes your preference. If you are not sure, see a lawyer or an accountant for help.
- K. Other Orders. Tell the Court anything else you may want ordered in your Legal Separation that has not been covered elsewhere in your Response.

### Oath and verification of party filing the Response

Sign this form in front of the Clerk of Superior Court, or a Notary Public. By doing so you are informing the Court that everything contained in the Response to Petition for Legal Separation is true. Then write in the date you sent your Response to the other party or his or her attorney if represented by an attorney, and the address you mailed the Response to other party or his or her attorney, if represented by an attorney.

### Parent Information Program

Remember to attend the Parent Information Program class. For further information see the Order and Notice to Attend the Parent Information Program class you should have received from other Party. If you did not receive this information, the Law Library Resource Center has the form.

### Other important forms in this packet

#### Parenting Plan

Fill out the Parenting Plan to let the Court know details about what you want for legal decision-making authority and parenting time. It is important to be specific when filling out the Parenting Plan. You may refer to the “Planning for Parenting Time: Arizona’s Guide for Parents Living Apart” to help make your parenting plan. The Guide is available for purchase at all Superior Court Law Library Resource Center locations or may be viewed online and downloaded for free from the State Courts’ webpage. After completing the Parenting Plan, FILE it with your Response.

#### Affidavit Regarding Minor Children

This affidavit form involves information about the residence of your minor children. This form is required for the Court to make a decision about legal decision-making. Fill out this Affidavit completely and provide accurate information. Use additional paper if necessary.

Other court papers to be completed not in this packet

## Child Support Worksheet

Read the Instructions on how to fill out the Worksheet to help you prepare this document. You can use the free online child support calculator at the websites listed below to complete a child support worksheet.

ezCourtForms <http://www.superiorcourt.maricopa.gov/ezcourtforms2/>

To complete the Child Support Worksheet you will need to know:

- Your case number.
- Your monthly gross income and that of the other parent.
- The monthly cost of medical insurance for the minor children who are the subject of this action.
- Monthly childcare amounts paid to others.
- The number of days the minor child(ren) spend with the non-primary residential (custodial) parent.
- Monthly obligations of yourself and the other parent for child support or court-ordered spousal maintenance/ support

After completing the child support worksheet, print out the child support worksheet and file it with your Response.

Wait to sign this form until you are in front of a notary or the Clerk of Superior Court at the filing counter.

What to do next: See the Law Library Resource Center “Procedures” document in this packet.