

D I V O R C E

**MANUAL ON HOW TO DO A DIVORCE
CASE IN THE MARSHALL ISLANDS
TOGETHER WITH FORMS
(INCLUDES SEPARATION AND ANNULMENT)
REPUBLIC OF THE MARSHALL ISLANDS**

By: John C. Lanham
Chief Justice, High Court
Republic of the Marshall Islands

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I. Purpose Of This Manual.

This Manual is necessary and should be helpful to Trial Assistants, the people of the Republic of the Marshall Islands in general and to attorneys who have just commenced practice of law in the Marshall Islands, because it compacts into a few pages nearly all of the necessary forms as well as a digest of the substantive and procedural law governing divorces.

It is a necessary item because of the many requests received from non-lawyers for guidance in how to draft forms for divorce actions and how to go about getting a divorce here in the Marshall Islands where we experience a shortage of attorneys like very few places I know of.

II. Format of the Manual.

This Manual is not produced with the exactitude of a law school thesis or a text book on the law. It is drafted rather hurriedly by a working judge who sees a dire need for the manual and that such need is immediate. The format is one that helps the person who either does or does not know how to proceed in a divorce matter.

III. Jurisdiction Of The Courts Over Divorce Matters.

Divorce petitions may be filed in the High Court, the District Court, or a Community Court in the Republic of the Marshall Islands. (39 TTC Sec. 1, 101; Sec. 34(2)(d), Judiciary Act). They may be filed in the High Court or the District Court no matter where in the Marshall Islands the parties reside, but if brought in a Community Court they must be filed in the Court for the Community in which one of the parties has resided for the last three (3) months. (39 TTC Sec. 101). This is because the High Court and District Court territorial jurisdictions extend nation-wide, but Community Courts must function within the boundaries of their respective communities (Judiciary Act, Sec. 34).

But jurisdiction of all courts is also dependent upon a valid service of the petition and summons as the law requires. Notice is the most basic element of due process of law. (Sec. 6 TTC Sec. 51-54 and Rule 4, Rules of Civil Procedure) See also paragraphs IX and XII Infra.).

IV. Residency Requirements.

The statute (39 TTC Sec. 202) provides that:

"No divorce shall be granted unless one of the parties shall have resided in the Marshall Islands for the two years immediately preceding the filing of the complaint [Petition]"

But in *Yang v. Yang*, 5 TTR 427 (1971) the Trust Territory High Court (Trial Division) held this 2 years residency requirement to be unconstitutional as a denial of equal protection under the laws. Later in *Hamrick v. Hamrick*, 6 TTR 252 (1973) the Trust Territory High Court (also Trial Division) upheld the two years residency clause in a case where the residency of the Petitioner was for only eight months. (But see following U.S. Supreme Court decisions re residency: *Shapiro v. Thompson*, 394 US 618 (1969); *Dunn v. Blumstein* (1972), 405 US 330, 338, 92 S. Ct. 995, 1001; *Wymelenberg vs. Syman* (1971), 328 F. Supp. 1353). Some decisions protect rights of travel and the Trust Territory courts have announced that it was their considered judgment that the divorce principles here should follow along the line of USA state statutes. (*Yamada v. Yamada* 2 TTR 66).

Obviously, if the Marshall Islands Republic is to be a modern nation where commerce, tourism, construction and other developments flow quite rapidly the laws should be construed reasonably in that light. One year's residency would seem to be enough to reasonably protect against the country becoming a divorce mill. But can the court modify the residency provision? Don't do it until after next session of Nitijela - until then the 2 years residency holds except in cases of unusual merit which I will write about later.

V. Venue.

Venue is no issue except when the Petition for Divorce is filed in a Community Court, in which case the Petition must be filed in the Court for the Community in which either of the parties has resided for three (3) months prior to the filing of the petition. (39 TTC Sec. 101).

VI. Jurisdiction In Customary Divorce Cases.

Although ordinary or standard divorce actions may be brought and adjudicated in the High Court or the District Court or a Community Court, actions for the confirmation of customary divorce may be brought only in the High Court. (39 TTC Sec. 5).

VII. Removal Of Divorce Actions To High Court.

The High Court may, for cause shown, order that any proceeding in divorce pending before another court be transferred to the High Court or any other court for disposition. (39 TTC Sec. 1; Judiciary Act, Sec. 42). The High Court has done this only in three types of situations: (1) Where the judge or judges of a certain court were on extended leave or illness; (2) Where the judge or judges were disqualified; and (3) Where the Court was concerned about the fairness of property division in cases where the wife did not fluently read or write the same language as the husband, and such transfer seemed necessary to adequately protect the property rights of the wife.

VIII. Transfer Of Cases By Other Courts.

Should a divorce action be filed in a Community Court which does not have venue over the case, the case need not be dismissed. Rather the court in which the action is erroneously brought may simply transfer the case to the court that does have the venue and jurisdiction. (66 TTC Sec. 104; Judiciary Act, Sec. 42).

IX. Procedures For Divorce.

(a) Drafting and Filing of Petition for a Divorce

A divorce action is commenced by the filing of a Petition for Divorce and Summons. If you will look at the forms attached hereto you will find the proper forms to be used. The contents of the Petition are guided by the requirements of 39 TTC Sec. 2). The form suggested for the filing of a Petition for Divorce is Form No. 1 in this Manual.

The Summons, which must accompany each of these petition forms is attached as Form No. 2.

If you need temporary relief and can't wait until the divorce case is heard and a Decree of Divorce has been issued, than you should file either together with the petition for divorce and Summons, or thereafter, a Motion and affidavit for Relief Before Decree (Form No. 3). Based upon these the Court usually will issue an Order to Appear and Show Cause (Form No. 4) to be served upon the adverse party and which will give you an early hearing on the issue which require immediate, temporary relief (39 TTC Sec. 103). Keep in mind that these documents should be drafted and filed by you - don't depend upon

the Clerk or Judge to do your work for you. Naturally, a filing fee will be charged for the filing of most documents, which fee is not a large one. At either this temporary relief hearing, or at the main hearing of the divorce case, you may be called upon to prepare and present a statement of your assets (property, cash, income and debts and liabilities, so you would do well to prepare these forms in advance. (Forms Nos. 5(a) and 5(b).

Important: See Par. XII below regarding Service of Process.

(b) The Hearings.

If you are represented by counsel he or she will know how to represent you at the hearing by asking questions etc. Usually in the questioning of the witnesses (including you) questions would be asked in a manner so as to bring out the matters you have alleged in your Petition for Divorce or Motion (in case the hearing is on the motion) plus such other matters as appear to be in issue, or other helpful information in the case. Don't try to insult the other party, because it is relatively easy to prove at least one of the grounds for divorce set forth in 39 TTC Sec. 201 without all that.

If you are trying to get the Judge to award you custody of the children keep in mind that the controlling test the judge uses to determine who is to be awarded custody of the child is what is in the best interests of the child. (Yamada v. Yamada, 2 TTR 66 (1959). And while one Trust Territory Court decision has held that it is usually best for the custody of small children (say 10 and under) to be awarded to the mother (Yamada v. Yamada, Supra), this not a rule of law, but merely one consideration, and cases exist where neither the mother nor the father (but rather a grandmother or grandfather) is awarded custody. Parties to divorces should always attempt to settle the child custody matter between themselves, as it makes life, usually, more harmonious for the child. But if you can't agree then the Court will decide it for you. The Probation Officer usually will be called upon to make an investigation for the Court re child custody if not agreed upon by you.

As to requests for child support and alimony these requests should always be reasonable under the facts and circumstances. The financial sheets (Form 5) submitted by the parties is of help in determining this. Under the American system of law, if the wife is not awarded alimony in the Decree

of Divorce, she is thereafter barred from seeking support from her ex-husband, but child support can be revised at anytime after the Decree of Divorce has issued. (Ngodrii v. Kumaichi, 5 TTR 121).

The Court will also have to determine and settle the property rights of the parties in the event the parties are unable to agree upon such a settlement. (39 TTC Sec. 103). Always try to make a reasonable settlement of the property rights with the adverse party, but if you can't the Judge will do that also. Property rights include real property rights which are transferrable, cash, stocks and bonds, retirement benefits, social security benefits, etc. It is true that the law does give the court the authority to settle property in which both parties have an interest (39 TTC Sec. 103), but the court has no authority to award or transfer separate property of the parties. (Nekai v. Nakai, 4 TTR 388). But jointly - owned, or jointly - interested property rights are not limited to those properties on, or concerning which, both names appear as owners. For instance, a husband's retirement pay is in his own name, as is his social security, but if he has been married for 20 years and the wife has been cooking his meals, caring for him and the children, etc., she has put her efforts into the earning of these savings, that retirement, or that social security, just as though she had been working on the job with her husband and she should receive credit therefor. The same applies to other property where the money, therefor came through one party's hands but the background efforts of the wife contributed to the earnings. I feel that these principles are not well enough understood in divorce actions here. (See Ngodrii v. Kumaichi, Supra. where court held that a husband owes his wife an obligation to share in the property which they acquired during their marriage).

X. The Decree of Divorce. Finality: Appeal and Review.

At the close of the hearing the Judge will announce his decision orally in court. After the hearing it will be your obligation to present the Judge with a Decree of Divorce setting forth the findings and other matters decided upon by the Judge. If the divorce matter involves the custody of minor children, then Form 6 should be generally followed - if no minor children are involved then use Form No. 7. After the Decree of Divorce has been signed by the Judge and filed with the Clerk you will ordinarily be divorced, but the adverse party has the right to appeal the case by filing a written Notice of Appeal within 30 days after he or she has received a

copy of the Decree of Divorce (Rules 3 and 4 of App. Rules of Procedure), (See also 39 TTC Sec. 104).

With respect to Divorce Decrees issued by the District Court or any Community Court, in addition to appeals to the next higher court (Judiciary Act, Sec. 29; Rules 13 and 14, App. Rules of Procedure 1-4) all divorce decrees issued by the District Court and the Community Court, and from which even no appeal is taken to the next higher court must be reviewed by the High Court (Judiciary Act (P.L. 1983-18), Sec. 12(1)). So keep in mind, your Decree of Divorce issued by District or Community Court, even if not appealed from, or even if not contested, is not final (absolute) until you get it reviewed by the High Court. Therefore, it is Important that you pursue it through the High Court review procedure - don't just stop after you get the decree.

(d) Effect of Decree of Divorce.

"The effect of a decree of annulment or divorce when it has become absolute shall be to restore the parties to the state of unmarried persons so far as the marriage in question is concerned. (39 TTC Sec. 104).

XI. Trouble After The Decree Of Divorce.

Sometimes, after the Decree of Divorce has become absolute and you think it's all over with, troubles will again arise relative to the divorce matter. Some of these problems that may arise are the following:

- (1) The adverse party may suddenly refuse or fail to provide child support or alimony, thus violating that term of the divorce decree; or
- (2) One party may not allow the other visitation with the child; or
- (3) One party may fail to transfer property to the other in spite of the court order; or
- (4) You need more money for support of the children; or
- (5) Any of several problems that could arise.

In that case you need not start a civil suit on any

new case. The Court has continuing jurisdiction over these matters, so you re-activate the same case with the same number in the same court by the filing an Order to Show Cause After Order or Decree with a Motion and Supporting Affidavit (See Form Nos. 8(a)(b). You may also ask that the Decree of Divorce be amended in certain respects. Child custody, the amount of child support, the method of paying child support, these matters may always be modified or changed by the court for good cause shown. But the general rule is that Property Settlement Agreements (but not the part containing child support and custody agreement) may not be modified or changed by motion subsequent to the Decree, except for such grounds as fraud and mutual mistake of fact, and where alimony was part and parcel of the Property Settlement Agreement it cannot be modified.

XII. Important Notice Regarding Service Of Petition; Summons, And Other Process

(1) Everyone is cautioned to pay strict attention to the provisions of Rule 4 of the Rules of Civil Procedure relative to the service of summons and other process, especially Rule 4(f). The Summons and the Petition (Complaint) should be served together at the same time (together with Motion for Relief Before Decree and Supporting Affidavit, if it is being used). If there is any reason to believe (and you should know if you are married to him or her) that the adverse party is not fluent in English as well as Marshallese (or other language) then the Petition and Summons should be translated into that language and served upon the adverse party and/or by reading or explaining the summons to the adverse party. The policeman or other party serving the papers should also make certain this is done. Failure to do so may open the divorce decree (especially property settlement, etc.) up to collateral attack even years later, so be careful on this.

(2) Sometimes the adverse party does not reside any longer, or perhaps never did, in the Marshall Islands and you either do or do not know his present address or location. Of course, if the person is in the Marshall Islands just have the policeman hand him the papers. If he or she is elsewhere, though, you must do one or more of the following things:

(1) If you think that the adverse party will sign it then send him or her Forms No. 11 or 12, Appearance, Waiver and Consent. If he or she signs and returns it then you can go ahead with the divorce action without any further notice or service upon the adverse party. If the adverse party doesn't agree and sign that paper then you must prove service upon him by showing service upon him personally or constructively. For procedure for constructive service

see Form Nos 9(a), 9(b), and also 10 asking that service of the paper can be made upon him or her via registered or certified mail, return receipt requested, deliver to addressee only. Be sure to make certain you have it sent, and the receipt returned via air mail. If the adverse party acknowledges the service of the Petition, Summons, etc., by signing the Receipt, we can proceed with the hearing about 35 days, or so, thereafter, if he or she does not file any responsive pleading. If the adverse party does not file such answer or responsive pleading, then you can proceed after the 35th day to set it up for hearing. Another way to serve him would be to have the police in the city where he lives serve him. If you don't know the present address or location of the adverse party then you must file a motion for a court order to allow you to serve the adverse party by constructive service by publication in the newspaper, plus mailing the papers to his or her last known address. (See Forms No. 9-10). These forms follow the Rules and 6 TTC Sec. 51-54. Note that if you don't notify the adverse party he may take certain actions within 1 year after final judgment of divorce. (6 TTC Sec. 54). You must keep in mind that the law requires you do your best to locate and personally serve the adverse party.

XIII. Confirmation Of Customary Divorce

At some date in the future someone may file a Petition for Confirmation of a Customary Divorce, but, as of this date, neither the Clerk of Courts, nor I, nor anyone else that I know can recall any such petition ever having been filed. For that reason I will make no further comments on or draft any forms regarding customary divorce confirmation. (See 39 TTC, Sec. 4-5).

XIV. Property Settlement Agreement

In drafting property settlement agreements take your time and make certain that you have covered all of the property he or she has either at the hearing or include it in the property settlement agreement, else the adverse party may later have the agreement set aside for fraud and then it all has to be re-examined. So do it right, with a full disclosure, the first time.

If property of a great value is involved be sure to check the tax consequences and try to minimize them as far as your client is concerned. Attached hereto as Exhibit A is a short summary of the tax laws of the U.S.A. This you should consider if one or more of your clients pays U.S. taxes. The RepMar tax laws are not clear at this time on alimony, etc. payments.

To be a valid and final property settlement under America law an agreement between husband and wife as a general rule must be made as part and parcel with, and in contemplation of, a separation or divorce of the contracting parties.

If the divorce hearing is held and the Decree of Divorce is issued without any adjudication of property rights, then the parties may re-open the divorce decree to settle those rights. (Ngodrii vs. Kumaichi, Supra). But this does not apply if the parties have already orally, or by act, settled such rights. (See also Nekai v. Nekai, 4 TTR 388).

Attached hereto as Exhibit "B" is a form for a simple Property Settlement Agreement.

XV. Forms Not Obligatory.

You are not obligated to follow the Forms herein in divorce actions, but may prepare your own forms so long as they satisfy the law. These forms and instructions are intended for guidance and are not Rules of Court. In fact some of them probably will need to be amended in certain cases.

SEPARATION

1. Reasons For Separation Instead Of Divorce.

One, or both, of the parties may, in certain cases, have grounds for divorce, but may wish not to terminate the marriage for various reasons, such as:

- (a) Religious reasons;
- (b) For the sake of the children;
- (c) Believe there is a chance that the two may be able to get together again and resume a normal married life after the period of "shock treatment" or "time for thought" period which the separation provides.
- (d) Really wants a divorce but has not yet been a resident for the required length of time necessary for a divorce action.

In such cases the parties may elect to file a civil action for separation.

2. Types Of Separation.

There are four (4) types of remedies which may be

referred to under the general word "separation". They are:

(a) Separation by Agreement.

One. The parties simply agree to live separate and apart under certainly mutually agreed-upon terms, either orally or in writing. This is a dangerous way to go, but if you elect to go this way there is a form of separation agreement on pages 980-982 of a law school textbook by Paulson, Wadling and Goebel entitled: 'Domestic Relations, Cases and Materials', University Casebook series, which volume is in the Court library. An agreement between the parties that purports to terminate a marriage is not valid or enforceable.

(b) Separation by Court Decree.

There are about three (3) titles and types of legal actions which may be brought to enable a wife to live separate and apart from her husband and yet still be entitled to require him to support her.

(1) Divorce A Mensa Et Thoro.

(Divorce From Bed and Board). This type of action is seldom used because actions for separation and separate maintenance accomplish the same thing and avoid the Latin word and the confusion caused by the word "divorce". A "divorce a mensa et thoro" is a limited divorce (to be distinguished from absolute divorce (divorce a vinculo matrimonii), and instead of terminating the marriage itself, it terminates rather the right and obligation of cohabitation only.

I see no necessity for anyone to use this remedy because the same result can be obtained by a Petition for Separation where the court may prohibit each party from physically contacting or harming the other, etc.

(2) Decree of Separation.

Either party residing in the Marshall Islands, without regard to the length of residence requirements set forth in 39 TTC Sec. 202, may petition the court for a Decree of Separation, which would entitle such party to live separate and apart from the spouse for a certain period of time, or until further order of the court, without such living away from the spouse being considered as desertion and also without forfeiting any rights of support from the spouse. For instance a wife who is being beaten up periodically by her husband may

petition the court for a decree of separation which allows her to live separate and apart from her husband and with specific orders of relief, as:

(A) That the husband pays her \$ _____ bi-weekly or monthly for support of herself (and the children, if any)

(B) That the husband be restrained from beating, harrassing or bothering her in any way;

(C) Provisions for custody and visitation of the child or children;

(D) Provisions as to who may occupy (and who has to vacate) the home of the parties; who gets to use the auto and who gets possession of certain property during the separation;

(E) Other provisions which are proved to be necessary or just.

Either the husband or wife may bring an action for separation.

(3) Decree of Separate Maintenance.

This type of decree is for all intents and purposes the same as a Decree of Separation, meaning it is a vehicle by which the wife may live separately from the husband and be still be obligated to furnish her support and maintenance.

Forms: Generally the same types of forms are used as in Divorce cases except the relief prayed for and awarded is different. Just take the Divorce forms and modify them to fit the separation actions.

ANNULMENT

(1) In addition to divorce and separation actions, a party may also file a domestic relations action termed "Annulment". An annulment differs from a divorce in that a decree of annulment declares that there never was any lawful or binding marriage in the first place, whereas a divorce concedes the pre-existence of a valid and binding marriage and then terminates it.

(2) Annulments are covered by the following sections of the Code: 39 TTC Sec. 1-6; 39 TTC Sec. 101-104; 39 TTC Sec. 151-153.

(3) Residence Requirement:

There is a statutory requirement that at least one of the parties must have resided in the Marshall Islands at least three (3) months immediately preceding the filing of the petition for annulment. (39 TTC Sec. 151).

(4) Jurisdiction:

The High Court, District Court and the Community Court for the Community in which one of the parties has resided for the three (3) months immediately preceding the filing of the action, all have jurisdiction to grant decrees of annulment. (39 TTC Sec. 1, 101; Sections 11, 28(2) and 34(2)(d) of the Judiciary Act of 1983)

(5) Appeals and Review:

The decision of any trial court in any annulment cases may be appealed to the next higher court. (Sections 29, Judiciary Act, 39 TTC Sec. 3). In addition thereto the High Court has the duty of reviewing for legal sufficiency every final decision of a District or Community Court in annulment, divorce and adoption cases. (Sec. 12(1), Judiciary Act).

(6) Commencement of an Annulment Action:

A proceeding in annulment is commenced by the filing of a Petition signed and sworn to by the Petitioner personally, except in Community Courts where it may be oral and under oath: Such a Petition must set forth:

- (a) The residences of the parties;
- (b) The date and place of the purported marriage of the parties;
- (c) The grounds for the annulment;
- (d) The facts which give rise to the grounds for annulment including the date and place where the facts occurred. [Such facts should be

stated sufficiently in detail so that the court and opposing party understand the grounds and facts relied upon.];

- (e) A statement as to whether any prior annulment of this marriage has been applied for in this or any other jurisdiction, and the results of such prior application. (39 TTC, Sec. 2).

(7) Service Of Process:

Service of Process (that is of the Petition or Complaint and Summons) is made in the same manner as in cases of divorce. (See Paragraphs XII of this manual).

(8) Grounds For Annulment:

The statute (39 TTC Sec. 151) states the following to be the authorized grounds for an annulment:

"A decree annulling a marriage may be rendered on any ground existing at the time of the marriage which makes the marriage illegal and void or voidable. "xx"

The statute does not specify, however, what types of facts and circumstances make a marriage void or voidable, so resort must be had to the common law (1 TTC Sec. 103) or local custom (1 TTC Sec. 14) to reach that determination in each case. Some of such grounds are as follows:

(a) The purported marriage was illegal (and therefore void) for any reason at all. Some of these reasons are:

- (1) One or both of the parties had a prior and existing marriage at the time the purported marriage was entered into;

- (2) The parties to the purported marriage were related to each other within a degree wherein marriage is prohibited by law;

- (3) One or more of the parties to the marriage had not yet attained the age which the law permits consent to marriage;

- (4) The purported marriage ceremony was entered into in jest or fun.

(b) The purported marriage, although not illegal and absolutely void, is voidable because of one or more of the following reasons:

(1) One or more of the parties to the purported marriage was insane or lacked the mental capacity to really enter into the marriage contract or relationship;

(2) One or more of the parties was so heavily intoxicated or under the influence of drugs at the time the purported marriage was entered into that he or she lacked the ability at that time to know what he or she was contracting;

(3) That one or more of the parties entered into the purported marriage as the result of force and/or duress;

(4) That the party applying for the annulment entered into the purported marriage relationship with the responding party because of fraud or deceit in important matters practiced upon him or her by the responding party, such as:

By keeping secret from the Petitioner such things as a prior dissolved marriage of respondent, an incurable defect in disease, impotency of respondent, misrepresentation of religion or citizenship, of prior criminal record or prior unchastity, etc.

With respect to those grounds described in (a)(1)-(4) above the marriage is illegal and void in any event, but most attorneys would advise bringing a court action for annulment nevertheless to make a record that such marriage is void so as to preclude future marital or family problems. With respect to the grounds set forth in (b)(1)-(4), these marriages are voidable only, and legal action must be taken to make them void (to annul them).

(9) Effect of Cohabitation on Annulment:

The statute setting forth the grounds for annulment (39 TTC Sec. 151), also provides as follows:

"xx A court may, however, refuse to annul a marriage which has been ratified and confirmed by voluntary cohabitation after the obstacle to the validity of the marriage has ceased, unless the public interest requires that the marriage be annulled". (Emphasis supplied).

With respect to those grounds set forth in (b)(1)-(4) above - voidable only for fraud, deceit, etc., most judges would probably hold that if the offended party continued to cohabit with the offending party after learning the truth of the matters concealed, then annulment should not be allowed. But other grounds for annulment may be so strongly embedded in public opinion that no judge would permit cohabitation to erase them.

(10) Children of Annulled Marriages are legitimate irrespective of the fact that an annulment means there never was a legal marriage in the first place. Of course, if there is a child born or expected of a purported marriage that would otherwise be entitled to be annulled, courts would be reluctant to decree the annulment in any event on any grounds of "voidable" only.

(11) Forms. The forms for annulment are basically the same as in divorce cases except for the grounds and the relief requested and to be granted. Those differences are so great, however, that forms for the Petition and Decree have been prepared and are attached hereto as Annulment Forms Nos. 1 and 2.

(12) Benefits and Detriments of Annulment.

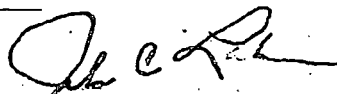
A number of people prefer annulments to divorces for religious reasons, namely: In religions that forbid divorce, or remarriage after divorce, annulment is the answer. Annulment also allows a person to say "I have never been married", which some people wish to be able to say.

There may be some detriments to annulment revolving around insurance, property, etc., but probably the detriments are much less than the benefits.

(13) Who May File Petition For Annulment.

Only an offended party. No party to a marriage can petition to have it annulled based upon his own misconduct unless the marriage is void as a matter of law.

DATED: November 9, 1983



JOHN C. LANIHAM
Chief Justice, High Court
Republic of the Marshall Islands

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

_____)	CASE NO. _____
)	
Petitioner,)	
)	
-vs-)	PETITION FOR DIVORCE
)	
_____)	
)	
Respondent)	
)	
_____)	

PETITION FOR DIVORCE

Petitioner, in support of the Petition for Divorce, alleges as follows:

I. 1. Either the Petitioner or Respondent has resided within the Republic of the Marshall Islands for a continuous period of at least _____ year(s) immediately preceding this application for divorce.

2. The parties are lawfully married to each other, as the result of a marriage at _____ on the _____ day of _____, 19____.

3. The parties: (Complete either (a) or (b))

(a) Are still living together.

(b) Last lived together at _____ on the _____ day of _____, 19____.

4. The parties have: (Complete either (a) or (b))

(a) No minor children of this marriage.

(b) _____ child(ren) of this marriage under the age of 18 years whose name(s), set and date(s) of birth are as follows:

<u>Name of Child</u>	<u>Date of Birth</u>
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II. (Complete if children involved)

The best interests of the child(ren), if any, require that the custody of said child(ren) be awarded as follows:

To the mother

To the father

To a 3rd party whose name and address will be presented in

evidence, at the time of the hearing of this divorce.

5. The best interests of the child(ren) require that the non-custodial parent pay to the custodial parent the following sum(s) for the support of said child(ren):

(a) For _____ the sum of \$ _____
(Name of Child)
bi-weekly.

(b) For _____ the sum of \$ _____
(Name of Child)
bi-weekly.

(Attach additional sheets, if necessary)

III. 6. The parties own certain properties, and Petitioner prays that petitioner be awarded a portion thereof; all of such property; none of said property.

IV. 7. Petitioner is entitled to an order requiring Respondent to pay the following portion of the debts of the parties:

(a) The parties have no debts, so no such order need issue; or

(b) All of the debts; or

(c) _____ % of such debts.

V. 8. Petitioner is is not entitled to an order that Respondent be required to provide for, or contribute to, the support of the petitioner.

VI. 9. Petitioner is entitled to a divorce from the Respondent on the grounds set forth in 39 T.T.C., Sec. 201() because of the following acts or omissions on the part of Respondent:

(Here briefly describe facts legally justifying the divorce)

VII. 10. No prior action for divorce or separation has been filed by either of the parties against the other with respect to this marriage except the following:

Wherefore, Petitioner prays:

That after a hearing of this Petition, the Court enter a decree granting a divorce, and awarding such other relief as has been prayed for or which to the Court may seem just under the facts and circumstances of the case, including such temporary relief pending the hearing of this cause as may be requested, and approval of such Property Settlement Agreement, if any which may be entered into by and between the parties.

Dated: _____, 19__.

Petitioner

Subscribed and sworn to

before me this __ day

of _____, 19__.

Signature and Printed or Typed Name
of Person Administering Oath

Title of Person Administering Oath

Name, address and Tel. # of Counsel
(or Petitioner, if no Counsel)

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____))
 Petitioner)
))
 - vs -))
_____))
 Respondent.)
_____))

SUMMONS

SUMMONS

REPUBLIC OF THE MARSHALL ISLANDS:

To the above-named Respondent

You are hereby summoned and required to serve upon Petitioner's
counsel or, in the event Petitioner is not represented by counsel upon the
Petitioner, at the address designated on the Petition, and also file with
the Clerk of Courts at _____, Marshall Islands,
(Location)
and whose mailing address is _____

_____, a written answer to the petition which is
herewith served upon you, within ___ days after service of this summons upon
you, exclusive of the date of service. If you fail to do so, further action
may be taken in this cause, including judgment for the relief demanded in the
petition, without further notice to you.

DATED: _____, 19__.

Clerk of Courts

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____)	
)	
Petitioner)	
)	
-vs-)	RETURN OF SERVICE
)	
_____)	
)	
Respondent.)	
_____)	

RETURN OF SERVICE

I Hereby Certify that I served the documents specified herein by delivering a copy of each document to:

<u>Name of Person Served</u>	<u>Time</u>	<u>Date</u>	<u>Place</u>

Documents Served:

- Petition For Divorce Summons
- Other: (Name Others)

Dated: _____, Marshall Islands, this ___ day
of _____, 19__.

- Police Officer
- Person Appointed by Court

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

_____,)
Petitioner)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

MOTION AND SUPPORTING AFFIDAVIT
(For Temporary Relief Before Decree)

MOTION AND AFFIDAVIT

The _____ moves that the Court issue an Order requiring _____ to show cause, if any _____ has why the temporary relief set forth in the Order To Appear filed herewith should not issue.

In support of such motion _____ states:

A. (If support payment, Counsel Fees or Costs are Involved):

_____ requests the following amount(s), which are reasonably necessary for the following purposes, and which the opposing party has the ability to pay:

\$ _____ bi-weekly for spouse support;

\$ _____ bi-weekly for child(ren) support;

\$ _____ attorney fees and costs.

B. (If Custody Of Minor Is Involved):

The best interests of the minor (child(ren) of the parties require that the custody of the child(ren) and rights of visitation be arranged as follows:

C. (If Restraining Order, Injunction, Receiver, etc., are requested - or if miscellaneous allegations are set forth):

The facts upon which application for (restraining order) (temporary injunction) (receiver) is made are as follows:

Affiant

Subscribed and sworn to
before me this ____ day
of _____, 19__.

Signature of Official

Name of Official Typed or Printed

Title of Official

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____,)
)
Petitioner,)
)
-vs-)
)
_____,)
)
Respondent.)
)
_____)

ORDER TO APPEAR IN COURT FOR HEARING
ON MOTION FOR TEMPORARY ORDER

ORDER TO APPEAR

REPUBLIC OF THE MARSHALL ISLANDS TO: _____

You are Hereby Ordered to appear before _____
(Name of Judge)

in the _____ Building, at _____

at the hour of _____ M. on the ____ day of _____,

19__, then and there show cause, if any you have, why certain orders effective during the pendency of this action should not be made as described in the marked paragraphs following and as requested in the accompanying affidavit, or in such further affidavits or pleadings as may be filed and served herewith.

1. An order with respect to the temporary custody of the parties minor child(ren).
2. An order providing for the temporary support of such child(ren);
3. An order providing for temporary support of your spouse.
4. An order providing for immediate payment of attorney's fees to your spouse.
5. A Temporary Restraining Order to issue preventing the following:
 - The wasting or improper or negligent transfer of property of the parties.
 - An Order restraining you from beating, threatening of otherwise disturbing the peace of your spouse or any child(ren).
 - An Order prohibiting you from removing the children from the party having present custody or from the jurisdiction of this Court.
6. Also why the following Order should not issue (Describe)

You are Further Ordered to bring with you to the hearing a paper showing your earnings and expenses on a monthly or bi-weekly basis.

IT IS FURTHER ORDERED that until Order of the Court, you are summarily enjoined and restrained from doing any of the acts described in the marked portions of Paragraph 5 above, except as follows: _____

_____.

DATED: _____, 19__.

Clerk or Judge of the Above-
Entitled Court

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____,
Petitioner,
-vs-
_____,
Respondent.

ORDER FOR TEMPORARY RELIEF

ORDER

A motion having been made for relief prior to the trial of this case, and such motion having come on for hearing on _____, 19 __, before the undersigned Judge of the above-entitled court, and the following persons being participants at said hearing:

- Petitioner
- Respondent
- Petitioner's Counsel _____
- Respondent's Counsel _____

IT IS ORDERED:

1. That Respondent pay to Petitioner the following at the times, for the purposes, and in the manner specified:

\$ _____ bi-weekly for the support of the child(ren) of the parties payable

\$ _____ bi-weekly for support of the Petitioner payable _____

\$ _____ (Other) _____

2. That the Petitioner and Respondent and their agents and associates, are, and each is, enjoined and restrained from the following

- (a) From doing, or attempting to do, any act of threatening beating or harrassing the adverse party, or child(ren), or otherwise molesting each other in any way.
- (b) (Other) _____

4. That the _____ is enjoined and restrained from any of the following acts:

Dated: _____, 19 __.

Judge, Above-Entitled Court

REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

INCOME AND EXPENSE STATEMENT OF

MY REGULAR INCOME:

A. Gross wages and commissions each pay period \$ _____
 Weekly: _____ Every 2 weeks: _____ Twice a month: _____ Monthly: _____
 Payroll deductions each pay period:
 Nat'l. Tax \$ _____ Local Tax \$ _____ S.S. \$ _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 Net take home earnings each pay period \$ _____
 Net take home earnings on a monthly basis \$ _____

B. Other income (e.g. net business income, net rentals, dividends, etc.)
 averaged out on a monthly basis \$ _____

MY REGULAR MONTHLY EXPENSES:

A. General expenses.

1. Rent or Mortgage or agreement of sale, including monthly prorata of property taxes, insurance, etc. \$ _____
2. Utilities (Water, Electricity, Gas, Telephone) \$ _____
3. Car operation, maintenance, repair, and insurance \$ _____
4. Insurance, other than car insurance \$ _____
5. Installment contracts and required monthly payment on:
 auto(s) \$ _____ household items \$ _____
 personal loans \$ _____ \$ _____
6. Support obligations under any prior court order \$ _____
7. Payments to other dependents \$ _____
- TOTAL \$ _____

B. Other expenses

	For myself only	For
1. Food	\$ _____	\$ _____
2. Clothing	\$ _____	\$ _____
3. Medical and dental	\$ _____	\$ _____
4. Laundry and cleaning	\$ _____	\$ _____
5. Recreation	\$ _____	\$ _____
6. School	\$ _____	\$ _____
7. Payments to others for child care	\$ _____	\$ _____
8. Income taxes on alimony	\$ _____	\$ _____
9. Others (Itemize)		
(a) _____	\$ _____	\$ _____
(b) _____	\$ _____	\$ _____
(c) Miscellaneous	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____

I have the following medical and dental plan coverage: _____
 I hereby declare, under penalty of perjury, that I have examined the foregoing statement and to the best of my knowledge and belief it is true, correct and complete.

Date: _____
 26

CASE NO. _____

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

ASSET AND DEBT STATEMENT OF

1. CASH (on hand or held by others for me) \$ _____

2. CREDIT UNION ACCOUNTS:

<u>Name</u>	<u>Title (H,W,J)</u>	<u>Credit Balance</u>	<u>Debit Balance</u>

3. BANK AND SAVINGS ACCOUNTS: (Include Trustee Accounts)

<u>Company & Branch</u>	<u>Type of Account</u>	<u>Title (H,W,J)</u>	<u>Current Balance</u>

4. SECURITIES: (Stocks, Bonds, Mutual Funds, Certificates of Deposit, etc.)

<u>Company</u>	<u>Title (H,W,J)</u>	<u>Date of Acquisition</u>	<u>Cost</u>	<u>Market Value</u>	<u>Debt Owed Against</u>

5. VEHICLES: (Autos, Trucks, Motorcycles, Trailers, Campers, Boats, etc.)

<u>Year</u>	<u>Make</u>	<u>Title (H,W,J)</u>	<u>Current Market Value</u>	<u>Debt Owed Against</u>

(over)

6. Real property (Land and Buildings in which I have a transferrable interest)

Part 5

Subscribed and sworn to
before me this ___ day
of _____, 19__.

Notary Public or Other Official

_____,)
Petitioner,)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

DECREE GRANTING DIVORCE AND AWARDING CHILD CUSTODY

DECREE GRANTING DIVORCE AND AWARDING CHILD CUSTODY

The above-entitled action came on for hearing on _____ before the above-entitled Court.

Following the hearing and after full consideration of all of the evidence the Court finds that:

(a) The parties were married at _____ on the ____ day of _____, 19__ . That there (is)(are) _____ child(ren) born of this marriage who are still minors (under the age of 18 years) whose names and dates of birth are set forth in Paragraph (3) herein.

(b) That _____ (has)(have) resided within the Marshall Islands for a period of not less than _____ years preceding the date of this decree.

(c) The Court also finds that the material allegations of the petition for divorce are true, the Petitioner to be entitled to a divorce from the bonds of matrimony on the grounds specified in 39 T.T.C., Sec. 201(), and the Court to have jurisdiction to enter this decree. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) A decree of divorce is hereby granted to Petitioner, the bonds of matrimony between Petitioner and Respondent are hereby dissolved, and the parties hereto are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree.

(2) _____ is awarded the care, custody and control of the minor child(ren) of the parties, subject to _____'s rights of reasonable visitation, and the custodial parent shall keep the non-custodial parent informed of the residence address of the child(ren).

(3) The name(s) and birth date(s) of the minor child(ren) of the parties are as follows:

Name(s)

Birth Date(s)

(4) Other matters covered by this decree are as follows:

(5) This decree shall take effect upon the signing and filing hereof.

Dated: _____, Marshall Islands,

_____, 19__.

Distribution:

Original to file
2 copies to Petitioner or Counsel
2 copies to Respondent or Counsel

Judge of the above-entitled Court

_____,)
)
 Petitioner)
)
 -vs-)
)
 _____,)
)
 Respondent.)
)
 _____)
)

CASE NO. _____

DECREE OF DIVORCE

DECREE OF DIVORCE

This action came on for hearing on _____ before the above-entitled Court.

Following the hearing and after full consideration of all of the evidence, the Court finds that:

(a) The parties hereto were married at _____ on the ____ day of _____, 19__.

(b) That _____ (has(have) resided within the Marshall Islands for _____ year(s) immediately prior to the date of hearing of this case.

(c) That there are no minor children of this marriage.

(d) The Court also finds that the material allegations of the petition for divorce are true, the petitioner to be entitled to a divorce from the bonds of matrimony on the grounds set forth in 39 TIC, Sec. 202(), and the Court to have jurisdiction to enter this decree. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) A decree of divorce is hereby granted to Petitioner, the bonds of matrimony between Petitioner and Respondent are hereby dissolved, and the parties hereto are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree.

(2) Other matters decided or approved by the Court and covered by this decree are as follows:

(3) This decree shall take effect upon the signing and filing
hereof.

Dated: _____, Marshall Islands, _____
19__.

Judge of the above-entitled Court

Distribution:

2 copies to Petitioner or Counsel
2 copies to Respondent or Counsel
Original to file

_____,)
Petitioner)
-VS-)
_____,)
Respondent.)
_____)

CASE NO. _____

DECREE OF DIVORCE

DECREE OF DIVORCE

This action came on for hearing on _____ before the above-entitled Court.

Following the hearing and after full consideration of all of the evidence, the Court finds that:

(a) The parties hereto were married at _____ on the ____ day of _____, 19__.

(b) That _____ (has(have) resided within the Marshall Islands for _____ year(s) immediately prior to the date of hearing of this case.

(c) That there are no minor children of this marriage.

(d) The Court also finds that the material allegations of the petition for divorce are true, the petitioner to be entitled to a divorce from the bonds of matrimony on the grounds set forth in 39 TIC, Sec. 202(), and the Court to have jurisdiction to enter this decree. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) A decree of divorce is hereby granted to Petitioner, the bonds of matrimony between Petitioner and Respondent are hereby dissolved, and the parties hereto are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree.

(2) Other matters decided or approved by the Court and covered by this decree are as follows:

(3) This decree shall take effect upon the signing and filing
hereof.

Dated: _____, Marshall Islands, _____,
19__.

Judge of the above-entitled Court

Distribution:

2 copies to Petitioner or Counsel
2 copies to Respondent or Counsel
Original to file

_____,)
Petitioner,)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

ORDER TO SHOW CAUSE AFTER ORDER OR DECREE
MOTION AND SUPPORTING AFFIDAVIT

ORDER TO SHOW CAUSE AFTER ORDER OR DECREE

REPUBLIC OF THE MARSHALL ISLANDS to: _____

YOU ARE HEREBY ORDERED to appear before the Judge presiding in the above-entitled proceeding in the court building at _____ at the hour of _____ .M., on the _____ day of _____, 19__ . then and there to show cause, if any you have, why certain orders should not be made as described in the marked paragraphs following and as requested in the affidavit on the second page hereof or in such further affidavits or pleadings as may be filed and served herewith.

1. Why existing orders with respect to the custody and visitation or minor child(ren) should not be modified.
2. Why existing orders with respect to the support of minor child(ren) should not be modified.
3. Why existing orders with respect to the support of the adverse party should not be modified.
4. Why you should not be held in contempt of court for failure to make the payments required under existing orders.
5. Why you should not be held in contempt of court for doing certain acts which you have been ordered not to do.
6. Why you should not be required to give security for the payment of support.
7. Why your personal estate should not be sequestered for the payment of support.
8. Why you should not have your wages assigned for the payment of support.
9. Also why further orders should not be made as follows:

YOU ARE FURTHER ORDERED to bring with you such payroll statements, tax returns, or other records under your control as are reasonably necessary to verify your income, expenses, assets and liabilities.

Dated: _____, Marshall Islands _____, 19__.

Clerk of the above-entitled Court

(Fill in and modify as appropriate. This Supporting Affidavit must be completed or the substance thereof set forth in attached pleadings or other affidavits. Additional affidavits may be filed and served if desired.)

AFFIANT MOVES FOR AN ORDER TO SHOW CAUSE as set forth on the preceding page hereof, and in support thereof avers:

A. (IF EXISTING ORDERS RE CHILD CUSTODY OR VISITATION ARE INVOLVED;)

The best interests of the minor child(ren) of the parties require that existing orders regarding custody or visitation be modified as follows:

B. (IF EXISTING ORDERS RE CHILD OR WIFE SUPPORT ARE INVOLVED;)

Changes in the circumstances of the parties require that existing orders regarding support payments be modified as follows:

C. (IF FINDING OF CONTEMPT IS REQUESTED;)

The adverse party has violated existing orders herein as follows:

D. (IF SECURITY, SEQUESTRATION, OR OTHER RELIEF IS SOUGHT;)

The facts upon which application for relief is made are as follows:

Affiant

Subscribed and sworn to
before me this ___ day of
_____, 19__.

Official Authorized to Administer
Oaths

CASE NO. _____

_____,)
Petitioner)
-vs-)
_____,)
Respondent.)

MOTION AND AFFIDAVIT FOR SERVICE BY MAIL

MOTION AND AFFIDAVIT

Petitioner moves for an Order authorizing service herein of Petitioner's
Petition for _____ and Summons by registered or certified
mail and in support of such motion states that to the best of Petitioner's
information and belief the Respondent is without the boundaries of the
Republic of the Marshall Islands and receives mail at the following address:

Signature of Petitioner

Subscribed and sworn to
before me this ___ day
of _____, 19__.

Official Authorized to Administer
Oath

Title of Official

_____,)
Petitioner)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

MOTION FOR CONSTRUCTIVE SERVICE

MOTION

Petitioner moves the Court for an Order authorizing service of the Summons herein upon Respondent by Publication twice in two consecutive publications in the _____ a newspaper of general circulation within the Marshall Islands, and also by mailing of the Petition for Divorce and Summons to Respondent at his last known address, namely:

In support of this Motion Petitioner presents the Affidavit of _____ attached hereto showing attempts to effect personal service upon Respondent and/or to ascertain his present location, address or whereabouts, which, Petitioner submits will support a finding that Petitioner has made all reasonable efforts to serve Respondent in the usually required manner.

Petitioner

_____)	CASE NO. _____
Petitioner,)	
-vs-)	AFFIDAVIT IN SUPPORT OF MOTION
_____)	FOR CONSTRUCTIVE SERVICE
Respondent.)	
_____)	

AFFIDAVIT

On the ____ day of _____, 19__, before me personally appeared _____, who, after being duly sworn by me, did state upon oath as follows:

My name is _____.

My employment is _____.

The Petition for Divorce and Summons in this case were filed in this Court on the ____ day of _____, 19__.

I have made the following attempts to serve such petition and summons upon _____, the above-named Respondent, and of all such attempts have been unsuccessful:

(Check appropriate blank)

- _____ 1) By having a police officer or other serving officer attempt to deliver or hand copies to the person to be served.
- _____ 2) By leaving a copy of the petition and summons at the dwelling house or place of business of the person to be served.
- _____ 3) By delivering a copy of the petition and summons to an agent authorized by appointment or by law to receive service of process for such person.
- _____ 4) By writing to him at his last known address.

That service of such petition and summons could not be made on any of such cases for the following reasons:

- _____ 1) Person to be served could not be located within the Marshall Islands.
- _____ 2) Person to be served has no dwelling house in the Marshall Islands.
- _____ 3) Person to be served has no place of business within the Marshall Islands.

_____ 4) Person to be served has no agent appointed by him for acceptance
of service of process.

_____ 5) Other reasons: _____

To be best of my knowledge and ability to ascertain, the above-named
Respondent's present location is unknown and the last known address of the
_____ to be served (Respondent) was:

Name _____

Address _____

Further Affiant sayeth not.

AFFIANT

Subscribed and sworn to
before this ___ day of
_____, 19__.

Signature of Official

Name of Official Printed or Typed

Title of Official

_____)	CIVIL ACTION NO. _____
Petitioner,)	
-vs-)	ORDER FOR CONSTRUCTIVE SERVICE;
_____)	NOTICE OF HEARING
Respondent.)	
_____)	

ORDER

Based upon the Motion and the Affidavit of _____, filed herein, and upon the file in this case, and it appearing from such documents that personal service cannot be made upon _____, the _____, in this divorce case, in any of the manners set forth in Rule 4 of the RepMar Rules of Civil Procedure; and

It further appearing that it is in the interests of justice that every reasonable effort be made to give notice of the hearing of this case and a chance to participate in such hearing should be given to the said _____, now, therefore,

Under the provisions of Sections 51, 52 and 55 of the Judiciary Act of 1983, 6 TTC Ch. 2, Rule 63 of the RepMar Rules of Civil Procedure, and Art. VI, Sec. 1(2), RepMar Constitution -----

IT IS HEREBY ORDERED that service of process in this case upon _____ be made in the following manner(s):

_____ 1) By publication of the Summons and Notice of Hearing in the _____, a newspaper of generally circulation in the Marshall Islands;

_____ 2) By sending a true copy of the Petition of Divorce, Summons, this Order and Notice of Hearing in the mails, Air Mail, postage pre-paid, certified mail and deliver to addressee only, addressed to:

Name of Person to be served:

Address of Person to be served:

____ 3) By sending a copy of the documents listed in Block 2 above to an
officer authorized to serve process in _____
or a person appointed to serve such by this Court, for service upon said
_____, if he can be found.

____ 4) Other means: _____

IT IS FURTHER ORDERED that evidence of service of process in the ~~manner~~
required by this Order be filed by Petitioner on or before the aforesaid
hearing date.

NOTICE OF HEARING

IT IS FURTHER ORDERED that this case is set for hearing before this
Court at the _____ Courthouse on _____
the ____ day of _____, 19__, at the hour of
_____ .M. (_____ date and time).

Dated: _____

Chief Justice, High Court

REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____,)
)
 Petitioner,)
)
 -vs-)
)
 _____,)
)
 Respondent.)
 _____)

ORDER FOR SERVICE BY MAIL

ORDER FOR SERVICE BY MAIL

It appearing from the Motion and Affidavit of the Petitioner that service of process upon Respondent via mail is appropriate and reasonable,

IT IS HEREBY ORDERED that service of process herein may be made by forwarding certified copies of the Petition and Summons and of this Order to the Respondent at the following address:

by registered or certified mail with return receipt requested and a direction to deliver to addressee only, and that actual receipt by the Respondent of the Petition and Summons sent in accordance with this Order shall be equivalent to service upon the Respondent by an authorized process server as of the date of such receipt.

Dated: _____, 19__.

 Judge of above-entitled Court

_____,)
Petitioner)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

ANSWER, WAIVER & CONSENT

ANSWER, WAIVER & CONSENT

I _____ the above-named Respondent, having been notified that my husband, the above-named Petitioner in this case, has filed an action asking for a divorce from me:

I hereby state to the Court that I do not wish to contest this divorce case, and consent to trial of this divorce matter without my presence and without further notice to me.

I understand my husband is requesting a divorce only, and no alimony, or property, except as follows:

Dated: _____ at _____

Respondent

Address: _____

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

_____,)
Petitioner)
-vs-)
_____,)
Respondent.)
_____)

CASE NO. _____

ANSWER, WAIVER & CONSENT

ANSWER, WAIVER & CONSENT

I _____ the above-named Respondent
having been notified that my wife, the above-named Petitioner in this case,
has filed an action asking for a divorce from me:

I hereby state to the Court that I do not wish to contest this divorce
case, and consent to trial of this divorce matter without my presence and
without further notice to me.

I understand my wife is requesting a divorce only, and no alimony.

Dated: _____ at _____.

Respondent

Address: _____

IN THE _____
REPUBLIC OF THE MARSHALL ISLANDS

CASE NO. _____

_____,)
Petitioner,)
-vs-)
_____,)
Respondent.)
_____)

NOTICE OF HEARING

TO: _____

You are hereby notified that the Petition for Divorce in the above-entitled case in which _____, Petitioner herein seeks a divorce from you, will be heard before this Court at the _____ Courthouse, in _____, on _____, the _____ day of _____, 19__ (_____ date and time).

Such hearing may result in a Judgment in this divorce case, so it is important that all matters pertaining to the case be brought to the Court's attention at that time.

Dated: _____

Justice in the above-entitled Court

If payments made to a (former) spouse for alimony or separate maintenance meet certain requirements they are deductible by the payer and taxable to the recipient.

✓ for in-depth discussion, see RIA Federal Tax Coordinator 2d § K-6000 *et seq.*

Alimony is a deduction in computing adjusted gross income, rather than as an itemized deduction.¹²

§ 7301. General requirements for deductibility. Payments by one spouse are deductible and hence taxable to the recipient if:¹³

... made under a qualifying agreement or decree as explained at § 7302 *et seq.*

... made because of the family or marital relationship in recognition of the general obligation of support made specific by the decree or agreement. See § 7312.

... they qualify as "periodic" payments. See § 7320 *et seq.*

§ 7302. Payments must be under agreement or decree. Qualifying alimony payments must be made under one of the following:¹⁴

... written separation agreement executed after Aug. 16, '54.

... decree for support or maintenance entered after March 1, '54.

... decree of divorce or separate maintenance or written instrument incident to divorce or separa-

11. Rev. Proc. 66-49, 1966-2 CB 1257.
12. Code Sec. 6113; Sec. 502, PL 94-455, 10/4/76.

13. Code Secs. 71 and 215.
14. Code Sec. 71.

tion, regardless of the date when entered or executed.

If an annulment has the same effect as a divorce for support purposes under state law, then payments under a decree of annulment¹⁵ or support agreement incident to a decree of annulment¹⁶ are deductible as alimony.

§ 7303. Payments under support decree. Periodic payments are deductible by the husband and taxable to the wife if made under a court order or decree entered after March 1, '54 requiring the husband to make the payments for the wife's support or maintenance.

A divorce or legal separation is not necessary. The mere order or decree for support is enough.¹⁷

The Eighth Circuit reversed the Tax Court and ruled that a husband can claim an alimony deduction for court-decreed temporary support, even though he continues to occupy the same residence as his wife, if the evidence shows, as it did here, that they in fact lived separately. They had no meals together, occupied separate quarters, and only rarely met face-to-face in the home. "Neither the statute nor the regulations specifically state that in order to live separately or apart the parties cannot occupy separate quarters in the same residence."¹⁸

§ 7304. Temporary alimony. Payments under court order of temporary alimony until final divorce or separation can qualify as alimony paid under a court order or decree for support entered after March 1, '54.¹⁹ A husband was able to claim an alimony deduction for court-decreed temporary support even though he continued to occupy the same residence as the wife where the evidence showed that the couple lived separately, i.e., had no meals together, occupied separate quarters, and only met rarely face-to-face in the home.²⁰

§ 7305. Interlocutory decree. Periodic payments under an interlocutory decree can qualify as deductible alimony paid under a support decree.²¹

§ 7306. Payments under separation agreement. Periodic payments made under a written separation agreement executed after Aug. 16, '54 because of the marital or family relationship are deductible as alimony by the husband and taxable to the wife if the payments were received after execution of the agreement. The payments are deductible even though there is no decree of

divorce or separation and even though the agreement is not legally enforceable.²² But the agreement *must* be written. It can't be oral.²³

The payments qualify as alimony if the agreement sets forth the amount of the wife's support and the couple are in fact separated at the time the payments under the agreement are made. The agreement need not state that the parties have agreed to separate and live apart.²⁴

If a joint return is filed, the husband is not entitled to any deduction and the payments are not considered income to the wife.²⁵

Payments under a separation agreement "incident" to divorce or legal separation can also qualify, regardless of when the agreement was entered into. See § 7308.

Observation: The Tax Court in *Hegart* (footnote 3) noted that state law isn't controlling in the determination of what constitutes a written separation agreement.

§ 7307. Modification of separation agreement or support decree. If a written separation agreement entered into before Aug. 17, '54 is materially altered or modified in writing by the parties after Aug. 16, '54, payments after modification can qualify as deductible alimony paid under a separation agreement entered into after Aug. 16, '54. And the same is true of payments under a pre-March 2, '54 support decree or order modified after March 1, '54.²⁶

§ 7308. Payments under divorce or separate maintenance decree or agreement incident to such decree. If husband and wife are divorced or legally separated under a decree of divorce or separate maintenance, periodic payments made after the decree can qualify as alimony deductible by the husband and taxable to the wife. The payments must be made under a specific obligation contained in the decree or a written instrument which is "incident" to the decree.²⁷ Payments made under an oral agreement entered into before the divorce and not incorporated into the divorce decree are not deductible.²⁸

§ 7309. Legal separation from bed and board. A so-called "decree of divorce granting legal separation from bed and board" is treated as a decree of separate maintenance.²⁹

§ 7310. Invalid decrees. Payments made incident to a divorce decree which may be of questionable validity qualify as alimony which is

15. Reisman, 49 TC 570(A); Newburger, 61 TC 457.
16. Laster, 48 TC 178(A).
17. Code Sec. 71(a)(3); Reg. § 1.71-1(b)(3).
18. *Sydney v. Comm.*, 68 TC 170, aff'd and rem'd on this issue 6/8/78, CA-8.
19. Reg. § 1.71-1(b)(3)(i) and § 1.71-b(b)(6), Example (4).
20. *Sydney v. Comm.*, 6/8/78, CA-8, aff'd and rem'd on this issue 6/8 TC No. 170.
21. Reg. § 1.71-1(b)(3).

22. Code Sec. 71(a)(2); Reg. § 1.71-1(b)(2) and § 1.71-1(c)(1).
23. *Herring*, 66 TC 308.
24. Rev. Rul. 73-409, 1973-2 CB 19; Bogard, 59 TC 92.
25. Code Sec. 71(a)(2).
26. Reg. § 1.71-1(b)(2) and § 1.71-1(b)(3).
27. Code Sec. 71(a)(1).
28. Smith, TC Memo 1967-90.
29. *Industrious*, 313 F.2d 221, aff'd TC Memo 1961-212.

This Agreement made and executed this ____ day of

_____, 19____, by and between _____

_____, herein referred to as the "Husband", and

_____, herein referred to as the "Wife"

witnesses that:

Husband and wife were married at _____

_____ on the ____ day of _____

19__, and have been ever since, and are now, husband and wife.

However, because of unhappy differences and disputes the parties

have found themselves unable to continue through life as husband

and wife, and _____ intends to file,

has filed, a Petition for Divorce in the Courts of the Republic

of the Marshall Islands under the provisions of 39 TTC Sec. 201

(); and other laws governing divorce, and they wish to provide

herein, and by means of this agreement, for the equitable and

fair distribution of both parties property interests, and also

a program for the care, custody and support of their minor

child(ren) _____

The parties understand that this agreement is subject to the

approval of the Court under the provisions of 39 TTC Sec. 103

and other applicable laws.

To that end and with those purposes in mind, the parties hereto agree as follows:

1. That the Husband shall receive and be awarded as his separate property after the effective date of the Divorce Decree, the following property (if none just put "none")

(a) Real Property (Describe):

Exhibit B Page 2

(b) Stocks and/or Bonds and similar Commercial Instruments:

(c) Vehicles and Engines:

(d) Furniture and Appliances:

(e) Cash including monies in Banks, Credit Unions, Savings and Loan Associations, etc.:

(f) Other Property:

2. The wife shall receive and be awarded as her separate property after the effective date of the Decree of Divorce, the following property:

(a) Real Property:

(b) Stocks and or Bonds and Similar Commercial Instruments:

(c) Vehicles and Engines:

(d) Furniture and Appliances:

(e) Cash, including monies in Banks, Credit Unions, Savings and Loan Associations, etc

(f) Other Property:

3. That the joint debts and obligations of the parties are as follows and are to be paid by the party named in the 3rd column hereof:

<u>Debt Owed to</u>	<u>Amount of Debt</u>	<u>Which Party Pays What Amount</u>
(Sample) Reimers' Store	\$500.00	\$250 - Husband 250 - Wife
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. That the custody of the children of the parties, namely _____, age _____ and _____, age _____ and _____, be awarded to the _____, subject, however, to the _____ rights to reasonable visitation with said child. Such rights of reasonable visitation shall include the right to visit with said children, or have said children visit with _____ at reasonable times, but not more than two days per week (without the consent of _____). The _____ may have the children visit with him one entire week-end (from Friday at 6:00 p.m. until Sunday at 5:00 p.m.) each month and may have the children with him on alternatives Christmas Eves and Christmases. The parties may by mutual agreement change these visitation schedule or may petition the courts for amendments hereof at any time for good cause shown.

The _____ shall pay to the _____ as and for the support, maintenance, care and education of such minor children during their respective minorities (until age 18) the sum of _____ bi-weekly per child (total \$ _____ bi-weekly), said payments to be made on the 1st and 16th days of each and every month.

After a child has obtained the age of 18, and has entered a college or university, _____ nevertheless agrees to apy the following sum (if any) for that child's education: _____ on a voluntary basis.

5. The _____ agrees also to maintain and pay for the benefit of the children during their minorities the following hospitalization and health insurance policies and other benefits:

6. That _____ shall pay support and alimony to the _____ (if any) as follows:

(a) No alimony or

(b) The sum of \$ _____ bi-weekly until the _____ remarries or becomes self-supporting, or until the court orders otherwise.

7. Each of the parties shall hereafter be responsible for their own debts and obligations., and shall be entitled to their own incomes, and each party promises and agrees not to make debts in other's name or to his or her account, either jointly or severally.

8. (If the parties have been married for a long time - say 10 years or more).

(a) That the Husband has the following retirement rights with _____ as a result of his working for such _____ Company or Government for a period of _____ years. That when he retires the Wife shall be awarded that part of his retirement income which is the fraction which the years the parties were married to

each other bears toward the total number of years the Husband worked multiplied against 50% of that retirement income. (See note below).

(b) The Husband shall be entitled to the same percentage of the Wife's retirement income as she would be to her Husband's under 7(a) above.

(c) The same rules as in 7(a) and (b) above apply to a party's Social Security, unless they both are entitled to Social Security Benefits.

[NOTE: The formula in 7 works as follows: Husband who gets 1,000 per month retirement income, worked for employer A for 30 years. He was married to wife for 10 of those 30 years. Wife then would get one-third of one-half (or 1/6) of the \$1,000 per month - that is about \$166.50 per month]. This is how it works.

(Of course, the parties need not agree on that formula or proposition. This just shows how one formula for division, which is the one I believe judges use the most in the absence of an agree, would work).]

(9) The parties further agree that in the event one party has property or money in his own right or in trust for or with another, which he has not disclosed to the other party, then such property is not covered by this agreement, and the other party may bring further action for the settlement of rights to that undisclosed property.

(10) Other matters covered by the agreement are as follows:

IN WITNESS WHEREOF the parties have signed their names on this ___ day of _____, 19___, with the intention of having this agreement presented to the Court for approval in their divorce case, therefore, this agreement shall take effect upon the date of this Decree of Divorce takes effect if the Judge approves same and makes it a part of such Decree of Divorce.

Dated: _____

Husband

Wife

[NOTE: Don't try to use this form verbatim. It is just a form containing most of the matters usually contained in a Property Settlement Agreement with child custody and support arrangements].

REPUBLIC OF THE MARSHALL ISLANDS

_____)	CASE NO. _____
Petitioner)	
-vs-)	PETITION FOR ANNULMENT
_____)	
Respondent.)	
_____)	

PETITION FOR ANNULMENT

Petitioner, in support of this Petition for Annulment, alleges as follows:

1. Petitioner or Respondent, or both, have resided within the Republic of the Marshall Islands for a continuous period of at least three (3) months immediately preceding this application for annulment, such residency being in the following atoll(s): _____

2. Petitioner and Respondent entered into a purported marriage ceremony at _____ on the ___ day of _____, 19___, which resulted in a purported marriage relationship.

3. That this purported marriage is void or voidable and should be annulled by this court under the provisions of 39 TTC Sec. 151 and 1 TTC Sec. 103 on the following ground(s), based upon the following facts and/or conditions:

(a) First Ground: _____

(b) Second Ground: _____

4. That Petitioner first gained knowledge of the truth or existence of the facts and conditions upon which Petitioner relies as grounds for the annulment of the purported marriage on the following dates and under the following circumstances:

(a) _____

(b) _____

5. (a) That Petitioner and Respondent last lived or cohabited together as purported husband and wife on the _____ day of _____, 19____, at the following address:

(b) (If Petitioner continued to live or cohabit with Respondent after learning of the matters alleged as grounds for annulment then Petitioner shall complete the following):

I continued to live or cohabit with Respondent after learning about the facts and conditions upon which I base my petition for annulment for the following reasons:

6(a). That Petitioner has not filed any prior petition for annulment or dissolution of this purported marriage, or separation from it, in this or any other jurisdiction; or

(b). Petitioner has filed the following prior action regarding this purported marriage:

Name of Court & Location: _____

Date Filed and Case No.: _____

Type of Action: _____

Result: _____

7(a) (a) That there are no children born or anticipated out of this purported marriage; or

(b) There are _____ child(ren) born of this purported marriage, whose name(s), sex(es) and date(s) of birth are as follows: or

Name and Sex of Child

Date of Birth

(c) There are no children born as yet of this purported marriage relationship, but it is anticipated that a child will be born on or about _____

8. Petitioner is entitled to an annulment of this marriage on the grounds alleged in Paragraph 3 of this Petition under the provisions of 39 TTC Sec. 151 and 1 TTC Sec. 103. Petitioner is also entitled to and requests the following relief:

WHEREFORE, Petitioner prays:

That after a hearing of this Petition, this Court enter a decree granting an annulment and dissolution of this purported marriage from the date of its purported inception (ab initio), and declaring that there never was a valid marriage between the parties as a result thereof, and that the court grant such other relief as is prayed for which appears to the court just under the facts and circumstances of this case and under the law, and including specifically the following relief in addition to the annulment:

Dated: _____, 19__.

Petitioner

Subscribed and sworn to
before me this __ day
of _____, 19__.

Signature of Notary Public or
Other Official Administering Oath

Name of Official Printed or Typed

Title of Official Administering
Oath

Name, address, and Tel #. Counsel
(or Petitioner, if no Counsel)

REPUBLIC OF THE MARSHALL ISLANDS

_____,)
)
 Petitioner,)
)
 -vs-)
)
 _____,)
)
 Respondent.)
)
 _____)

CASE NO. _____

DECREE OF ANNULMENT

DECREE OF ANNULMENT

This action came on for a hearing before the above-entitled court on the ___ day of _____, 19__.

Following the hearing and after full consideration of all of the evidence, the court finds that:

(a) The parties hereto entered into a purported marriage relationship as the result of a ceremony at _____ on the ___ day of _____, 19__.

(b) That _____ (has or have) resided within the Marshall Islands for _____ months _____ immediately prior to the date of hearing of this case;

(c) The court finds the material allegations of the Petition for annulment to be true, the court to have jurisdiction to enter this decree, and the Petitioner to be entitled to a decree of annulment annulling and dissolving, ab initio and from its inception, the aforesaid purported marriage of the parties on the grounds of _____, and under the provisions of 39 TTC Sec. 151 and 1 TTC Sec. 103. Now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) A decree of annulment is hereby granted to

Petitioner and the purported marriage of the parties is declared null and void from the date of its inception for the reasons herein stated.

(2) Other matters decided by the Court in connection with, and covered by, this decree are as follows:

(3) This decree shall take effect as of the ___ day of _____, 19___, the date of the annulled marriage:

Dated: _____, Marshall Islands,
_____, 19__.

Judge of the above-entitled Court