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*How to Do Your Own*  
***Divorce in California***  
*in 2010*

EVERYTHING YOU NEED for an UNCONTESTED DIVORCE  
of a Marriage or a Domestic Partnership

**A GUIDE FOR PETITIONERS AND RESPONDENTS**

- **INCLUDES A CD WITH FORMS AND RESOURCES**
- Californians have saved BILLIONS by doing their own divorces.  
We show you how—step by step!



*This is a book you can talk to.  
Divorce Helpline service available.*

**ED SHERMAN**

Divorce Specialist Attorney

33<sup>RD</sup> EDITION | UPDATED TO JANUARY 2010 and constantly on our website



Welcome . . . and congratulations!

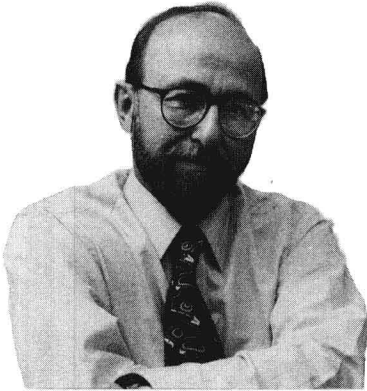
Congratulations? For what? Well, studies show that the single most important factor in a divorce is starting off with the right information. The fact that you are reading my book shows you have a desire to know and participate that will lead you to successful solutions. You are definitely on the right path.

My life's work has been to develop ways to help people take some control when going through a divorce—one of life's toughest passages. Divorce is hard enough without having to struggle against a legal system that tends to make things worse instead of better. If you follow my advice, you won't have to go through that.

**Divorce Helpline.** After 30 years of producing materials to help people help themselves, the next step was to reinvent the practice of law. My goal was to develop a way for lawyers to help people in a way that would be effective and affordable; a practice that would solve problems, not cause them. So in 1989, Sherman, Williams & Lober was formed and Divorce Helpline was born. Over time, we grew and recently have become Sherman, Naraghi, Woodcock & Pappas, with more talent and energy than ever to bring you the best and most effective service in California (or anywhere).

Many people can get through a divorce without any help outside the covers of my books—and well over a million people have done so. The books are as complete as I know how to make them without becoming cumbersome, but books can't replace years of experience. People with some resources to protect will find that doing their own divorce with the help of an experienced Divorce Helpline attorney can save money and bring peace of mind. This is just one more tool we have invented to help you help yourself. You get to choose what works best for you.

**This is a book you can talk to.** If you have questions to ask or problems to solve, or if you want a friendly, reliable attorney to act as your coach or “just do it” for you, call Divorce Helpline. Tell them Ed Sherman sent you.



Doing your own divorce doesn't mean that you can't get help.

The important thing is that you keep control of your own case. We created Divorce Helpline to provide legal support and practical advice for people doing their own divorces. When you use Divorce Helpline, you are still doing your own divorce, because the control of your case and your life stays in your hands, where it belongs.

At Divorce Helpline we are expert at helping you solve problems, settle issues, negotiate agreements and get through your divorce in the best way possible. We do not take cases to court; instead we use discussion, negotiation, mediation, collaborative divorce and arbitration. Our highly experienced, top-quality attorneys have helped over 60,000 people since 1990, so we can almost certainly help you.

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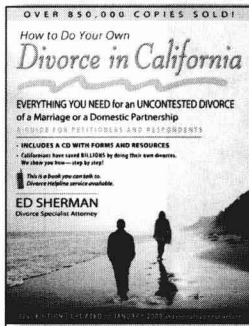
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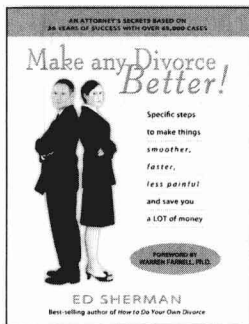
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*Start any case and finish it if no opposition in court*

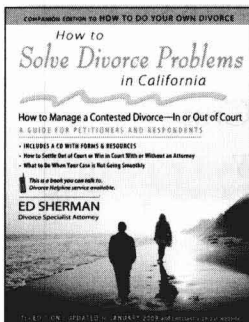
## HOW TO DO YOUR OWN DIVORCE

This is the book you use to start any case. It is the only book you'll need if your spouse doesn't oppose you in court. Could be long gone, doesn't care, or you two can settle divorce issues peacefully. Explains the law, provides advice and step-by-step instructions with a sample agreement and all the forms you'll need to complete a peaceful divorce.



*For cases that aren't going smoothly (or might not)*

This is the book you use to keep easy cases easy, or turn difficult cases into easier ones. Shows you specific steps you can take to reduce upset, insecurity and conflict, and to protect children. How to talk to your Ex, how to negotiate, how to organize your facts, documents and your thinking. This is the newer, better version of the famous, award-winning *Divorce Solutions*. CD with worksheets included.



*For cases that seem headed for court*

## HOW TO SOLVE DIVORCE PROBLEMS—In or Out of Court

This great book shows you how to get the information you need from your Ex, how to defend against legal action or take your own case to court if you need to go there. Or, if you *want* an attorney to take over your case, how to choose and supervise one and know if your case is being handled competently, and how to fire an attorney who is not giving good service. Includes free Bonus CD full of forms and resources to help make your job easier.

To use *Solve Divorce Problems*, you also need *How to Do Your Own Divorce*. For cases in court, they work together. So for convenience, in the text of both books we sometimes refer to *DYOD* as Book 1 and *SDP* as Book 2.

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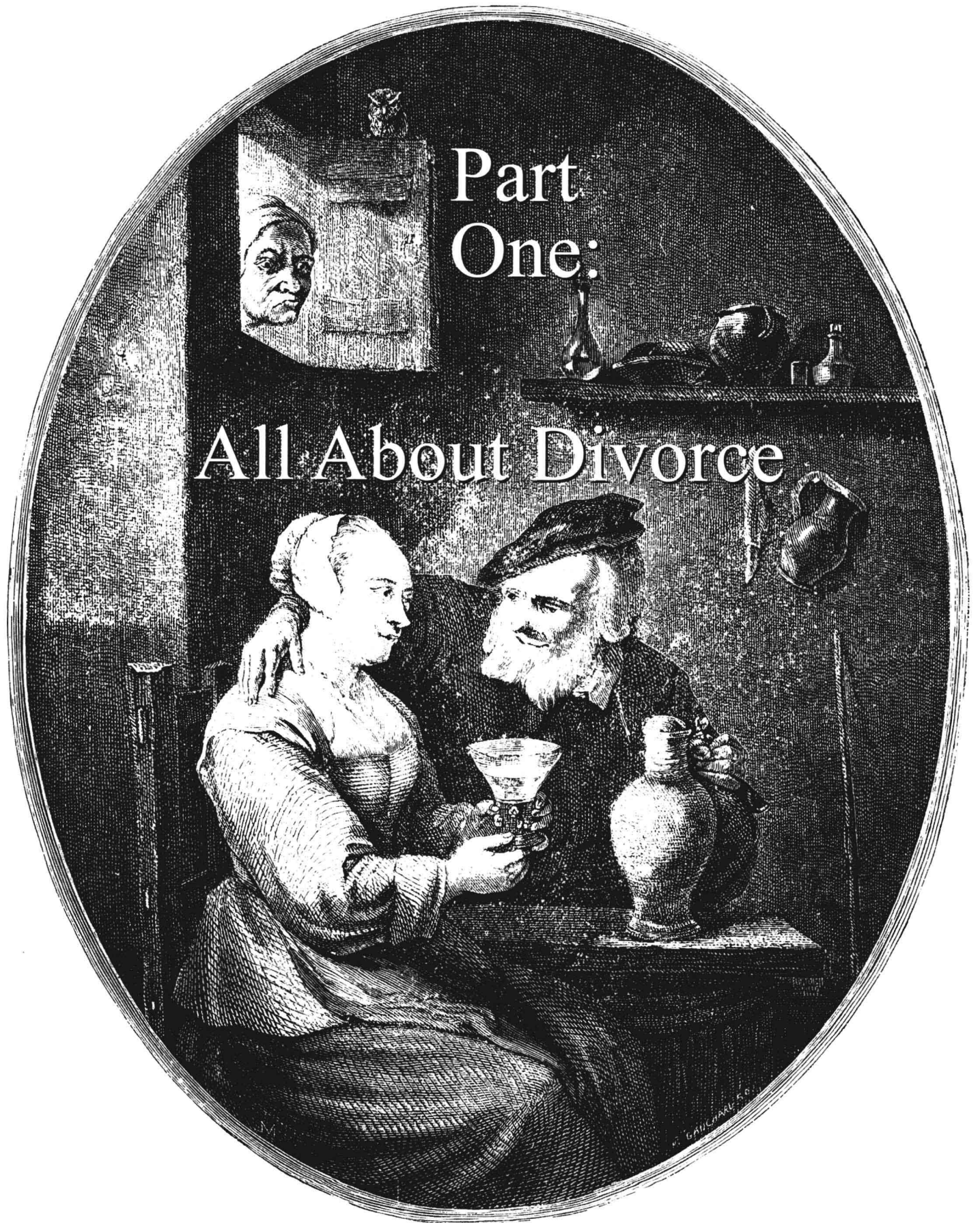
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**CD** with forms, worksheets, links, more . . . **Inside back cover**

Part  
One:

All About Divorce



G. GAUCHEL F. G.



*This book is dedicated  
to all of my clients  
and to my ex-wife,  
from whom I learned so much  
about the subjects in these pages.*

•

*Thanks to my partners at Divorce Helpline  
who helped improve this book, and to  
Hamid Naraghi for suggesting a new format.*

# 1

## DOING YOUR OWN DIVORCE

You might not know it, but you are going through two divorces at the same time—your Real Divorce and your Legal Divorce. This book is about getting yourself through the legal divorce with little or no involvement with courts and lawyers. It explains California divorce laws with practical advice to help you make decisions, and shows you exactly how to do the paperwork to get your divorce or find someone to do it for you inexpensively.

**The real divorce** is your life, your relationships with your Ex, family, friends, and yourself. It's what you go through in practical, emotional and spiritual terms. The real divorce is about breaking old patterns, finding a new center for your life and doing your best with the hand you've been dealt. These matters are not assisted or addressed in any way by the legal divorce.

**The legal divorce** cares only about how you will divide marital property and debts, whether there will be spousal support, and how you will arrange parenting and child support if you have minor children. If you can settle these matters out of court, there's nothing left but paperwork and red tape to get your judgment.

If you have trouble agreeing on terms, the problem is almost never legal, but almost always about personalities and emotional upset, for which there is absolutely no help and no solutions—zip, zero, nothing—in court or in a lawyer's office. In fact, getting involved with lawyers and courts almost always makes things worse—much worse. If you follow my advice, you'll avoid the traps and pitfalls of the legal system, and things will get much better much sooner.

### 1.1 Can you do your own divorce? Should you?

**Yes! You can!** Since this book was first published in 1971, *millions* of Californians just like you have used it to do their divorces without retaining lawyers, so you can almost certainly do it, too. Over 60% of California's divorces are now done without either side being represented by an attorney, saving California families between 500 *million* and a *billion* dollars *every year* in unnecessary legal fees. This book can save you thousands of dollars!

**Yes! You should do your own divorce!** Taking charge of your own case leads to a smoother, faster, less painful, and less expensive experience. Most people would be better off if they reduced or eliminated their use of attorneys, because the legal process and the way attorneys work in it tends to cause trouble, raise the level of conflict, and greatly increase your expense. While you might decide to get advice from a family law attorney who primarily practices mediation or collaborative law, you should not *retain* an attorney to “take your case” unless you have an unavoidable need for doing so. In section 1.8 below, I explain when you should get help and how to get the right kind of help from an attorney without *retaining* the attorney to take over your case.

**What if things don’t go smoothly—easy and difficult cases.** If your spouse will not oppose you in court because he/she is gone, doesn’t care, or you expect no trouble agreeing on terms, then you only need some paperwork to get your divorce done, and this is the only book you’ll need. However, if you have trouble agreeing on divorce terms (or think you will), or if you prefer to have a professional stand with you and take an active role in negotiating for you, or if your case seems headed for court, you can still do your own divorce, and this book is an important place to start, but you will need more help. Solving divorce problems is discussed below in section 1.7 and getting the right help is discussed in section 1.9.

## 1.2 What “do your own divorce” means

Doing your own paperwork is not the important part—the essence of it is thinking things through and making informed decisions. It means that you take responsibility for your case, your decisions, your life. You find out what the rules are and how they apply to your case. You explore all options, then decide what you want and how you want to go about it. If you use an attorney, *you* make all the decisions and control how your case is run. If your spouse is in the picture and cares what happens, doing your own divorce means having detailed discussions—perhaps with help—to reach a thoroughly negotiated agreement.

Above all, doing your own divorce means that you do not *retain* an attorney (section 1.3). No one should *retain* an attorney unless they have an emergency situation like those discussed in section 1.8, but that doesn’t mean you can’t get advice and help from an attorney if you feel the need (section 1.9).

Many people find it difficult to think things through carefully and make decisions about their divorce, and they are *extremely* nervous about discussing divorce details

with their Ex. This is completely understandable, but it is something you need to do if you don't want to become a victim of divorce. If you want it, you can get help from an attorney-mediator or a collaborative law attorney (section 1.9) to help you think things through, talk to your spouse, and work out an agreement.

### 1.3 What it means to “retain” an attorney—and a better idea

It's okay to use an attorney, but most people should not *retain* one in their divorce unless there is a clear reason for doing so. Here's why.

When you *retain* an attorney, you sign a “retainer agreement” where the attorney takes professional responsibility to act in your behalf—to represent you. You are *literally* handing over your power and authority to act. Standards of professional conduct require any attorney who represents you—even one with good intentions—to act in ways that will complicate your case and make it worse instead of better. Attorneys typically start cases in court quickly, even when that is likely to cause upset and make settlement more difficult.

An attorney who represents you must go to great lengths to protect himself against later malpractice claims by his own client—you. This means doing things for the attorney's benefit instead of yours. California's leading family law authority advises attorneys to either get clients to waive the attorney's responsibility or else “do the absolute maximum” in every case. Doing the maximum may or may not help you, but it will certainly raise the level of conflict, and it will cost plenty.

Never forget that when you *retain* an attorney, the more trouble you have, the more money the attorney makes. That's hardly an incentive to keep things simple.

Our system of justice is known as “the adversary system.” It began in the Middle Ages, when trial by combat meant a battle and whoever survived was right, and that approach to justice forms the basis of our legal system today. The attorney works in our system as a combatant, but that is not what you want for solving family and personal problems.

It would be nice if you could get help from an experienced attorney with a good attitude who does not want to be retained, but few attorneys will take an interest in your case unless you retain them. That's why we created Divorce Helpline, operated by Sherman, Naraghi, Woodcock & Pipersky. This is the only law firm we know of that works exclusively on divorce settlement. Instead of “taking” your case, we

serve as your guide and assistant. When you use Divorce Helpline, you are still doing your own divorce because the responsibility and control of the case stays in your hands. We guide you, help resolve problems, and handle the red tape and paperwork, but your case doesn't get out of control because *you* are in charge.

## **1.4 Advantages to doing your own divorce**

### **Getting a good divorce**

Studies show that active participation in your divorce is the single most important factor in getting a good divorce. "Good divorce" means such things as better compliance with agreements and orders after the divorce, less post-divorce conflict, less post-divorce litigation, more good will, and better co-parenting.

People who take an active role generally do much better emotionally and legally than those who try to avoid the responsibility for solving their divorce problems. This doesn't mean you shouldn't get help from an attorney or mediator—it means you should be actively involved, become informed about the rules, and make your own decisions. Be in charge of your case and your life.

### **It's much cheaper**

A huge advantage to doing your own divorce, even with the help of Divorce Helpline, is the savings in cost. When an attorney takes your case, the initial retainer could be anywhere from \$750 to \$5,000, but the retainer is only the beginning. The average cost of a divorce is about \$20,000 *for each party*, but that's only because the average couple has no more than that to spend. If you have more, it will cost more—much more. Depending on the size of your estate, a contested case can cost many tens or hundreds of thousands of dollars *on each side!*

### **Keeping it simple**

Most people start off with a case that is either fairly simple or one that could probably become simple if handled right. Such cases don't usually stay simple after an attorney is retained. Divorces tend to be fairly sensitive, so it doesn't take much to stir them up, but lawyers and the legal system tend to make things more complicated, more stirred up, worse instead of better. This is because of the way the system works and the way lawyers work in it.

When one spouse or partner gets an attorney, the other is likely to get one too, and then the fun really begins. Two attorneys start off costing just double, but pretty

soon they are writing unpleasant letters, filing motions, and doing attorney-type things as a matter of routine that may not be helpful. Now we have a contested case, more fees and charges, and a couple of very upset and broke spouses.

In the end, you will still have to negotiate a settlement with your Ex. Over 90% of all cases settle without trial, but when attorneys are retained, settlement usually comes after the parties are emotionally depleted and their bank accounts exhausted. Why go through all that?

The moral of this story is this: don't *retain* an attorney unless you absolutely must (section 1.8). If you do it entirely yourself, or with the help of Divorce Helpline, you have a much better chance of keeping a simple case simple and of reaching a settlement much earlier.

## 1.5 How to start a divorce—Petitioners and Respondents

**The Petitioner and the Respondent.** Every divorce starts with a Petition. The Petitioner is the person who first files papers and gets the case started. The Respondent is the other party. A Response need not be filed, but it is a good idea, otherwise the inactive person has little say about when or how the divorce is completed, unless there is already a written agreement. In general, the more both parties participate, the better. After a Response is filed, the divorce can be completed only by written agreement or court trial. Agreement is better.

**Equality.** Once a Response is filed, Respondent has equal standing and there is no legal difference between the parties or their rights, and either party can take any available legal step. Where instructions in this book indicate “Petitioner,” Respondent can substitute “Respondent” and take the same action.

**The Petition.** To get your case started, you file a Petition and serve it on your spouse or partner. The only thing you need to know before you do this is that you want to start a divorce. The issues can all be sorted out and resolved later. On the other hand, it wouldn't hurt to read through Part One before you start.

### **Advantages to serving the Petition:**

- Starts the clock ticking on waiting periods.
- Causes automatic restraining orders to take effect.
- Helps establish the date of separation.
- Has psychological value for Petitioner and tells Respondent a divorce is really going to happen.



**Possible downside.** Serving papers can upset the Respondent and stir up conflict if you don't properly prepare the Respondent ahead of time.

**Getting a smooth start.** Unless your Ex is an abuser/controller, you will probably want to start things off as nicely as possible. An abrupt start will probably increase conflict as an upset spouse is more likely to run to an attorney who will probably make your case more complicated. So take some time to prepare your Ex and let him/her get used to the idea that a divorce is about to start. If you aren't comfortable discussing things in person, write a nice letter. Let your spouse know you are committed to working out a settlement that you can both agree to and live with. Unless you are under time pressure, don't serve your Summons and Petition until your partner seems ready to receive the papers calmly.

**The Response.** A Response *should* be filed within 30 days of receiving the Summons and Petition, but *can* be filed any time before Petitioner declares the Respondent's default (chapter 17). Filing a Response is not an aggressive act. In fact, it is usually a good idea for Respondent to take part in the action, especially if you have kids or property or debts to be divided. It is easy to do. The only disadvantages are Respondent's filing fee of about \$320 (chapter 7.3), and the possibility that you might have to file a questionnaire about your case in order to avoid a case conference hearing (last page of chapter 11).

There are numerous advantages to filing a Response. If there's no Response, Respondent has little control over when and how the divorce is completed, so the Respondent feels insecure. By filing, Respondent joins the case on an equal standing with Petitioner, so Respondent feels more a part of the process, more in the loop, more confident. Experience and studies show that the more Respondent participates, the better the divorce outcome is likely to be.

## 1.6 Three ways to get it done

After you file your Petition, there are only three ways you can get your Judgment of Dissolution: (1) by default, (2) by contest, or (3) by written agreement.

### The default divorce

In a default case, Respondent is served with the Petition but does nothing. No Response is filed, so the case is completed by default, without participation by Respondent. Default should be used only if you have little property or debts, no