

LA. C.C. ART. 103 (5) DIVORCE FORM PACKET (DIVORCE BASED ON ISSUANCE OF PROTECTIVE ORDER) INSTRUCTIONS

These instructions are to help you through the process of getting a divorce under Louisiana Civil Code article 103 (5). This law allows you to get divorced if a court issued a protective order or injunction during your marriage against your spouse to protect you or one of your children from abuse.

These forms are not legal advice and cannot take the place of the advice that a lawyer can give you. It is always best to speak with a lawyer before taking any legal action.

If you represent yourself in court, you must follow all of the proper procedures and the law. It is your responsibility to see your case through the whole process.

STEP ONE: THE PETITION

This will guide you through the Petition paragraph by paragraph. Read everything carefully, double check the information you fill in, and make sure you fill out the forms clearly and completely.

- The top part of this form is for your case information. Fill in your name in the first blank on the left because you are the petitioner. Your spouse is the defendant, so write his/her name underneath. For now, leave the blanks on the right empty. When you file this form in the Clerk of Court's office, they will give you the docket number and the division that is assigned to you.
- The beginning paragraph asks you to fill in your name and domicile. Your domicile is the parish/county and state where your permanent address is currently.
- Paragraph 1 asks you to fill in your spouse's name and domicile. Your spouse's domicile is the parish/county and state where his/her permanent address is currently.
- Paragraph 2 asks you the date and place you were married. It also asks you to fill in the last place that you and your spouse lived as a married couple.
- You don't have to provide any information in paragraphs 3 and 4, but make sure the statements are true in your case. If you or your spouse is in the armed forces or if you entered into a covenant marriage when you applied for your marriage license, you may not be able to get a divorce using these forms.
- Paragraph 5 is about your children. Check the correct statement that applies to you. Check the first blank if you do not have any children that are under 18 from your marriage. Check the second blank, if you do have children that are under 18 from your marriage and write their names and dates of birth in the blank lines.
- Paragraph 6 is about your domestic violence protective order or injunction. To fill this part out, it is a good idea to have a copy of the order with you. If you do not have a copy, you can get one from the Clerk of Court's office in the parish where the judgment was done.

Write the date the order was signed by the judge in the first blank space, then the case title in the next two blank spaces. This is usually listed at the top of your order and looks something like "John Doe v. Jane Roe."

In the next blank space, write the docket number of the order or injunction. Finally, write in the name of the court that gave the order and the city where the court gave the order.

- Paragraph 7 says why the law allows you to get divorced in this case. No information is needed.

STEP ONE: CONTINUED

- The paragraph after is a summary of everything you're asking the court to do. It also deals with the costs of coming to court for this divorce. Select the option that you are asking the court to do.
- Then, sign and print your name along with your address, telephone number and email address under where it says "respectfully submitted" so the court knows who filed it and how to contact you.
- The very last part has to do with service on your spouse. You have two options at this point:

The first option can only be used if your spouse will accept a copy of the petition from you. After you file your petition, you will get a certified copy and give it to your spouse. Your spouse will also have to fill out a form and get it notarized. Check the first option if this is what you want to do. Step 3 will give you the instructions on how to do this.

The second option is to request service by the Sheriff's Office. Check the second option and fill in your spouse's name and information if this is what you want to do. There is a cost for having the sheriff serve your spouse.

Along with your petition, you will also have to sign the Verification form, which states that you are swearing that everything in your petition is true. This step requires you to go to a notary. You must have a picture ID to get the form notarized. Make sure you fill out this form in the presence of the notary.

STEP TWO: FILING

To file your papers, you must go to Clerk of Court's office for your parish.

You must file the original forms that you filled out. It's also a good idea to make 2 copies of your forms and bring them with you. When you file the originals, ask the Clerk of Court's office to return one stamped copy to you for your records.

- If you have come to court previously with your spouse, let the Clerk of Court's office know so they can look up your information and put the right case number on your paperwork.
- If this is the first time coming to court with your spouse, the Clerk of Court's office will assign a case number to you and write it at the top of your filed pleadings. They will also assign you to one of court divisions (A, B, C, D or E). Make sure you keep this information because you will need it to check the status of your case.

Anytime you file something with the Clerk of Court's office, you will have to pay a filing fee. There are different fees for different documents. The Clerk of Court's office can tell you how much the fees are. If you cannot afford to pre-pay the costs, you may request to file as a pauper and you will have to fill out and file a separate pauper form, which you can get from the 23rdjdc.org site or the Clerk of Court's office. *IMPORTANT- Pauper status does not make filing free, but only lets you go without paying in advance. You may have to pay court costs after the case is over.

STEP THREE: SERVICE/WAIVER

The next step is to give your spouse notice of your divorce by serving the petition on him/her. You have two options: 1) you can either get the Sheriff's office to make service on your spouse, or 2) you can send your petition to your spouse and get him/her to sign a waiver of service.

OPTION 1: Service: To have the Sheriff's office make service, you have to request it in your Petition for Divorce. Make sure that you have the service information filled out at the end of your Petition. NOTE: If your spouse lives outside of Louisiana, you will have to get "longarm" service. Please speak with the Clerk of Court for more information on how to do this.

OPTION 2: Waiver: Instead of having the Sheriff's office make service, you can get your spouse to sign a waiver of service. You must send or give your spouse a certified copy of your Petition, which you can get from the Clerk of Court's office after you file with them.

- You will also have to send or give your spouse the form called the Acceptance of Service and Waiver of Citation. This form says that your spouse received a certified copy of the petition and that he/she does not need service by the sheriff. You must make sure that the waiver is filled out and signed after the petition is filed with the Clerk of Court's office.
- Fill out all of the case information at the top of the document. Do not fill in the rest. Your spouse will have to fill out the form with a notary. You cannot fill it out for your spouse.

Once your spouse fills out the form, ask him/her to send it back to you so that you can file it. You will file it with the Clerk of Court's office, where you filed your petition before. Ask the Clerk of Court's office to provide you with a stamped copy of the waiver for your records. If your spouse does not agree to sign this form, you will need to request service in Option 1.

STEP FOUR: CHECK ON YOUR CASE

To check on your case status, you will have to call the Clerk of Court's office at (225) 621-8400 for Ascension, (985)369-6653 for Assumption or (225) 562-2270 for St.James or visit in person.

If you asked the Sheriff's office to serve your spouse, you need to make sure the service return from the Sheriff's office is in the record and that it states that the Sheriff was able to serve your spouse either domiciliary or personally. If the service was "due and diligent", it means that the Sheriff's office was not able to make service on your spouse. You will have to request service again.

If you had your spouse fill out a waiver of service form, you need to make sure the waiver form has been filed into the record with the Clerk of Court's office.

Finally, check to see if your spouse filed a written answer or other pleading into the record about your divorce. If your spouse or his/her attorney filed an answer, then proceed to Option 2 under Step 5 and file your Motion to Set for Trial. If your spouse or his/her attorney filed another type of pleading or the attorney contacted you in writing, you must send a Notice of Intent to Seek Default Judgment. You must send the notice certified mail. Keep a copy for yourself and when your green card is returned indicating that the letter was received, you may file your Motion to Obtain Default Judgment as explained in Step 5, Option 1 below. You should file a copy of the notice and the green card into the record with the Clerk of Court.

STEP FIVE: MOTIONS

Depending on the information you found out in Step 4, you may have to file a Motion to Obtain Default Judgment or a Motion and Order to Set Trial. You only need to do one of the following options.

OPTION 1: MOTION TO OBTAIN DEFAULT JUDGMENT: You can use this option if you have already completed Steps 1 through 4 and if your spouse has not filed a written answer with the Clerk of Court's office within 21 days of begin served or signing the waiver of service. If your spouse did file a written answer, you cannot use this option. You have to use Option 2. If there was another type of pleading filed or an attorney contacted you in writing regarding the matter, you must send the certified letter of your intent to seek a default judgment as per the instructions in Step 4, last paragraph.

- Fill out the top part of the Motion to Obtain Default Judgment form completely with your case information. Put your name where it says Petitioner and your spouse's name where it says Defendant. Fill in your docket number and division on the top right.
- Under paragraph 1, fill in the date that you filed your original Petition for Divorce.
- Paragraph 2 asks you to choose between two options for service. Select the first option if you had the Sheriff's office serve your spouse. Select the second option if you had your spouse fill out the waiver form. You will also need to fill in the dates of the service or waiver. If you are unsure of the dates, call the Clerk of Court's office to find out this information. Do not leave this blank.
- Then, sign and write your name, address, and telephone number under where it says "respectfully submitted" so the court knows who filed it and how to contact you.
- The second page is for the court to fill out. Only fill in the caption again but do not write anything in the Order.

After you've filled out the form completely and checked that all the information is correct, you have to file it. Go to the Clerk of Court's office to file this paperwork. Again, it's a good idea to bring 2 copies and get one stamped by the Clerk's office for you to keep. You will have to pay a filing fee, unless you were granted pauper status. The Clerk of Court's office can tell you how much the fees will be.

After you file the Motion to Obtain Default Judgment with the Clerk of Court's office, it will take some time for it to get to the judge's office. Once the judge signs it, the Clerk will return a signed copy to you notifying you of the date to come to court to finalize the divorce.

OPTION 2: MOTION TO SET FOR TRIAL: You must use this option if you have already completed Steps 1 through 4 and your spouse has filed a written answer with the Clerk of Court's office. If your spouse did not file a written answer, it's faster to use Option 1.

- Fill out the top part of the Motion to Set for Trial form completely with your case information. Put your name where it says Petitioner and your spouse's name where it says Defendant. Fill in your docket number and division on the top right.
- The first paragraph asks you to fill in two dates. The first blank space is for the date that you filed your petition with the Clerk of Court's office. The second blank space is for the date that your spouse filed his/her written answer in the Clerk's office. If you are unsure of the dates, call the Clerk of Court's office to find out this information. Do not leave this blank.
- Next, sign and fill in your name, address, telephone number and email address under where it says "Respectfully submitted."
- The next part is for the court to fill out. Do not write anything in this paragraph.

- Finally, write your spouse's name, address, and telephone number under where it says "Please serve." The Sheriff's office will use this information to make service on your spouse and let him/her know about your court date.

After you've filled out the form completely and checked that all the information is correct, you have to file it. Go to the Clerk of Court's office to file this paperwork. Again, it's a good idea to bring 2 copies and get one stamped and returned to you by the Clerk's office. You will have to pay a filing fee, unless you were granted pauper status. The Clerk of Court's office can tell you how much the fees will be.

After you file the motion with the Clerk of Court's office, it will take some time for it to get to the judge's office. Once the judge signs it, you will be sent a signed copy with your court date.

STEP SIX: COMING TO COURT

Once you have your court date scheduled, prepare your judgment of divorce. Fill out the case information at the top of the paper like you did for your other pleadings. Also, make sure to fill in the service information for you and your spouse at the bottom of the page. The Clerk of Court's office will use this information to mail out your official certified copies of the divorce judgment later. You will also need to complete a Divorce Checklist filling in all of the correct dates. The Clerk of Court can help you determine the dates to use.

You will have to file your judgment of divorce and 2 copies with the Clerk of Court's office the morning of your hearing before you go into the courtroom. Also, make sure you have a certified copy of the protective order upon which you are using to obtain the divorce. Once you file the judgment, let the Clerk of Court's office know that you are on your way to court.

Make sure you are present in the courtroom on the day and time that you were given by the court with two witnesses. Get to court early to allow time for traffic, parking, walking to the courthouse, getting through security, and stopping by the Clerk of Court's office to file the judgment.

Go to the courtroom and wait quietly until your case is called. When your case is called, stand up and go forward. The judge will ask you and your witnesses some questions under oath to make sure everything is correct and will request that you submit your certified copy of the protective order. If everything is in order, the judge will grant the divorce and sign the judgment. The court will keep the signed judgment so that it can be processed. You will get a copy of the judgment of divorce in the mail later. Make sure you and your spouse's mailing addresses are written correctly at the bottom of the judgment.

(Petitioner)

NO: _____ DIVISION _____

Versus

23rd JUDICIAL DISTRICT COURT

(Defendant)

PARISH OF _____

STATE OF LOUISIANA

PETITION FOR DIVORCE PURSUANT TO LA CC 103(5)

NOW INTO COURT comes _____, a person of the full age of majority and domiciled in the Parish of _____, State of Louisiana, who respectfully represents:

1.

Made Defendant herein is _____, a person of the full age of majority and domiciled in the Parish of _____, State of _____.

2.

The parties were married on _____ in the Parish/County of _____, in the State of _____. The parties last resided together as spouses in the Parish/County of _____, in the State of _____.

3.

Neither party is an active member of the United States armed forces.

4.

The parties did not contract a covenant marriage.

5.

*(Please select **one** of the following)*

_____ There are no minor children born or adopted of the marriage of the parties, nor is the wife currently pregnant.

_____ The following minor children were born of the marriage or adopted by the parties:

(CHILD'S NAME) (DATE OF BIRTH)

(CHILD'S NAME) (DATE OF BIRTH)

(CHILD'S NAME) (DATE OF BIRTH)

(CHILD'S NAME) (DATE OF BIRTH)

(CHILD'S NAME) (DATE OF BIRTH)

(CHILD'S NAME) (DATE OF BIRTH)

6.

On _____, a protective order or an injunction was issued against the Defendant to protect the Petitioner or a child of one of the spouses from abuse, which was issued in a suit entitled _____ vs. _____, bearing the docket number _____, filed in the _____ Court in _____ County/Parish, State of _____.

7.

Petitioner is entitled to and does desire a divorce under the provisions of Louisiana Civil Code article 103 (5) due to the fact that a protective order or an injunction has been issued against the Defendant to protect the Petitioner or a child of the spouses from abuse.

WHEREFORE Petitioner prays that after all legal delays and due proceedings, this Court issue a Judgment of Divorce in accordance with the provisions of Louisiana Civil Code article 103 (5), and for all general and equitable relief.

PETITIONER FURTHER PRAYS that: *(please select one of the following)*

_____ Petitioner be cast with the costs of these proceedings.

_____ Defendant be cast with the costs of these proceedings.

_____ The parties share the costs of these proceedings in equal amounts.

Respectfully submitted:

(SIGNATURE)

(PRINTED FULL NAME)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

_____ DEFENDANT TO ACCEPT SERVICE

OR

_____ PLEASE SERVE:

(DEFENDANT'S FULL NAME)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

VERIFICATION

STATE OF _____

PARISH/COUNTY OF _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in this state and parish, personally appeared:

PETITIONER'S NAME

who after being duly sworn, did depose and state that he/she is the Petitioner in the above and foregoing numbered and entitled cause, that he/she has read the same, and that all of the allegations contained therein are true and correct to the best of his/her knowledge, information, and belief.

PETITIONER'S SIGNATURE

SWORN TO AND SUBSCRIBED before me this _____ day of _____,
20_____, at _____.

NOTARY PUBLIC

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

ACCEPTANCE OF SERVICE AND WAIVER OF CITATION AND SERVICE

STATE OF _____

PARISH/COUNTY OF _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in this state and parish, personally appeared:

DEFENDANT'S NAME

who after being duly sworn, did depose and state that he/she is the Defendant in the above and foregoing numbered and entitled cause and that:

He/she acknowledges and accepts receipt of a certified copy of the Petition for Divorce in the above numbered and entitled cause;

He/she expressly waives the issuance of formal citation, service of process, notice of trial, and appearance at trial; and

He/she acknowledges that by signing this waiver, Petitioner will be able to go forward with the divorce in the Defendant's absence.

DEFENDANT'S SIGNATURE

SWORN TO AND SUBSCRIBED before me this _____ day of _____ ,
20____, in _____, Louisiana.

NOTARY PUBLIC

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

MOTION TO OBTAIN DEFAULT JUDGMENT

NOW INTO COURT comes, _____ a person of the full age of majority and domiciled in the Parish of _____, State of _____ who respectfully represents:

1.

Defendant herein was personally served with the petition for divorce, based on Civil Code Article 103(5) in the above-captioned matter on _____. OR Defendant executed a waiver of service of the petition for divorce, based on Civil Code Article 103(5), in the above-captioned matter, which was filed in the suit record on _____.

2.

Defendant has not filed an answer or other pleading nor has defendant or any attorney contacted petitioner or submitted anything in writing to the petitioner. (No 7 day notice required.)

3.

More than 21 days have passed since Defendant was served or waiver of service was filed and Petitioner is now ready to appear in open court as required by Local Rule 28.0.

WHEREFORE petitioner prays that this matter be set on the court's docket for presentation of testimony and evidence and that thereafter a default judgment of divorce pursuant to Civil Code Article 103(5) be granted.

Respectfully submitted:

(SIGNATURE)

(PRINTED FULL NAME)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

ORDER

Considering Petitioner's request for default judgment of divorce pursuant to Louisiana Civil Code Article 103(5) and that pursuant to Appendix 28 of the Uniform District Court Rules as they pertain to the 23rd Judicial District Court wherein it states that individuals representing themselves must appear in open court to obtain a divorce,

IT IS ORDERED that _____, along with **two independent witnesses**, appear in person at the courthouse in Gonzales, Louisiana on the _____ day of _____, 20____, at 9:00a.m. to confirm the divorce. This matter will be heard in front of the hearing officer in Courtroom 3C.

IT IS FURTHER ORDERED that prior to the hearing, _____ shall file a proposed judgment and completed 103(1) Divorce Checklist with the Clerk of Court.

IT IS FURTHER ORDERED that _____ bear any costs associated with this filing.

THUS DONE AND SIGNED on this _____ day of _____, 20 _____, at Gonzales, Louisiana.

**THE HONORABLE PATRICIA DOUGLAS
HEARING OFFICER, 23RD JDC**

NO SERVICE REQUIRED

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

MOTION AND ORDER TO SET TRIAL

NOW INTO COURT comes the Petitioner, who, on suggesting to this Court that Petitioner filed a Petition for Divorce on _____, 20____ and that Defendant filed an Answer to the said petition _____, 20____, moves this Court for an order setting the matter of the divorce for trial.

WHEREFORE Mover prays that this Court will set this matter for trial on the matter of the divorce.

Respectfully submitted,

(SIGNATURE)

(PRINTED FULL NAME)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

Considering the above and foregoing Motion:

IT IS ORDERED that this matter is set for trial for divorce at ____ o'clock a.m. on the ____ day of _____, 20____, in accordance with the law and the rules of this Court. This matter will be heard in front of the hearing officer in Courtroom 3C.

IT IS FURTHER ORDERED that prior to the hearing, _____ shall file a proposed judgment and completed 103(1) Divorce Checklist with the Clerk of Court.

THUS DONE AND SIGNED on this ____ day of _____, 20____, at Gonzales, Louisiana.

**THE HONORABLE PATRICIA DOUGLAS
HEARING OFFICER, 23RD JDC**

PLEASE SERVE:

(DEFENDANT'S FULL NAME)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

(Petitioner)

Versus

(Defendant)

NO: _____ DIVISION _____

23rd JUDICIAL DISTRICT COURT

PARISH OF _____

STATE OF LOUISIANA

JUDGMENT OF DIVORCE

THIS MATTER came before the Court pursuant to regular assignment. The Court, considering the entire record, the testimony of the witnesses, and finding the law and evidence to be in favor thereof, ruled as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that a divorce *a vinculo matrimonii* is hereby granted, dissolving forever the bonds of matrimony heretofore existing between the parties in accordance with Louisiana Civil Code article 103 (5), on the basis that a protective order or an injunction has been issued during their marriage against the Defendant to protect the Petitioner or a child of the spouses from abuse.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to Louisiana Code of Civil Procedure Article 3947, at her option the petitioner/defendant is allowed to resume the use of her maiden name which is _____.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that costs of court in this matter are assessed against _____.

JUDGMENT RENDERED AND SIGNED on this _____ day of _____, 20____, at _____, Louisiana.

JUDGE, 23rd JUDICIAL DISTRICT COURT

PLEASE SEND NOTICE TO:

(PETITIONER'S FULL NAME)

(DEFENDANT'S FULL NAME)

(STREET ADDRESS)

(STREET ADDRESS)

(CITY/STATE/ZIP CODE)

(CITY/STATE/ZIP CODE)

(TELEPHONE NUMBER)

(TELEPHONE NUMBER)

23rd JUDICIAL DISTRICT COURT
APPENDIX 28.1C: LA. C.C.P. ART. 1702(F) DIVORCE CHECKLIST
LOUISIANA CIVIL CODE ARTICLE 103(1) OR ARTICLE 103(5) DIVORCE

FOR PRO SE ONLY

Note: Must be completed by Petitioner and submitted/filed with the Judgment of Divorce.

_____ Petitioner VERSUS _____ Defendant	NUMBER _____ DIV “__” 23RD JUDICIAL DISTRICT COURT PARISH OF ASCENSION STATE OF LOUISIANA
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- Date the parties were married: _____
- The requisite period of time to live separate and apart (*select one*):
 ____ 180 days- there are no minor children of the marriage
 ____ 365 days- there are minor children of the marriage
- For La. C.C. art. 103 (1): date the parties began living separate and apart: _____
- For La. C.C. art. 103 (5): date that a protective order or injunction was issued against the defendant to protect the petitioner or a child of one of the spouses from abuse: _____
- Date the petition was filed: _____
- Service / waiver (*select one*):
 ____ Personal / domiciliary service on: _____
 ____ Waiver was executed on: _____ and filed on: _____
 ____ Long arm service delivery on: _____ and affidavit filed: _____
- Did the defendant make an appearance in the case or was petitioner contacted by an attorney in writing concerning the action after it was filed: **Yes/No** (If yes, see subpart below)

 If the defendant made an appearance in the case or petitioner was contacted by an attorney in writing, was notice of the default judgment sent to the attorney or defendant by certified mail at least 7 days before the default judgment? **Yes/ No** (If yes, you must file your proof of certified mailing pursuant to La.C.C.P. Art. 1702A)
- If this is a divorce under La. C.C. 103(1), have 2 days passed since defendant’s waiver was filed? **Yes/ No**
- If this is a divorce under La. C.C. 103(5), have 21 days passed since service/waiver of service? **Yes/ No**
- If this is a divorce under La. C.C. 103(5), has the petitioner filed a certified copy of the protective order into the record? **Yes/No**
- Petitioner has 2 witnesses to appear in open court to testify. **Yes/ No**
- Petitioner has filed the original and not less than one copy of the proposed default judgment. **Yes/ No**

CERTIFICATION OF PETITIONER

I certify that the information I have provided above is correct after an examination of the record.

_____ SIGNATURE	_____ DATE
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CERTIFICATION OF MINUTE CLERK

I certify that after examining the record, no answer or opposition has been filed in the proceeding.

_____ MINUTE CLERK SIGNATURE	_____ DATE
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