

# Law & Order Using Court Records in Your Family History Research

## *Class 4: Other Court Records: Naturalization, Divorce and More*

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### **Naturalization Records**

Since the birth of the United States of America, there have been expectations that new arrivals to the country should show their allegiance to their new land. Over the years, that “show of allegiance” became the naturalization process.

The amount of time between the immigrant’s arrival, their declared intent to become a U.S. citizen, and their petition for U.S. citizenship can lead to research challenges in finding naturalization records for an ancestor. The naturalization process is a three-step system:

- Declaration of Intention (First Papers)
- Application for Naturalization (Second Papers)
- Certificate of Naturalization

Many researchers who find the certificate of naturalization assume they have found the only record that exists. This document gives the least information of the three, however, it may indicate where an immigrant filed the application, which can be valuable for pre-1906 naturalizations.

Prior to 1906, naturalization and the individual steps to citizenship could be done at *any* “court of record.” This includes:

- Municipal courts
- County courts
- State courts
- Federal courts

One of the issues with this period is that an immigrant could file his first and second papers in two different places and then receive his certificate of naturalization at yet another.

The year 1906 is the year when the courts began to forward copies of the naturalizations to the Immigration and Naturalization Service. This division year, while important, often causes genealogists to overlook repositories because they assume the records they want won’t be there.

In fact, many of the State and local court naturalizations have since been deposited in the National Archives and may be available through one of the regional NARA facilities. There are microfilmed indexes to some of these records.

## Repatriation

Repatriation was a method of regaining citizenship in the United States if a man had lost his citizenship. There were a few ways in which he could have lost his U.S. citizenship (perhaps without even realizing it). For many, this happened during World War I, when they went to fight for Canada or England before the United States officially entered the war. When a man takes up arms for another country, he is swearing allegiance to that country and therefore lost his citizenship in the United States.

Of course, if for some reason a man actually applied for citizenship in another country, then he was renouncing his allegiance to the United States. So of course, he would lose his U.S. citizenship. And there were times in history when if a person lived too long in a foreign country, he ran the risk of losing his U.S. citizenship as well.

For those who did lose their citizenship, they could go through the repatriation process. This entailed regaining their citizenship by signing a single document and swearing the oath of allegiance to the United States.

## Women and Naturalization

Women were included under their husband's naturalization until 1922. Prior to 1920, there was little reason for women to become naturalized, as they could not vote. Beginning in 1907, however, a woman could lose her citizenship if she married a man from another country who had not yet naturalized. In 1936, repatriation records may contain dates and places of marriage, divorce and/or death of spouse as repatriation was, at first, only available to women who were widowed or divorced from the alien spouse.

## Divorce Records

The stigma of divorce carried well into the 20th century. You may find that even though family members knew of a divorce, they may not share this information with you despite your genealogical interest. Records such as marriage applications, death records, census, 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 by herself and then is listed as “widow of...” in later years.

*Tip: Look for statewide indexes.*

Unlike today where couples can file for divorce without supplying a reason (a.k.a. “no fault” divorce), this was not the case in the past. 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. Among some of the courts in which you may find divorce records:

- 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 over divorce cases will be the same court that decides equity matters in the state.

There are generally two formats to the divorce records:

- Bound volumes – volumes in 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, orders, depositions, and other papers usually bound together in some format (envelope, file folder, etc.). Like 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 the files still under the control of county courthouse may be stored offsite. Be sure to conduct 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 that deeds were also created in the parent county of where the ancestor was residing when originally identified.

To find the website for a state archives, simply do a Google search including the name of the state and the words *state archive*.

Once you have located the online site for the state archives, spend some time digging around on their website to see how they have arranged their collections. Look for:

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

NOTE: Before aiming for the state archives, see what records are available online at FamilySearch.org. 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, 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* – formal method of disputing the legality of the proceeding rather than the facts 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* – individual who brings the complaint; in the case of a divorce, this is 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* – individual who brings the complaint or petition (plaintiff or libellant in divorce cases)

*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

## Other Records

There are a variety of other records that you may want to look for among court records. These could include adoptions, jury lists, and witness lists.

### Adoption Records

Adoption records are in many respects a rather modern court record. Those that are more contemporary are likely sealed or only accessible to the adopted child once he or she reaches the age of maturity. With that said, if you suspect an adoption somewhere in the latter half of the 1800s or the early 1900s, you will certainly want to see what might be available or open.

Most often these records are found as part of whatever court is responsible for the handling of probate and family. These courts have different names including Orphan's Court, County Court, etc.

If you do find information about a case, it is likely there are two types of files:

- Case file – includes original pages of all papers generated in the case
- Clerk's Copybook – copies of the various pages written into bound volumes for ease of use by the county clerk, usually have copied only the most important pages.

Among the records generated during an adoption, you may find:

- Petitions
- Consents
- Witness statements
- Hearing transcripts
- Decrees
- Orders

### Jury Lists

Serving on a jury is a civic duty and shows your support of the court system in America. Knowing that a case is being heard by the defendant's peers is intended to ensure an impartial outcome. You may find lists of jurors who are identified for a particular case, court, court term, or type of jury. You may also find jury lists in county sheriff reports. There are two different juries a citizen may be called to serve on:

- Grand jury: called to review a case to determine if there is probable cause to issue the indictment (needed to go forward with the trial)
- Petit jury: called to sit and hear a trial and determine guilt or innocence based on evidence and testimony presented at the trial

## Witness Lists

Because trials rely on testimony of eyewitnesses or expert witnesses, you may also discover ancestors among those who were called to give testimony either to a grand jury (to determine if an indictment should be issued) or those who were called for the plaintiff or the defense.

When a list is found for an actual case, thoroughly examine the names to see if there are relatives of the defendants on one or both sides. When the case has to do with the welfare of a family member (non-compos mentos, insanity, etc.) it is more frequent to discover relatives on both sides.

If a case is discovered through a witness book, dig further to see if you can get a copy of the actual trial to see what each of the witnesses said.

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## Online Resources

Ancestry <https://ancestry.com/>

FamilySearch.org [www.familysearch.org](http://www.familysearch.org)

FamilySearch Catalog [www.familysearch.org/search/catalog](http://www.familysearch.org/search/catalog)

FamilySearch Research Wiki [www.familysearch.org/en/wiki/Main\\_Page](http://www.familysearch.org/en/wiki/Main_Page)

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