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Locating Illinois Divorce Records from 1809 - 1961

by Eric Willey

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While marriage records are among the easiest sources of genealogical information to locate, the process for finding a divorce record can be much less intuitive. Early Illinois divorces were not recorded by the state, and rarely recorded in their own separate record series even by the counties; however, divorces were recorded as individual legal cases by the courts, and can often provide a great deal of family history. As court cases where a plaintiff was required to show cause, divorce records can provide not just the names of the husband and wife, but the location and date the marriage being dissolved took place (particularly useful for couples married outside of Illinois), the number of children born into the marriage and their names, which spouse received custody of the children, the reason for the divorce, and in cases of abandonment, the location the spouse has moved to if it is known. In cases where real estate was owned, divorce records may also name that property and indicate its disposition. This is of course dependent to a certain extent on the exact nature of the record being consulted and individual practices in record keeping by court officials; however, divorce records are often a valuable source of information for genealogical researchers, providing a rare narrative of events that sometimes cannot be found in other records. The fact that they are legal petitions and therefore fall under the sometimes changing jurisdictions of the judiciary system instead of a separate, discreet record can make them difficult to locate; however, they remain a very worthwhile source of information for research into a family history.

Because of changes in the Illinois judicial system, a divorce proceeding which took place in Illinois between 1809 and 1961 can be contained within the records of one of three broad institutions: the territorial legislature and courts, the Illinois General Assembly, or a court with chancery jurisdiction (generally circuit or county, but sometimes a city court). Except for divorces granted by the territorial legislature and Illinois General Assembly, these records will be found at the county (not state) level. Records of divorces were not maintained at the state level until 1961, when legislation was passed requiring the Illinois Department of Public Health, Office of Vital Records to maintain and index records of the "dissolution of marriage and declaration of invalidity of marriage."¹ Prior to 1961 there were no statewide records of divorce proceedings, and often little to no effort to record divorces in a unique record series at the county or township level.

The majority of genealogical research will likely concern divorces occurring after 1818, but we will begin with a discussion of the earliest divorce proceedings in Illinois. These are the records generated by the territorial legislatures and courts between 1809 and 1818.

The earliest Illinois divorces were granted by the territorial legislature and courts from the dates between the creation of the Illinois Territory on March 1, 1809 through Illinois' admittance as a state on December 3, 1818. While in theory the territorial legislature could grant divorces, an index search of acts by the legislature reveals only one marriage that was dissolved by that

body (for a Mrs. Elizabeth Spriggs in the 1817 - 1818 session, see House Bill 26); therefore, searches of that record series will not be discussed.²

Records of the territorial courts (as opposed to the territorial legislature) may be searched by either requesting a search from the appropriate county clerk's office, or the appropriate Illinois Regional Archives Depository (IRAD). Complete listings of IRAD record series (but not specific individual territorial court cases) and contact information for all IRAD depositories can be viewed online.³ Briefly, at least partial territorial records for Johnson, Pope, Randolph, and St. Clair Counties can be found at the Southern Illinois University (SIU) IRAD. Other records for territorial courts, if they exist, are located at the appropriate county clerk's office; however, the county boundaries have changed significantly since the territorial period, and researchers will need to be aware of this when searching for records.

The most critical factor to remember in researching divorces (and county records in general) from early Illinois is the rapidly changing boundaries of counties at the time. Illinois continued to create new counties through 1859 and divorce records, like all court cases, remain in the files of the county where they took place *at the time those court records were created*. For example, Marion County was not created until 1823. From 1819 - 1823 the area of land now known as Marion County was part of Jefferson County, and divorces from that time period will be filed in Jefferson County, regardless of where they took place according to current county lines.⁴

While these shifting county boundaries can be confusing, clear maps and explanations can be found in the booklet *Origin and Evolution of Illinois Counties*, published by the Illinois Secretary of State. This publication is free, and can be obtained by calling the Illinois Secretary of State, Index Department at (217) 782-7017.

For divorces prior to 1859, researchers with a general sense of where their ancestor lived and an approximate time span for the divorce should locate the county in which it would likely have taken place, and check records for that county first. Counties which did not exist at the time of the divorce can be definitely eliminated as possible sources for court records. While the most radical changes to county boundaries occurred while Illinois was still in its territorial period, new counties were created until 1859 and researchers should bear that in mind when trying to locate documents from before that year.

The territorial period ended when Illinois was admitted as a state on December 3, 1818. From that date through the revision of the Illinois Constitution in 1848, both the Illinois General Assembly and circuit courts could grant divorces. Searching for divorces granted by the Illinois General Assembly is extremely simple, as an index of all divorces granted was published in the *Illinois State Genealogical Society Quarterly*. Researchers can consult the Summer, Fall, and Winter issues from the year 1985 (volume XVII, nos. 2, 3, and 4), and request specific petitions from the Illinois State Archives.⁵ Please bear in mind that a \$10.00 out-of-state requester fee applies to individuals outside the State of Illinois. The General Assembly lost the power to grant divorces when the Illinois Constitution was revised in 1848, and thereafter divorces could only be granted by the courts. Searching for divorce records prior to 1848 from the courts is done by the same process as a search for those records after 1848, and the two will be addressed together in the following paragraphs.

While divorces could only legally be granted by courts with chancery jurisdiction, it is possible for a divorce petition to be filed under either the chancery record, or the general court record. Court records and case files (if they still exist) are held by the appropriate IRAD facility, or the clerk for the county where the divorce took place. While the exact contents will vary from case to case, generally a "court record" is largely

concerned with procedural matters such as the filing of motions and decrees by the court, and only provides an abstract of the case itself. A "court case file" may contain more documents with narration or testimony including affidavits, depositions, declarations, and verdicts.⁶ Generally court cases will contain more information than court records, but the additional information may not necessarily be more relevant to genealogical research (for example, a list of jurors called may be included). Both court records and court case files are valuable sources of information and the court record should not be ignored. Also, remember that county boundaries shifted during part of this time period (specifically through 1859), and an ancestor who lived in a certain county when a later record was generated may have been in a different county when their divorce took place, despite not having changed their physical residence. See *Origin and Evolution of Illinois Counties* for county boundaries by year, as discussed above, if you feel this may be the case, to make certain your search is in the appropriate county records.

While their status as court cases can make divorce records difficult to locate, they can also provide valuable insights into how best to search for divorce records. Divorce records will be filed under the married name of the parties involved and in the county of the plaintiff's court jurisdiction. In cases where the wife filed the complaint, the action will still be filed under her married name. If the petition is successful (that is if the divorce is granted) and occurred after 1874 the court may decree she can return to her maiden name or that of any prior husband.⁷ Subsequent cases might be filed under the woman's maiden or former name (for adjustments of alimony, for example), but the initial divorce case will still be brought under her married name. Although a court could order a change of venue for a particular case, the initial complaint will also be filed in the jurisdiction of the court where the plaintiff resided. This is especially convenient in cases of abandonment,

as a researcher need not locate a spouse who moved to a new location to search for court records. The basic process for searching for divorce records is therefore largely the same as that of searching for any other court record, with the provisions noted above.

Because these were court records and Illinois law required a plaintiff show cause before a divorce could be granted, every *legal* divorce which occurred in Illinois should be contained in a court record (or general assembly petition) somewhere, if those records still exist. This is not to say that a divorce could not have occurred in another state, or that all couples necessarily felt legal recognition of their divorce was necessary. The fact that a plaintiff had to show cause, and there were a limited number of acceptable legal causes for divorce, may have also dictated the timing and circumstances of some divorce petitions. The number of acceptable causes for a divorce changed over time (increasing and becoming more liberal), but drunkenness, extreme cruelty, and abandonment all had to occur repeatedly over a two year period before they became cause for divorce. Historian Stacy Pratt McDermott has noted that a woman unwilling to accept this situation for two years could conceivably leave her spouse, and then wait for their husband to sue her for divorce on grounds of abandonment. While this would place the woman legally at fault for the divorce, being found at fault would not automatically disqualify her from receiving alimony payments or custody of children.⁸

These factors and the highly emotional nature of divorce cases make it even more important than usual that genealogical researchers not necessarily take some of the contents of these records at face value. Still, divorce records can provide valuable objective information such as dates of marriages which occurred outside of the state and the names and ages of children, as well as the more subjective testimony and cause given for a divorce petition. The lack of a separate record for divorces makes them slightly more difficult to find than some other records, but

they are still manageable provided a researcher has some basic information. Divorces granted prior to 1848 can easily be checked in the index of divorces granted by the Illinois General Assembly, and then requested from the Illinois State Archives if found.

If a petition is not listed in the Illinois General Assembly index, then it will have occurred through the court system (researchers should also note that not all divorce petitions were granted, but they should still have generated a court record even if the petition was denied and the marriage was not dissolved by the court). If a researcher knows the county where the plaintiff resided, and bears in mind changing county boundaries for divorces prior to 1859, the court a divorce took place in can be determined. From there it is a relatively simple matter of searching for the names of the parties involved, which is made easier by the wife being recorded under her married name, although after 1874 she may have reverted to her maiden name, or that of a previous husband in subsequent cases. The court record should reflect if this motion was granted, making it easier to search subsequent records. Researchers may have to check multiple courts (circuit, county, and possibly city), and the divorce may be recorded under either the general court proceedings or chancery court proceedings, but a divorce which was legally recognized by the State of Illinois should be found in one of those records at either the appropriate county clerk's office, or through the appropriate Illinois Regional Archives Depository.

This may all seem terribly involved, but researchers should bear in mind that, compared to many early Illinois records, court records were more consistently recorded and on occasion even indexed (especially court records, which were often written in bound volumes as opposed to court cases which were frequently a collection of loose documents), making searching them comparatively easy. The information from a divorce petition can provide invaluable insights into family history, and these records

are certainly worth searching out. The lack of a separate divorce record can make them seem more complicated to locate, but following the steps above should allow a researcher to find the record they are seeking, and greatly complement their existing knowledge of a family's history.

ENDNOTES

1. Illinois General Assembly, *Marriage, Dissolution, and Invalidity Records Act* (Springfield, IL: 1961).
2. Illinois General Assembly Legislative Council, *Journals of the Legislative Council of Illinois Territory: Index*. (Springfield, IL: Illinois State Archives, 1985). Microfiche, 4th Floor Malpass Library, Western Illinois University.
3. Illinois Secretary of State, "Illinois State Archives, Illinois Regional Archives Depository: Local Governmental Records in IRAD," Illinois Secretary of State, <http://www.cyberdriveillinois.com/departments/archives/irad/iradholdings.html> (accessed September 25, 2009).
4. Illinois Secretary of State, *Origin and Evolution of Illinois Counties* (Springfield, IL: State of Illinois, 2003), 39-40.
5. Researchers may submit requests for Illinois General Assembly divorce petitions to:

Illinois State Archives
Reference Unit
Margaret Cross Norton Building
Capitol Complex
Springfield, IL 62756
Telephone: (217) 782-3556
Fax: (217) 524-3930

Requests may be submitted over the internet through the Illinois State Archives website at: http://www.cyberdriveillinois.com/departments/archives/serv_sta.html
6. Illinois Secretary of State, "Illinois State Archives, Illinois Regional Archives Depository: Record Descriptions, County Court," Illinois Secretary of State, http://www.sos.state.il.us/departments/archives/irad/rd_countycourt.html#5.9 (accessed September 25, 2009).
7. Illinois, *Laws of the State of Illinois*, (Blackwell and Berry, 1874), 158. <http://books.google.com/> (accessed September 21, 2009).
8. Stacy Pratt McDermott, "Dissolving the Bonds of Matrimony: Women and Divorce in Sangamon County, Illinois, 1837-1860," in *In Tender Consideration: Women, Families, and the Law in Abraham Lincoln's Illinois* (Champaign, IL: University of Illinois Press, 2006), 78; 98.