

Using Divorce Records in Your Family History Research

Rhonda R. McClure, rmcclure@nehgs.org

When it comes to researching our ancestors, we often consider divorce to be a limited option. However, divorce came over on the boat with the Puritans, though a couple couldn't always get a divorce in a particular location. Divorce records and their availability should be investigated if you find your ancestor suddenly living alone, even if they are stating that they are widowed.

Discover

The stigma of divorce carried well into the 20th century. You may find that even though family members knew of a divorce in the family that no one tells you despite your genealogical interest. Records such as marriage applications, death records, census records, and newspapers may reveal the surprise when you least expect it. You may also need to “read between the lines” in records such as city directories where a woman is originally listed just by herself and then in later years is listed as “widow of...”

Tip: Look for statewide indexes.

Unlike present day where a couple can file for divorce in many states without supplying a reason, known as “no fault” divorce, this was not the case in earlier years. As a result, there will be a reason mentioned in the complaint in the Bill of Divorce. Some are easier to handle than others. Abandonment is often seen as a reason for filing for divorce, but there can be other causes, including adultery and cruelty.

Tip: Before searching for the divorce, be prepared to learn the reason for the divorce.

Records

When it comes to divorce records, while they were usually handled on the county level, the court responsible varied from state to state. Divorce, the legal separation of a husband and wife, was adjudicated by one of a variety of civil courts. Some of the courts in which you may find divorce records are:

- Chancery Court
- Circuit Court
- Court of Common Pleas
- District Court
- Family Court
- Law and Equity Court
- Probate Court
- Superior Court

The court that holds jurisdiction of the divorce cases is whatever court is responsible for deciding equity matters for that state.

There are generally two formats to the divorce records:

- Bound volumes – generally the volumes into which the county clerk records the most important aspects of the case, similar to copy books for probate cases. These include indexes, docket books, minutes, orders, and judgements. The orders and judgements may also be recorded in the docket books. These volumes are usually arranged chronologically and may have an index at the front of the volume, or the volumes and pages may be identified in a separate volume.
- Case files – the complete file of all documents submitted, including petitions filed, orders generated, depositions taken, and other papers usually bound together in some format (envelope, file folder, etc.). Similar to probate packets, they usually include much more than what can be found in the bound volumes. (See the glossary for the names and definitions of the different records.)

Note: The case files may describe some unpleasant topics.

Archives

While divorce cases were the responsibility of the county courts, many of the earlier completed cases may have been deposited at the state archive. This is usually the result of a lack of space within the county courthouse itself. Even those that the county courthouse still considers under their control may actually be stored offsite. It is a good idea to do some preparative research before traveling to a courthouse.

The websites for most state archives offer good information about the records they have and how to access them. As a result of the COVID-19 pandemic, many archives have changed how they handle access. You may need to request an appointment rather than simply showing up. These websites also offer finding aids to the archives' directives, collections, and how they handle remote requests should it not be possible for you to physically view a file.

The only way to know the answers to the above is to exhaust all the records in a given county and see where things stand. It is possible deeds were also created in the parent county of where the ancestor was residing when originally identified.

One of the best steps to finding the web address for the archives of the state in which your ancestors resided is to begin by doing a search of Google.com including the name of the state and the words *state archive*.

Once you have located the online site for the state archives, you want to dig around. Most now accommodate family historians by creating a landing page for such research, but even if they have, don't

get complacent and only look there for the records you are seeking—in this case divorce records. Instead, spend some time digging around on their website to see how they have arranged things including:

- Catalogs
- Collections
- Contact information
- Finding Aids
- Record Requests

Usually, before aiming for the state archives, it is a good research approach to see what records the Family History Library has acquired via microfilm or digital camera in the past 70 years by the Genealogical Society of Utah. Many of their microfilmed records are now digitally available from home on their website, FamilySearch.org. Because divorce affected the family, these court records may have been available for photographing over the years.

You may find a few instances where the FamilySearch.org catalog has a subject heading for *Divorce records*, but they are generally listed under the *Court records* subject heading for a county.

If there are divorce records available, you will want to examine those before reaching out to the state archives.

Glossary

Affidavit – a document, written or printed, that is a statement of facts, made voluntarily, that is then confirmed by either an oath or affirmation

Bill – the formal written complaint in the form of a petition

Chancery – equity; the system of jurisprudence dispensed in a court of equity

Defendant – the person, in divorce cases, against whom the divorce is sought

Demurrer – the formal method of disputing the legality of the proceeding rather than the facts stated in the case

Deposition – testimony of a witness that is written and authenticated with the intention of using it in court

Docket – the court's calendar

Equity – the impartial justice between two persons whose rights are in conflict

Libellant – the individual who brings the complaint, in the case of a divorce, the individual making the petition for the bill of divorce (see Plaintiff)

Motion – an application to the court by the parties or their counsel needed to obtain some ruling that has become necessary in the progress of the case

Orator – the plaintiff in a cause in chancery

Oratrix – a female plaintiff in a cause in chancery

Order – a command or direction from the court (in divorce cases this could refer to a command from the court to supply them with a financial statement, for instance)

Plaintiff – the individual who brings the complaint or petition (in divorce cases they may be called plaintiff or libellant)

Præcipe – a writ demanding that the defendant do what he has been told to do or to show a valid reason why he either hasn't done so or can't

Summons – to notify the defendant that a legal action has been filed against him/her

Subpœna – the method of informing a witness, or the defendant in the case of a divorce, that their attendance in court is required at a specific date and time

Writ – a document generated by the court, in the form of a letter, sent to a sheriff, officer of the law, or an individual, of whom the court wishes to command an action; it bears the seal of the court

Suggested Bibliography

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Online Resources

Ancestry <https://ancestry.com/>

FamilySearch.org www.familysearch.org

FamilySearch Catalog www.familysearch.org/search/catalog

FamilySearch Research Wiki www.familysearch.org/en/wiki/Main_Page

Genealogical Publishing Company, Inc. Online Books Subscription Site
<https://genealogical.vitalsource.com/>

Google <https://www.google.com>