

INSTRUCTIONS FOR FILING AN ANSWER AND COUNTERCLAIM FOR DIVORCE WITH MINOR CHILDREN

This packet contains forms for people whose spouse has filed for a divorce against them. The packet is for those who wish to file an *Answer and Counterclaim for Divorce*, and who have minor children together with their spouse. **If you and your spouse do not have minor children together, you should not use this form packet.** Instead, use the shorter and simpler version of this document packet called “*Answer and Counterclaim for Divorce without Minor Children.*”

In the State of Georgia, if a spouse wants to end a marriage, he or she must file a *Complaint for Divorce* in the Superior Court. The Respondent in the case (presumably you) must file an answer to that *Complaint for Divorce*. If the Respondent would also like to request relief from the court, such as custody of the children or child support, he or she must also file a counterclaim.

There are two options available to you for responding to a *Complaint for Divorce*: (1) you can hire a lawyer who will prepare your paperwork and represent you in court, or (2) you can use the forms included in this packet and represent yourself in court. After a court grants your divorce and issues a *Final Judgment and Decree of Divorce*, you will be legally able to remarry.

It is advisable to speak with a lawyer before filing any action with the Court; this divorce is no exception to that rule. There are often more issues involved in a divorce than you might realize if you fail to get legal advice. However, you may want to review the form in this packet before you talk to a lawyer, so that you will be able to make the best use of your time with the lawyer.

YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents your spouse.
- You or your children are victims of family violence against you by your spouse.
- You want a custody or visitation arrangement that does not exactly fit these forms.
- You and your spouse have a house, pension, or large amount of property or income to be divided.
- You think you may have difficulty getting financial information from your spouse.

Whether your case is contested or uncontested, you should speak with a lawyer before signing a *Settlement Agreement* or filing any other documents with the Court.

State law, O.C.G.A. § 15-19-51, prohibits court personnel (including staff attorneys, law clerks, calendar clerks, Clerk’s Office staff, and Sheriff’s Department staff) from giving legal advice or answering legal questions. This rule also applies to the Cobb County Law Library.

Dissolution of a marriage can be a very complicated process. If documents are not completed, signed, notarized and filed as prescribed by law, or the divorce pleadings are not in compliance with the law, a judge cannot grant your request for divorce, and may dismiss your case. If you want a court to grant your divorce and the relief that you have requested, **you must complete each and every paragraph in this packet that applies to your case (but not any paragraph that does not apply to your case).** When you are ready to file your *Answer and Counterclaim for Divorce with Minor*

Children, you must file it with the clerk for the Superior Court of Cobb County and mail a copy to your spouse (or your spouse's attorney if he or she has one).

Please keep in mind that you may need to submit other forms to the Court in addition to this packet either initially or as your case progresses. At a minimum, you are required to submit a *Domestic Relations Financial Affidavit*, a *Child Support Worksheet*, and a *Parenting Plan*. The Cobb County Law Library offers many of these sample forms and documents.

HEARINGS

After you have filed your *Answer and Counterclaim*, you are ready for the next step, which is either a temporary hearing (called a *Rule Nisi*) or the final hearing.

- **Temporary Hearing (Rule Nisi)**

A temporary hearing is not required. However, if your case will not be ready for a final hearing (because you do not have a signed agreement and do not expect to have one soon), there may be issues that need to be decided on a temporary basis before the final hearing. In that situation, you may ask the Court to schedule a *Rule Nisi* temporary hearing. In a divorce with minor children, temporary issues may include child support, custody and visitation with the children, living arrangements, use of an automobile, or who is responsible for certain payments while the divorce is pending.

To schedule a *Rule Nisi* temporary hearing, you should complete a *Rule Nisi* form which has its own separate instructions. If you know you want a temporary hearing when you are getting ready to file your *Answer and Counterclaim for Divorce*, you can copy, sort, and file the *Rule Nisi* form with your other paperwork. You should take the original copy of the *Rule Nisi* and at least one copy to the office of the judge assigned to your case. The judge's staff will schedule a date for the *Rule Nisi* and fill out that part of the *Rule Nisi* form.

- **Final Hearing**

- With a Signed *Settlement Agreement*

If you have a signed *Settlement Agreement*, you may arrange to have the final hearing take place any time at least 31 days after you were personally served (or the *Acknowledgment of Service* was filed with the Clerk). Most of the judges and other court personnel call this type of hearing an "uncontested" divorce hearing. The judges schedule them in different ways. You should check with the staff for the judge assigned to your case to find out how that particular judge schedules these hearings.

- Without a Signed *Settlement Agreement*

If you do not have a signed *Settlement Agreement*, then your final hearing may take place any time at least 46 days after you were personally served (or the *Acknowledgment of Service* was filed with the Clerk). The judges schedule these final hearings in different ways. You should check with the staff for the judge assigned to your case, and make sure you make it clear to them that there is not a signed settlement agreement.

Sometimes the judge's staff will mail notice of the hearing date to both parties. However, to be on the safe side, you should also mail a copy of the hearing notice to the Petitioner. Then, you should file a *Certificate of Service* with the Superior Court Clerk's Office (showing that you mailed or delivered proper notice to the Petitioner).

- Before Hearing Dates

Whether temporary or final, you must prepare your case to be presented to the Court before your hearing dates. You are your main witness. You must also gather other evidence (such as documents and photographs), and you must arrange for any other witnesses that you want to have testify at the hearing. You must also prepare the proper documents to be provided to the judge at (or soon after) the hearing.

For a temporary hearing, you may use *Affidavits* from witnesses, so that they do not have to testify in person. However, there are special procedures for this. See *Uniform Superior Court Rule 24.5*.

At the final hearing, *Affidavits* are not proper evidence. Your witnesses (if any) must testify in person at the hearing.

If you have a Final Divorce Hearing set on a case involving minor children, be sure to bring one of the following to the hearing:

- (c) *Settlement Agreement* – completed, signed, and notarized by both parties. Be sure that the *Settlement Agreement* includes the attached *Parenting Plan*, which is consistent with the provisions for visitation contained in your *Settlement Agreement*.
- (d) *Final Judgment and Decree of Divorce With Minor Children* completed for the judge to review. Be sure to attach a *Parenting Plan* with your *Final Judgment*, which is consistent with the provisions for visitation included in your *Final Judgment and Decree*.

The Cobb County Law Library has materials to help you prepare for the hearings. You should also talk to a lawyer about the hearing to learn more about how to present your case.