

Alternative Service CLE:

1. Personal service

- a. Iowa Rule of Civil Procedure 1.305(1)
 - i. Personal service may be made as follows:
 1. A signed, dated acknowledgement of service;
 2. Serving the individual personally; or
 3. Serving a person who is over 18 and resides at the individual's dwelling house or usual place of abode.
- b. Iowa Rule of Civil Procedure 1.305(14)
 - i. "If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law."

2. Service by Publication

- a. Iowa Rule of Civil Procedure 1.310
 - i. First, an affidavit must be filed asserting personal service cannot be had on the adverse party in Iowa
 - ii. Rule 1.310(9) allows service by publication for "dissolution of marriage or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a party who is a nonresident of Iowa or whose residence is unknown"
- b. Rule 1.313: "After the filing of a petition, publication of the original notice shall be made once each week for three consecutive weeks in a newspaper of general circulation published in the county where the petition is filed."

3. Alternative Service

- a. However, in some situations, other alternative methods of service may be necessary.
- b. If service cannot be made by personal service or any other means authorized by rule, the individual may be served as provided by court order consistent with due process of law. Iowa R. Civ. P. 1.305(14)
 - i. Two conditions for alternative service (*See Lucas v. Warhol*, 23 N.W.3d 19, 28 (Iowa 2025)):
 1. A determination that service cannot be made by any methods provided by Rule 1.305
 2. The alternative method must be consistent with due process of law
 - a. "This means the method must be 'reasonably calculated' to bring the notice 'to [the] defendant's

attention and to give him an opportunity to defend the action, if he desires to do so.” (citations omitted)

- ii. So, before seeking alternative service, you will want to make reasonable efforts to effectuate personal service.
 1. In a case against law enforcement officers, the plaintiff requested alternative service by mail or publication after only attempting service through sheriffs in two counties. The court denied the motion for alternative service as the plaintiff could not show service could not be attained by methods provided by Rule 1.305. *Bennett v. Mrstik*, 16 N.W.3d 509, 512, 515-16 (Iowa 2024)
 2. However, “Rule 1.305(14) does not require the plaintiffs to engage in futile efforts ad infinitum merely because there is some metaphysical possibility the plaintiffs might be able to serve the defendants.” *Ackelson v. Manley Toys Ltd.*, 2015 WL 4935560, at *5 (Iowa Ct. App. Aug. 19, 2015)
 3. Unlike when granting an extension to the time for service, the court does not have to make a finding of good cause to grant alternative service. *Bennett v. Mrstik*, 16 N.W.3d 509, 515 (Iowa 2024)
- iii. Reasonable efforts may include hiring the local sheriff or a private process server and messaging the individual by other means to coordinate service
 1. Communications with the individual may include confirming their address for the sheriff or process server to use
 2. And, they may include sending the documents to the individual along with an Acceptance of Service for them to complete and return
- c. However, if you are unable to serve the individual using the sheriff or process server, and the individual will not accept service, then you will need to turn to alternative service
 - i. Means to effectuate alternative service include:
 1. U.S. mail
 - a. “Absent a court order, mailing a copy of an original notice is only adequate notice if required or permitted by a rule or statute.” *Wang v. Baumgartner*, 2019 WL 1055857, at *2 (Iowa Ct. App. Mar. 6, 2019)
 2. E-mail

- a. See *Ortiz v. Loyd Roling Constr.*, 928 N.W.2d 651, 653 (Iowa 2019) which characterizes email as “one of the primary and accepted forms of sending communications in society”
 3. Text Messaging
 4. Social Media (i.e., Facebook messenger)
 - ii. You want to confirm that these methods of communication actually belong to the individual you are trying to serve
 1. This is where your client comes in
 2. They can confirm the phone number or email address actually belongs to the individual
 3. Even better yet is when your client actively uses or has used this method of communication with the individual in the past
 4. Don’t stop at just your client either.
 - a. Other friends or family members may be able to help
 - b. Ask your client if they know anyone else who may have alternative means of communication that your client does not have
 - c. For instance, your client may not be on social media, but perhaps their child, niece, or nephew is and can provide them with the individual’s Facebook
- d. Motion for Alternative Service
 - i. The Motion should detail your attempts at personal service as well as any attempts at communication or service by alternate means
 - ii. It is helpful to include confirmation of other communication through the same method prior to service attempts.
 - iii. If the individual responds or confirms receipt by alternate means, detail the confirmation and attach a copy or screenshot to the Motion
 - iv. It may also be useful to request multiple alternate means (such as U.S. mail, text message, and social media) to better fulfill due process requirements
 - v. Finally, in your Motion, you can request service be backdated to the date of the last communication or when the individual confirmed receipt of the documents
- e. Lastly, Judge McAllister was kind enough to let us know that he is supportive of alternative service.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Upon the Petition of
Petitioner,
and Concerning
Respondent.

Case No.
MOTION FOR
ALTERNATIVE SERVICE

COMES NOW the Petitioner, by and through the undersigned attorney, and for this Motion for Alternative Service, respectfully states the following:

1. Petitioner filed a Petition for Dissolution of Marriage on June 14, 2025, and a Pretrial Conference has been scheduled for September 17, 2025.
2. The 90-day deadline for service is September 12, 2025.
3. Respondent has not participated in the case since the Petition was filed in June 2025.
4. On June 16, 2025, the undersigned mailed copies of the Original Notice, Petition for Dissolution of Marriage, and Family Law Case Requirements Order to the Sheriff Department to effectuate service.
5. From June 23, 2025, to June 29, 2025, the Sheriff Department made four (4) attempts to have Respondent served at her last known address.
6. On July 8, 2025, the Sheriff Department informed the undersigned by telephone that service was unsuccessful and an affidavit documenting service attempts would be provided. See attached Sheriff's Affidavit of Non-Service.
7. On July 21, 2025, the undersigned mailed copies of the Original Notice, Petition for Dissolution of Marriage, and Family Law Case Requirements Order to Process Server to effectuate service.
8. From July 29, 2025, to August 13, 2025, the process server has made four (4) attempts to have Respondent served at her last known address.
9. On August 22, 2025, the process server informed the undersigned by email that service was unsuccessful. See attached Affidavit of Non-Service.
10. On August 11, 2025, the undersigned sent the Original Notice, Petition for Dissolution of Marriage, Family Law Case Requirements, and Acceptance of Service, and a letter

regarding the enclosures to Respondent by both U.S. mail to her last known address and by text message to her phone number. See attached screenshots.

11. On August 20, 2025, Respondent confirmed by text message that she had received the court documents. See attached screenshot.
12. Email and text messaging are reliable means to transmit information in today's world. *See Ortiz v. Loyd Roling Constr.*, 928 N.W.2d 651, 653 (Iowa 2019) (characterizing email as "one of the primary and accepted forms of sending communications in society").
13. In that Petitioner knows of no other residence or employer where he can personally serve Respondent, Petitioner is requesting that he be allowed to serve Respondent with the Petition, Original Notice, and Family Law Case Requirements Order by alternative means using all of the following:
 - a. Text message to Respondent's phone which has been used to communicate with the undersigned;
 - b. Facebook Messenger to Respondent's account provided by Respondent's daughter;
 - c. Email to Respondent's last known email address; and
 - d. U.S. mail to Respondent's last known mailing address.
14. Petitioner requests that the date of Respondent's response, August 20, 2025, be determined as the date of service.
15. In the alternative, if service by these means is not allowed, Petitioner requests that he be given an extension of the 90-day deadline for service.

WHEREFORE, Petitioner prays that the Court provide the relief requested, and for any further relief that is just and equitable under the premises.



GRAB BAG

LAWS AND THINGS YOU 1) DID NOT KNOW, 2) KNEW BUT FORGOT, OR 3) ALREADY KNOW AND LET YOU FEEL SMARTER THAN EVERYONE ELSE!

FUN FACTS ABOUT CHILD SUPPORT

- If non-custodial parent's only source of income is SSI (42 USC 1381a), support should be \$0. Rule 9.4
- Spousal support is added to the payee's income, and deducted from the payor's income, except if it is reimbursement alimony. 9.5(1)
- Imputed income for a party requires a finding of voluntary un/underemployment and substantial injustice if the actual earnings were used. 9.5, 9.11
- Deduction of health insurance cost for other children (not covered by the pending case) is 1/2 of the per person calculation of 9.14(5)(b):
family cost – single cost / # of insureds – parent. 9.5(2)(f)

FUN FACTS ABOUT CHILD SUPPORT

- A parent can object to the health insurance deduction if paid for by a step parent. Then, the court can decide whether to factor it in. 9.14(5)(d)
- If a parent is not covered by Social Security (railroad, police for example), deduct their mandatory pension contributions. 9.5(2)(c).
- If the amount of state or federal taxes actually paid is substantially different than the guideline amount, the court can consider that and adjust support. 9.6(7). Also adjust for other state taxes.
- if neither parent has insurance available to them at a reasonable cost, cash medical should be ordered. 9.12(3).

FUN FACTS ABOUT CHILD SUPPORT

- If the noncustodial parent is not a W2 employee, (does not have income which may be subject to income withholding for collection of cash medical support), cash medical is not ordered and the court shall order the noncustodial parent to provide health care coverage when a health benefit plan becomes available at a reasonable cost, and the order shall specify the amount of the reasonable cost as specified in subsection 3, paragraph “a”, subparagraph (1). § 252E.1A

GROSS INCOME ON THE W2

- Use the right box on the W2
 - Box 1- has the 401k, health insurance and other deductions considered
 - Box 3 – Ok to use if they are not above the SS threshold (\$176,100 this year, \$184,500 next year)
 - Box 5 – Use this, as it is a full accounting of gross wages

a. Employee's Social Security Number *****		OMB No. 1545-0008									
b. Employer's Identification Number (EIN) 31-1575142		d. Control number		1 Wages, Tips, and other compensation 45614.07	2 Federal Income Tax withheld 3837.77						
c. Employer's Name, Address, and ZIP Code DEFENSE FINANCE & ACTG SERV ROOM 1907 1240 E 9TH STREET (OMA) CLEVELAND OH 44199				3 Social Security Wages 46628.21		4 Social Security Tax withheld 2890.95					
				5 Medicare Wages and Tips 46628.21		6 Medicare Tax withheld 676.11					
				7 Social Security tips		8 Allocated Tips					
e/f. Employee's Name, Address, and ZIP Code [REDACTED]				9		10 Dependent Care Benefits					
				12 See instructions for box 12 AA 1014.14 DD 9300.95 D 1014.14		14 See instructions for box 14 V 3182.73					
				13 <input type="checkbox"/> Statutory Employee <input checked="" type="checkbox"/> Retirement Plan <input type="checkbox"/> Third-party sick pay							
				15 State Employer's State ID Number IA 34-0727612001		16 State Wages, Tips, etc 45614.07		17 State Income Tax 1914.59		18 Local wages, tips, etc	
15 State Employer's State ID Number		16 State Wages, Tips, etc		17 State Income Tax		18 Local wages, tips, etc		19 Local Income Tax		20 Locality name	

Employee Reference Copy
W-2 Wage and Tax Statement **2022**
Copy C for employee's records. OMB No. 1545-0008

d Control number 0000001000 V7U	Dept.	Corp. MGH8	Employer use only 51150
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c Employer's name, address, and ZIP code
DEERE PAYROLL SERVICES INC
AGENT FOR:DEERE CREDIT SERVICES
DEERE CREDIT SERVICES 36-3423266
ONE JOHN DEERE PLACE
MOLINE, IL 61265

e/f Employee's name, address, and ZIP code

b Employer's FED ID number 36-2746168	a Employee's SSA number XXX-XX-XXXX
1 Wages, tips, other comp. 186712.44	2 Federal income tax withheld 32116.67
3 Social security wages 147000.00	4 Social security tax withheld 9114.00
5 Medicare wages and tips 199830.49	6 Medicare tax withheld 2897.54
7 Social security tips	8 Allocated tips
9	10 Dependent care benefits
11 Nonqualified plans .92	12a See instructions for box 12 C 783.53
14 Other	12b D 13055.52
	12c W 5200.00
	12d DDI 12769.47
13 Stat emp Ret. plan 3rd party sick pay X	

DISSIPATION OF ASSETS

The “dissipation doctrine” only applies to post-separation spending,

However pre-separation spending will also be considered: “conduct of a spouse which results in the loss or disposal of property which would otherwise be subject to division at the time of the divorce may be considered in making an equitable division of property.” *In Re Marriage of Andersen*, 682 N.W.2d 81 (Iowa Ct. App. 2004); *In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa Ct.App.1997).

DISSIPATION OF ASSETS

- This is also a general factor in the alimony determination:
“Because we consider property division and alimony together in evaluating their individual sufficiency, we may similarly consider dissipation of marital assets by a spouse in determining whether an award of alimony should be made.” *In Re Marriage of Andersen*, 682 N.W.2d 81 (Iowa Ct. App. 2004).
- If the doctrine applies, the dissipated amount is counted as marital property, so reimbursement is for half of the dissipated amount. *In re Brink*, 669 N.W.2d 261 (Iowa Ct. App. 2003). Or, include it in the dissipating party’s column on the balance sheet.

DISSIPATION OF ASSETS

Semi-related issue: when debt may not rise to actual dissipation, you can argue debt was more than reasonable or usual and the other party did not have knowledge of the spending:

While the credit card debt was marital debt, we believe it is equitable to require Delores to assume this liability as the level of debt was incurred without Lyle's knowledge and without his consent. *In re Marriage of Hansen*, 733 N.W.2d 683, 703–04 (Iowa 2007).

ATTORNEY FEES – NOT DEBT

Attorneys' fees incurred in dissolution proceedings are not marital debt. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). The court, however, does have the discretion to make an award of attorneys' fees when equitable. *Id.*

IPERS – REFUND VALUE

- The “refund value” is what the employee has paid in and, if vested, a portion of the employer’s contributions. The employee can take this refund when they leave employment. The amount can be rolled over into an IRA or cashed out and taxed as income.
- Unless the party is going to cash out, the “refund value” should not be used as the value of the pension in the property calculation. If you want to put a value on it, you’d need to calculate the present value (get an expert).

IPERS – DON'T JUST SAY “BENSON”

- If you don't address death benefits in the stipulation, the court does not have jurisdiction to change them later. *In re Marriage of Tekippe*, 898 N.W.2d 203 (Iowa Ct. App. 2017); *In re Marriage of Thatcher*, 864 N.W.2d 533, 538 (Iowa 2015).
- Include language in the Stipulation requiring the participant to elect a specific option for the plan AND the percentage of pre and post-retirement death benefit
- Plan options (1-6): <https://ipers.org/members/nearing-retirement/benefit-payment-options> :

Option 1: Annuity With Fixed Lump-Sum Survivor Benefit	Monthly benefit for life. You specify a death benefit amount, in \$1,000 increments, to be paid in a lump sum to your beneficiary(ies) when you die.	After retirement, you cannot change the death benefit amount. The death benefit amount cannot exceed your total contributions plus interest.	Yes	No
Option 2: Annuity With Variable Decreasing Lump-Sum	Monthly benefit for life. After your death, your beneficiary(ies) receives the difference between the retirement benefits you received and your total contributions plus interest.	A death benefit is not guaranteed.	Maybe	No
Option 3: Single Life Annuity	Monthly benefit for life.	After your death, no death benefit is payable to your beneficiary(ies).	No	No
Option 4: 100%, 75%, 50%, or 25% Joint and Survivor Annuity	Monthly benefit for life. You choose whether your contingent annuitant receives 100%, 75%, 50% or 25% of your monthly retirement benefit after your death. Your retirement benefit payment will not change if your contingent annuitant dies before you die.	Restrictions on percentages apply if your contingent annuitant is not your spouse and is more than 10 years younger than you. You cannot change your contingent annuitant after IPERS has made your first monthly payment.	No	Yes, if your contingent annuitant outlives you.
Option 5: 120-Month Term Certain Annuity	Monthly benefit for life. If you live to receive 120 retirement benefit payments, no death benefit is payable to your beneficiary(ies). If you die before receiving 120 retirement benefit payments, your sole beneficiary receives the same monthly retirement benefit for the remainder of the 120 months, or multiple beneficiaries will receive a lump-sum death benefit.	Must be under age 90 to elect this option.	Maybe. If you name more than one person, a trust or an estate as your beneficiary, payments will be made in a commuted lump sum based on today's value of the remaining monthly payments.	Maybe. A monthly benefit can be paid only if you named one beneficiary and received less than 120 payments.
Option 6: 100%, 75%, 50%, or 25% Joint and Survivor Annuity With Pop-Up Annuity	Monthly benefit for life. You choose whether your contingent annuitant receives 100%, 75%, 50% or 25% of your monthly retirement benefit after your death. If your contingent annuitant dies before you, your benefit pops up to what it would have been under Option 2. You may designate a new beneficiary at that time.	Restrictions on percentages apply if your contingent annuitant is not your spouse and is more than 10 years younger than you. You cannot change your contingent annuitant after IPERS has made the first monthly payment.	Maybe, if your contingent annuitant dies before you and any balance remains of your total contributions plus interest.	Yes, if your contingent annuitant outlives you.

IPERS – RUN THE NUMBERS BEFORE MEDIATION

Option 3 A lifetime monthly benefit of approximately \$6,387.33. This option does not provide a payment after your death.

Option 4 A lifetime monthly benefit for you *and*, after your death, a lifetime monthly benefit for your contingent annuitant (CA), if you die before that person dies. You cannot change your contingent annuitant after you start receiving monthly benefits, even if that person dies before you. You must provide proof of your contingent annuitant's birth date and choose one of the following.

After your death, CA will receive	Your monthly benefit (approx.)	CA's monthly benefit (approx.)
100% of your monthly benefit amount	\$5,805.76	\$5,805.76
75% of your monthly benefit amount	\$5,941.00	\$4,455.75
50% of your monthly benefit amount	\$6,082.68	\$3,041.34
25% of your monthly benefit amount	\$6,231.28	\$1,557.82

Option 6 A lifetime monthly benefit for you *and*, after your death, a lifetime monthly benefit for your contingent annuitant (CA), if you die before that person dies. You cannot change your contingent annuitant after you start receiving monthly benefits, even if that person dies before you. You must provide proof of your contingent annuitant's birth date and choose one of the following.

After your death, CA will receive	Your monthly benefit (approx.)	CA's monthly benefit (approx.)
100% of your monthly benefit amount	\$5,700.35	\$5,700.35
75% of your monthly benefit amount	\$5,857.86	\$4,393.40
50% of your monthly benefit amount	\$6,024.32	\$3,012.16
25% of your monthly benefit amount	\$6,200.52	\$1,550.13

If your contingent annuitant dies before you die, your monthly benefit will increase to the amount you would have received if you had chosen Option 2. You may then designate a new beneficiary for your Option 2 death benefit, if any.

IPERS – RUN THE NUMBERS

- This is helpful for them to know what the impact would be on their monthly benefit amount based on the option they choose. For example, the above monthly payment would only be reduced by about \$300 per month from the no beneficiary option (3) versus the lifetime benefit option (6) with 50% benefit.
- It is best practice to bring a sample QDRO (or the IPERS handbook) to the mediation to make sure you address all of the issues and include them in the stipulation.

QDROs – WHEN DO WE NEED THEM?

- ARE required for pensions – use Benson
- ARE required for 401ks, 403b, etc. – don't use Benson
- ARE NOT required for IRAs – the financial institution will have its own form for this transfer

QDROs – ADDRESS ALL THE ISSUES

- Death benefits (pre and post-death)
- Access to information about benefits, payout, etc.
- Costs – who will prepare the QDRO? How will the other fees be paid? They can be steep:

E.g. cost for QDRO at Principal:

The review time spent on this DRO was 2.20 hours. The review charge of \$484 along with the QDRO Processing Fee of \$350 will be split between you and the participant and will be deducted from the respective account balances.

AVOID THE 10% PENALTY

- If your client is not the recipient of a retirement plan using a QDRO - avoid it altogether by taking a loan against the 401k
- Cash out after a QDRO – but, check with the financial institution about their rules: How soon after? Can you withdraw more than once to avoid the tax hit in one year?
- Other exceptions to 10% penalty: <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-exceptions-to-tax-on-early-distributions>

Other exceptions to 10% penalty:

Domestic abuse victim distribution	to a victim of domestic abuse by a spouse or domestic partner, up to the lesser of \$10,000 or 50% of account (distributions made after 12/31/2023)
Emergency personal expense	one distribution per calendar year for personal or family emergency expenses, up to the lesser of \$1,000 or vested account balance over \$1,000 (made after 12/31/2023)

Other exceptions to 10% penalty:

- Hardship withdrawal. The IRS considers immediate and heavy financial need for hardship withdrawal: medical expenses, the prevention of foreclosure or eviction, tuition payments, funeral expenses, costs (excluding mortgage payments) related to purchase and repair of primary residence, and expenses and losses resulting from a federal declaration of disaster, subject to certain conditions.
- More information: <https://www.fidelity.com/viewpoints/financial-basics/taking-money-from-401k>

ONE LAST THING TO CHECK

- If parties do not have a mortgage that is collecting/paying property tax, dig into the assessor's page regarding tax payments – this will show if they are behind or if the house has gone to tax sale

Select Area

Parcel Information				
Parcel/Geoparcel Number		812506200005	Class	Status
		Active	Ag Dwelling	
Parcel Flag				
Year	Tax Sale Cert Number	Affidavit Date	Last Date to Redeem	Deed Limitation Date
2023	2025-0599			
This parcel has an unredeemed tax sale...				
Physical Address 12808 NW 166TH AVE MADRID IA 50156-7492				
Mailing Address HOWARD, MIKE 12808 NW 166TH AVE MADRID IA 50156-7492				
Legal Description				
PARCEL D BK 12681 PG 113 BEG NE COR THN S 799.2F W 1444.24F N 799.16F E 1443.16F TO POB NE FRL 1/4 LESS 2.22A RD SEC 6-81-25				
		Legal Party	HOWARD, MIKE	
		Description		Role
Deed				

Installment Details

Print 

Parcel/Geoparcels Number	Alternate Parcel Number	Class	Status
812506200005	280.00071.002.000	Ag Dwelling	Active

Tax Installment Detail		Bill Number RE791265				2023
Installment	Tax	Fee	Interest	Total	Date	
(1) Original	\$966.00	\$0.00	\$0.00	\$966.00	9/30/2024	
(1) Payments	\$0.00	\$0.00	\$0.00	\$0.00	Pay 	
Total Due	\$966.00	\$0.00	\$0.00	\$966.00		
(2) Original	\$966.00	\$0.00	\$0.00	\$966.00	3/31/2025	
(2) Payments	\$0.00	\$0.00	\$0.00	\$0.00	Pay 	
Total Due	\$966.00	\$0.00	\$0.00	\$966.00		
Tax Installment Detail		Bill Number RE606147				2022
Installment	Tax	Fee	Interest	Total	Date	
(1) Original	\$930.00	\$0.00	\$28.00	\$958.00	9/30/2023	
(1) Payments	\$930.00	\$0.00	\$28.00	\$958.00	⚠ Sold at Tax Sale 	
Total Due	\$0.00	\$0.00	\$0.00	\$0.00		
(2) Original	\$930.00	\$4.00	\$42.00	\$976.00	3/31/2024	
(2) Payments	\$930.00	\$4.00	\$42.00	\$976.00	⚠ Sold at Tax Sale 	