

INSTRUCTIONS FOR FILING A COMPLAINT FOR DIVORCE WITH MINOR CHILDREN

GENERAL COMMENTS

This is the form packet for people who want to file their own divorce in Gwinnett County, 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 called *Complaint for Divorce Without Minor Children*.

Please read these instructions and each form very carefully. Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your divorce case in jeopardy.

INTRODUCTION

In the State of Georgia, if you want to end your marriage, you must file a complaint for divorce in the Superior Court. There are two options available to you for filing a divorce case: (1) you can hire an attorney 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 an attorney 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 forms and instructions in this packet before you talk to an attorney, so that you will be able to make the best use of your time with the attorney.

Divorce can be a very complicated process. If documents are not completed, signed, notarized and filed as required by law, 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, **you must follow the law and you must complete each and every paragraph that applies to your case (but not any paragraphs that do not apply to your case).**

Please read and complete the seven (7) steps listed below in order to complete, file and serve your complaint for divorce.

State law, **OCGA § 15-19-51** prohibits court personnel (including staff attorneys or law clerks, calendar clerks, clerk's office staff, and sheriff's department staff) from giving legal advice or answering legal questions. Free consultations with an attorney are available through the Family Law Clinic by appointment only. You may request a consultation by contacting Gwinnett Legal Aid at 678-376-4545.

YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents your spouse.
- Your spouse has been violent to you or your children.

- You want an arrangement for custody or visitation that does not exactly fit these forms.
- You are unable to locate your spouse to have him/her served with this action.
- 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 an attorney before signing a settlement agreement or filing any other documents with the court.

FORMS YOU WILL NEED TO START YOUR DIVORCE:

If this divorce action **may be contested** (you do not have a signed *Settlement Agreement*), you must file the following documents with the *Complaint*. All of these forms are included in this packet or are available from the Family Law Clinic, except the *Sheriff's Entry of Service*. You can get the *Sheriff's Entry of Service* from the Superior Court Clerk's office on the 1st floor of the Gwinnett Justice and Administration Center (where you will be filing your case).

- (a) *Domestic Relations Case Filing Information Form*
- (b) *Complaint for Divorce*
- (c) *Verification*
- (d) *Summons*
- (e) *Domestic Relations Financial Affidavit*
- (f) *Child Support Worksheets and Schedules*
- (g) *Permanent Parenting Plan*
- (h) *Mutual Restraining Order*
- (i) *Parenting Workshop Order*
- (j) *Sheriff's Entry of Service*

OR

Acknowledgment of Service

OR

Publication paperwork, as follows:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication and*
- (3) *Order of Publication, Return of Service, Order Perfecting Service*
- (k) *Notice of Lis Pendens* (only if applicable — see instructions for Paragraph 21 of the *Complaint*)
- (l) *Rule Nisi* (only if you want a hearing on temporary issues)
- (m) *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis* (only if you are indigent and cannot afford to pay the filing & service fees — see list of fees enclosed with this packet)

If this action is **uncontested** (you have a signed *Settlement Agreement*), you must file the following documents with the *Complaint*. All of these forms are included in this packet or are available from the Family Law Clinic.

- (a) *Domestic Relations Case Filing Information Form*
- (b) *Complaint for Divorce*
- (c) *Verification*
- (d) *Summons*
- (e) *Domestic Relations Financial Affidavit*
- (f) *Child Support Worksheets and Schedules*

- (g) *Permanent Parenting Plan*
- (h) *Mutual Restraining Order*
- (i) *Parenting Workshop Order*
- (j) *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* (original signed by Defendant and notary public)
OR
Acknowledgment of Service (original signed by Defendant and notary public)
- (k) *Notice of Lis Pendens* (only if applicable, which is unlikely if you have a signed *Settlement Agreement* — See instructions for Paragraph 9 of the *Complaint*.)
- (l) *Rule Nisi* (only if you want a hearing on temporary issues, which is unlikely if you have a signed *Settlement Agreement*)
- (m) *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis* (only if you are indigent and cannot afford to pay the filing & service fees — see list of fees enclosed with this packet)
- (n) *Settlement Agreement* (signed before notaries by both parties)

FORMS YOU WILL NEED AT THE FINAL HEARING TO FINISH YOUR DIVORCE:

If you do not have a signed *Settlement Agreement*, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Family Law Clinic.

- (a) *Final Judgment and Decree of Divorce With Minor Children (Without Settlement Agreement)*
- (b) *Child Support Addendum*
- (c) *Permanent Parenting Plan Order*
- (d) *Domestic Relations Case Final Disposition Information Form*
- (e) *Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Support Enforcement Case Registry Form*

If you have a signed *Settlement Agreement*, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Family Law Clinic.

- (a) *Final Judgment and Decree of Divorce Incorporating Settlement Agreement*
- (b) *Child Support Addendum*
- (c) *Permanent Parenting Plan Order*
- (d) *Domestic Relations Case Final Disposition Information Form*
- (e) *Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Support Enforcement Case Registry Form*

THE FOLLOWING ARE DETAILED INSTRUCTIONS ON HOW TO COMPLETE AND FILE THIS COMPLAINT FOR DIVORCE WITH MINOR CHILDREN, AS WELL AS SOME OF THE RELATED DOCUMENTS. (Read these instructions carefully and more than once, if necessary.)

Step 1: Completing the Complaint for Divorce

Caption (Heading):

Fill in your full name as the Plaintiff, and your spouse's full name as the Defendant. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your complaint in the**

Clerk's office. After completing the heading, write your full name again in the space provided just before Paragraph 1.

Paragraph 1: Subject Matter Jurisdiction * CHECK ONLY ONE BOX *

- (a) Check box "a" if **you have been a resident of the State** of Georgia for at least six (6) months immediately before filing your complaint for divorce. (It is not good enough if you used to live in Georgia in the past, moved away, and have returned more recently than six months ago.)
- (b) Check box "b" if you are not a resident of the State of Georgia, but your **spouse has been living in Georgia** for at least the past six (6) months. (It is not good enough if your spouse used to live in Georgia in the past, moved away, and has returned more recently than six months ago.)

Note: If you live in Georgia, but have not lived here for a full six months, but your spouse has been living here for at least the past six months, you may still use this *Complaint* and file in Georgia. Just check box "b" and cross out the first eleven words ("I am not a resident of the State of Georgia, but"), so that the sentence is accurate.

Paragraph 2: Venue * CHECK ONLY ONE BOX *

Note: The issue of venue in a divorce action is very complicated. It is also very important, since the divorce may be defective if venue is not addressed properly. Read these instructions *very carefully*. If your situation does not seem to fit any of the choices exactly, you should talk to an attorney. You may not be able to file your case in Gwinnett County, or you may need to make particular changes to this form.

- (a) Check box "a" if the Defendant **currently resides in Gwinnett County**.
- (b) Check box "b" if **all** of the following are true:
 - (1) the Defendant is not a resident of Gwinnett County but resides in Georgia;
 - (2) the two of you lived together in Gwinnett County at the time you separated;
 - (3) you still live in Gwinnett County; **and**
 - (4) the Defendant has moved out of Gwinnett County only within the **past six (6) months** prior to you filing this *Complaint for Divorce*.
- (c) Check box "c" if the Defendant is not a resident of Gwinnett County but **resides in Georgia** and has **acknowledged** service of process **and consented** to the jurisdiction and venue of this Court. (You will also need to file the original signed and notarized *Acknowledgment of Service* when you file this *Complaint*.) You must currently live in Gwinnett County to check this box.
- (d) Check box "d" if you live in Gwinnett County and the Defendant **does not live in Georgia**. Then, check number (1), (2) or (3) in the same paragraph. Check only one of these. (If both 1 & 3 or 2 & 3 apply, check only "3".)
 - (1) Check box "1" if the Defendant **was a resident** of Gwinnett County but currently resides in another state (enter the name of the state in the space provided), and the Defendant is subject to the personal jurisdiction of the Court under Georgia's Long Arm Statute. (See OCGA § 9-10-91[5].)
 - (2) Check box "2" if the Defendant has **never resided** in the State of Georgia and currently resides in another state. Add the name of the state in the space provided.

- (3) Check box "3" if the Defendant does not live in Georgia, but has **acknowledged** service of process **and** has **consented** to the jurisdiction of the Court. If you check this box, you must file the original signed and notarized form entitled *Acknowledgment of Service, Consent to Jurisdiction & Venue, and Consent to Present Case* (one form) with this complaint.
- (e) Check box "e" if you reside in Gwinnett County, but you **do not know where the Defendant lives**. You must prove to the Court that you have tried to locate the Defendant and cannot find him or her. **You must also file the original signed and notarized "Affidavit of Due Diligence" with this Complaint. In that Affidavit, you will explain to the Court about the steps you took to try to find the Defendant.**

Note: In this situation, you will have to serve the Defendant by publication. (See Paragraph 3-c, below.) That means you will not be able to get certain kinds of relief as part of the divorce, such as child support and alimony. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will not be limited by the restrictions that apply to publication cases.

Paragraph 3: Service of Process * CHECK ONLY ONE BOX *

Note: To find out more information about Service of Process, read **Step 6** of these instructions.

- (a) Check box "a" if the Defendant has acknowledged service of process. If you check this box, you must also file the original signed and notarized *Acknowledgment of Service*.
- (b) Check box "b" if you want the Sheriff's Department to serve the Defendant with this *Complaint* and the other court papers. You must fill in the address where the Defendant should be served, and circle whether this is a home or work address.
- (1) Check box "b-1" if the Defendant lives outside of Gwinnett County and you want the Sheriff's Department to serve him or her. **If you check box "b-1," you must inform the Clerk's office (when you file the case) that the other party must be served by "second original." The clerk will then stamp the service copy of your papers as a "second original."**
- (c) Check box "c" if you do not know where the Defendant lives and you are serving him or her by publication. Write the Defendant's last known address on the lines provided. *You must also file the original signed and notarized "Affidavit of Due Diligence" with this Complaint. In that Affidavit, you will explain to the Court about the steps you took to try to find the Defendant.*

Paragraph 4: Date of Marriage * CHECK ONLY ONE BOX *

- (a) Check box "a" if you and the Defendant were married with a license and a ceremony, such as one by a clergyman or by a judge at the courthouse. Write the date of the marriage in the space provided.
- (b) Check box "b" if you and the Defendant did not have a marriage license and a ceremony, but you believe you have established a common law marriage. Under Georgia law, this generally means that you and the Defendant lived together in the State of Georgia and held yourselves out as husband and wife **before** January 1, 1997. Write the date you began your common law marriage on the space provided.

Paragraph 5: Date of Separation

In the space provided, write the last date that you and the Defendant separated and remained separated up to the present time. Provide only one date. If you and the Defendant have separated, gotten back together, and then separated again, use the date of the most recent separation.

Paragraph 6: Settlement Agreement

Check this box **only if** you and the Defendant have signed a *Settlement Agreement, Permanent Parenting Plan, and Child Support Addendum* telling the Court the arrangements concerning your minor children (such as custody, visitation, child support, medical expenses, insurance), how you will divide your joint and marital property and debts, and how you will resolve any other issues between the two of you. The parties must agree voluntarily and these documents must be signed by both parties.

Paragraph 7: Minor Children

On the space provided, write the number of minor children that you have together. In the additional spaces, list the name of each child, the sex, date of birth and the parent (or other adult) with whom the child lives now. If you have more than five (5) minor children together, you should list the information for the additional children on a separate piece of paper and attach that paper to this *Complaint* (between pages 3 & 4).

Paragraph 8: Children's Current Residence

In the spaces provided, you must give the Court the address and county where the children live now, and the names of the adults living with them. On the last space, tell the court how long they have been at that address. **However, if the children live in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. Do not even fill in the name of the county.

Paragraph 9: Children's Past Residences

You must tell the Court where the children have lived within the past five (5) years. In the spaces provided, tell the Court the dates the children lived at each address, and then list the address next to the corresponding date. **However, if the children lived in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

Paragraph 10: Adults With Whom the Children Have Lived

In the spaces provided, list the name of each adult with whom the children have lived during the past 5 years, and then list that person's current address. **However, if any person on the list is living in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

Paragraph 11: Other Court Cases About Children * CHECK ONLY ONE BOX *

- (a) Check box "a" if you have never participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with the children, in this state or any other state.
- (b) Check box "b" if you have participated in litigation other than this case (such as filing a case, being

served with court papers, testifying as a witness), concerning the custody of or visitation with these children, in this state or another state. In the spaces provided, list the court, the case number and the date of any order concerning custody or visitation.

Paragraph 12: Other Cases That Could Affect Custody or Visitation in This Case

*** CHECK ONLY ONE BOX ***

- (a) Check box “a” if you do not have any information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other divorces, contempt actions, family violence cases, termination of parental rights, legitimations, and adoptions.
- (b) Check box “b” if you do have information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other divorces, contempt actions, family violence cases, termination of parental rights, legitimations, and adoptions. In the spaces provided, you must tell the Court the name of the court involved, the case number and the type of case. If you need more space for this answer, use additional paper and attach it to this *Complaint* between pages 5 and 6.

Paragraph 13: Others Claiming Custody or Visitation * CHECK ONLY ONE BOX *

- (a) Check box “a” if you do not know of any person (other than the Defendant) who has physical custody of the children or who claims to have custody or visitation rights to the children.
- (b) Check box “b” if you do know of someone (other than the Defendant) who has physical custody of the children or claims to have custody or visitation rights to the children. In the spaces provided, list the name and present address of each person involved.

Paragraph 14: Child Custody * CHECK ONLY ONE BOX *

Note: There are many ways to arrange custody of children. This form *Complaint* does not try to deal with all of them, but only the two most common ones. If you want the Court to order a different custody arrangement other than (a) or (b) below, you should talk to an attorney. If you want more information about what it means to have full custody or joint legal custody, you may want to read OCGA § 19-9-6 and also talk to an attorney. Under the law, the Court must order custody in a way that fits the “best interests of the children.”

- (a) Check box “a” if you believe it would be in the children’s best interest for the Court to grant full custody (also called “sole” custody) of the children to one person (rather than sharing joint custody). If you believe you should have full custody yourself, then write “Plaintiff” in the space provided. If you believe your spouse should have full custody, then write “Defendant” in the space provided. If you believe some other person (such as a grandparent or other relative) should have custody instead of either you or your spouse, you may still be able to use this *Complaint*, but you will need to get advice from an attorney about how to do it.
- (b) Check box “b” if you believe it would be in the children’s best interest for the Court to grant joint legal custody between you and the Defendant, with one person to have primary physical custody. If you believe you should have primary physical custody yourself, then write “Plaintiff” in the space provided. If you believe your spouse should have primary physical custody, then write “Defendant” in the space provided.
- (c) Check box “c” if you want some other custody arrangement. Talk to an attorney to figure out the best

way to explain what you believe is best for the children on the lines provided here.

Paragraph 15: Child Visitation * CHECK ONLY ONE BOX *

Note: There are many ways to arrange visitation for children. This form *Complaint* does not try to deal with all of them, but only the two most common ones. If you want the Court to order a different visitation arrangement other than (a) or (b) below, you should talk to an attorney. As with custody, the law requires that the Court must order visitation in a way that fits the “best interests of the children.”

- (a) Check box “a” if you believe that one of you should have reasonable visitation with the children. If you believe the Defendant should have reasonable visitation, then write the word “Defendant” on the space provided. If you believe that you should have reasonable visitation, then write the word “Plaintiff” on the space provided.
- (b) Check box “b” if you believe that the Defendant’s visitation should be restricted in some way, to protect the children. Examples include: not allowing the parent to drink alcohol when the children are with her or him, not allowing the parent to drive with the children, or requiring supervision of visitation by another person. On the lines provided, explain to the Court about the restrictions you believe are necessary, and the reasons for them.

Paragraph 16: Child Support * CHECK ONLY ONE BOX *

Note: Unlike many areas of family law, there are specific guidelines that the Court must follow when setting child support. The guidelines are found in OCGA § 19-6-15. The guidelines explain what counts as income for setting child support. The amount of child support varies depending on the income of the parties, the expenses of the family and the number of children involved. Finally, there are many factors that the court can use to increase or decrease the amount of support. More information about the child support guidelines can be found on the Internet at:
<https://services.georgia.gov/dhr/cspp/do/public/SupportCalc>

- (a) Check box “a” if you are asking the Court to order the Defendant to pay child support. In the first space provided, list the Defendant’s gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe the Defendant should pay each month, based on the Georgia child support guidelines. (See note above.) If you do not know the amount of the Defendant’s income, write the word “unknown” on all three spaces.
- (b) Check box “b” if you believe that you should pay child support to the Defendant. In the first space provided, list your gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe you should pay each month, based on the Georgia child support guidelines. (See note above.)
- (c) Check box “c” if the Court cannot decide this issue in this divorce action, because the Court cannot get personal jurisdiction over the Defendant. Generally, this will be because you are serving by publication, or because the Defendant has never lived in the State of Georgia. (For more information on this, see the note about service by publication in the instructions above for Paragraph 2-e.)

Paragraph 17: Health Insurance for Children * CHECK ONLY ONE BOX *

- (a) Check box “a” if you want the court to order the Defendant to maintain medical, dental and hospitalization insurance for the children.

- (b) Check box “b” if you already provide health insurance for the children, and you want the Defendant to be required to reimburse you for a share of the cost each month.
- (c) Check box “c” if you are not asking the Court to decide this issue.
- (d) Check box “d” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 18: Other Medical Expenses for Children * CHECK ONLY ONE BOX *

- (a) Check box “a” if you want the Defendant to be responsible for all expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (b) Check box “b” if you believe that you and the Defendant should share the expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (c) Check box “c” if you are not asking the Court to decide this issue.
- (d) Check box “d” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 19: Life Insurance to Support Children * CHECK ONLY ONE BOX *

- (a) Check box “a” if the children depend on the Defendant for support, and you believe the Defendant should maintain a life insurance policy on himself/herself for the support of the minor children. In the space provided, write the amount of insurance you believe the Defendant should maintain for the children’s benefit.
- (b) Check box “b” if you are not asking the Court to decide this issue.
- (c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 20: Alimony * CHECK ONLY ONE BOX *

Note: If you want alimony, but do not have proof of the Defendant’s income, you should see an attorney. There are procedures called “discovery” that may be used to try to find out about the income. The income of the two parties is a key issue in deciding alimony.

- (a) Check box “a” if you are financially dependent on the Defendant and want the Court to order the Defendant to pay alimony for your support.
- (b) Check box “b” if you are not asking the court to order alimony payments for your support.
- (c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 21: Marital Property

Notes About Marital Property:

- (a) **All** property obtained by either party during the marriage is considered marital property (no matter

whose name is on the title), except for gifts and inherited property.

- (b) If the marital home or other real estate is titled in the Defendant's name alone (or you are not sure whose name is on the property deed), you must file a separate document called a *Notice of Lis Pendens*. If you do not file a *Lis Pendens*, and the property is sold before the divorce becomes final, you will not be able to get the home (or a share of it) as part of the divorce, because it will be gone. See an attorney if this may apply to your case.
- (c) If the marital home belonged to one of the parties before the marriage, it still may be claimed as marital property if its value has increased (or the mortgage has decreased) during the marriage. See an attorney if this may apply to your case.
- (d) If you or the Defendant have rights to a pension that have built up during the marriage, the pension may be considered marital property. Figuring out the value of a pension (and writing the proper QDRO order if it is distributed in the divorce) is very complicated. See an attorney if this may apply to your case.
- (e) If you think the Defendant may have obtained assets during the marriage that are unknown to you, the law has procedures to use (called "discovery") to try to find out about them. If it is important to you to try to learn more about the Defendant's assets, you should see an attorney.

*** CHECK ONLY ONE BOX in Paragraph 21***

- (a) Check box "a" if you and the Defendant have already divided your marital property and you are both satisfied with the division.
- (b) Check box "b" if you and the Defendant did not obtain any property during your marriage to each other (or if the property is already all gone).
- (c) Check box "c" if you and the Defendant have obtained property during your marriage to each other and you are asking for a fair division of that property. ***If you check box "c," you must provide the Court with information about the property that you and the Defendant have obtained at any time during the marriage. Use the spaces provided under box "c" to describe the property and check each box that applies. Use additional paper if necessary, and attach the paper to this Complaint, between pages 8 and 9. Carefully read the "Notes about Marital Property" at the beginning of the instructions for Paragraph 21.***
- (d) Check box "d" if this issue cannot be decided by the Court in this divorce action because none of the marital property is located in Georgia and the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 22: Joint or Marital Debts * CHECK ONLY ONE BOX *

Note: The creditors are not parties in your divorce case. Therefore, the Court cannot take away the creditors' rights in the divorce. This means that the Court cannot prevent creditors from trying to collect from any person who is responsible for a particular debt. However, the Court can enter an order in the divorce case that says one party or the other must pay a particular marital debt. If the responsible party does not pay as ordered, she or he may be held in contempt.

- (a) Check box "a" if you and the Defendant do not have any joint or marital debts.

- (b) Check box “b” if you and the Defendant have joint or marital debts. In the spaces provided, list each creditor (for example, Visa, MasterCard, etc.), the balance owed, and who you believe should pay each debt. Use additional paper if necessary, and attach it to the *Complaint* between pages 10 and 11.
- (c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 16-c.)

Paragraph 23: Restraining Order Where Violence Has Occurred

Check this box **only if** there has been a history of violence by the Defendant toward you, and you are afraid that the Defendant will continue the violent acts or harassment against you. **Do not check this box if there has not been any history of violent acts against you by the Defendant.**

Note: If there has been recent violence (or past violence plus a recent threat of violence), you should consider filing for a Temporary Protective Order (TPO) immediately. A TPO provides much stronger and faster protection than a restraining order in a divorce case. There is no charge for filing a TPO petition, and free help is available for filing one. Contact the Family Violence Project at 678-376-9844 or the Partnership Against Domestic Violence at 770-822-8873 to get more information about filing for a TPO.

The restraining order in a divorce is not enforceable by warrantless arrest. It can only be enforced by a motion for contempt. So, it can provide useful protection, but it is much more limited than a TPO.

Paragraph 24: Restore Former or Maiden Name

Check this box **only if** you want the Court to restore your former or maiden name. On the space provided, write the name you want to have restored. *This is not a name change action and cannot be used for anyone except the wife or husband in this divorce action.*

Paragraph 25: Grounds for Divorce (Your reason(s) for wanting the divorce)

Check only the boxes that you **can prove** in court if your case goes to trial.

- (a) Check box “a” if there is no hope that you and the Defendant can save this marriage. This is the language for grounds in most cases, and may be the only grounds you choose. It is the basis for granting a divorce when fault is not proven. It can and should also be used as a “back-up,” if you check other grounds based on some kind of fault.
- (b) Check box “b” if the Defendant has committed acts of cruelty against you. On the spaces provided, you must tell the Court what cruel acts the Defendant did to you.
- (c) Check box “c” if the Defendant has had sexual relations with someone else while you have been married to each other.
- (d) Check box “d” if the Defendant left you intentionally and has not come back for at least a year.
- (e) Check box “e” if you can prove and want to state other grounds for divorce. **You must** research the law at OCGA § 19-5-3, and tell the Court what other grounds for divorce you are stating. Use the space provided or use and attach additional paper between pages 10 and 11.

Final Paragraph: Request for Relief * CHECK ONLY THE BOXES THAT APPLY *

- (a) Check box “a” if you want the Court to grant you a total divorce from the Defendant. Make sure you have also completed Paragraph 25.
- (b) Check box “b” if you want the *Settlement Agreement* signed by you and the Defendant to be incorporated in the *Final Judgment and Decree of Divorce*. Make sure you have also completed Paragraph 6 and that both parties have signed the *Settlement Agreement* in front of a notary public.
- (c) Check box “c” if you want the Court to order custody and visitation according to Paragraphs 14 and 15. Make sure you have completed those paragraphs.
- (d) Check box “d” if you want the Court to order child support, health insurance, medical expenses and life insurance according to Paragraphs 16, 17, 18 and 19. Make sure you have completed those paragraphs.
- (e) Check box “e” if you want the Court to order the Defendant to pay alimony for your support. Make sure you have also completed Paragraph 20.
- (f) Check box “f” if you want the Court to divide the marital property as described in Paragraph 21. Make sure you have correctly and completely filled out Paragraph 21, after carefully reading the notes at the beginning of the instructions for that paragraph.
- (g) Check box “g” if you want the Court to assign responsibility for payments of joint or marital debts as described in Paragraph 22. Make sure you have correctly and completely filled out Paragraph 22, after carefully reading the notes at the beginning of the instructions for that paragraph.
- (h) Check box “h” if you want the Court to temporarily and permanently restrain the Defendant from harassing you or committing any further acts of violence toward you. Make sure you have also completed Paragraph 23.
- (i) Check box “i” if you want the Court to restore your former or maiden name according to Paragraph 24. Make sure you have also completed that paragraph.
- (j) Check box “j” if you want the Court to schedule a Rule Nisi (hearing on temporary issues). Complete a *Rule Nisi* form for the Court to complete and sign. See additional information about this in **Step 7** below.
- (k) Check box “k” as a “back-up” to allow for any other relief the Court finds appropriate in your case.

To finish filling out this Complaint form, add the date on which you are signing it, sign your name in the space provided on the last page, write your address and a daytime telephone number where the Court staff could reach you if necessary. **However, if you are living in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER. To do so would violate OCGA § 19-13-23.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. **Also, if the Defendant does not know your address and it should be kept confidential because of family violence, do not write that address here.** Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Defendant.

□ **Step 2: Complete the Verification Form**

The Verification form must be filed with the *Complaint for Divorce*. In the caption, insert your name as the Plaintiff and your spouse's name as the Defendant. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the Clerk's office.** Insert your name in the space underneath the word "Verification," which is the title of this document. In the next space, insert the title of the document you are verifying as true, which is "*Complaint for Divorce With Minor Children.*"

Now, before you sign this *Verification*, remember that you will be swearing under oath that the information you have provided in the *Complaint for Divorce* is true. Therefore, you should re-read the *Complaint* one more time, from start to finish, to make sure it is all true. Then, take the *Complaint* and this *Verification* to a notary public. (See pages 2-3 above to find out the other forms you will need to have notarized.) **Sign your name in front of the notary public** in the space provided, and check the box to indicate that you are the Plaintiff. The notary must complete the rest of the *Verification* form after you sign it under oath.

□ **Step 3: Complete Other Court Documents & Copying Your Papers**

In addition to the *Complaint* and the *Verification*, you must complete and file several other forms together with the *Complaint* to start your divorce case. Like the *Complaint* and the *Verification*, some of these forms must also be signed by you in front of a notary public. (The forms you will need are listed on pages 2-3 of these instructions.)

After you have finished filling out all the papers you need to start your case, and all have been signed (in front of a notary when required), **make two complete sets of copies** of all the papers you are going to file. Then, separate them into three packets: (1) all the originals (for the court), (2) one set of copies for your spouse (called the "service copy"), and (3) one set of copies for you to keep for your records.

□ **Step 4: Fees**

The court **filing fee** for a divorce action is **\$204.00**. In addition, if the Gwinnett County Sheriff's Department is going to serve this action, there is a **service fee** of **\$50.00**. You should take cash or two separate money orders for these amounts with you when you take your papers to file your case.

If you have a very low income, and feel that you cannot afford to pay these fees, you can ask the Court to waive the fees. To do this, you should file the ***Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis*** forms with the other papers when you file your divorce action at the Clerk's office. (See list of forms on page 2-3, above.) A judge must sign the *Order* approving your *Affidavit*, before the filing of your case will be completed by the Clerk's office staff. If the judge signs the order of approval, both the \$204.00 filing fee and the \$50.00 service fee are waived. If the judge does not approve your *Affidavit*, you must pay the fees before your case will proceed.

If you are serving the Defendant by publication (because you do not know where she or he can be found for service), there is a **publication fee** charged by the newspaper that publishes the notice. Even if the judge approves your *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis*, you may have to pay this fee, which is **\$80.00**, to *The Gwinnett Daily Post* newspaper. **Note:** If the judge approves your *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis*, the *Gwinnett Daily Post* may waive the publication fee.

□ **Step 5: Filing Your Case in Court**

After you have completed, signed (in front of a notary, where applicable), copied and sorted all your paperwork (and you have your filing and service fees ready, unless you are filing an *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis Poverty Affidavit*), you are ready to file your case.

Take all 3 sets of forms (with the Court's set on top), along with your cash or money orders, to the Gwinnett Superior Court Clerk's office. It is located on the 1st floor of the Gwinnett Justice and Administration Center (75 Langley Drive, Lawrenceville, GA 30045).

When it is your turn, give all 3 sets to the clerk. Tell the clerk if you and your spouse have ever had any cases between you in Gwinnett County Superior Court, so that the case can be assigned properly. If your paperwork is in order, the clerk will keep the originals for the Court's file. The clerk will write your case number on the top page of your set of copies, stamp them with the date & time stamp, and return them to you. The last number in the case number shows you which judge has been assigned to the case. Keep these for your records. Your divorce case has now been filed. But, do not rush out of the Clerk's office yet. Unless you filed an *Acknowledgment of Service*, you must also arrange for service. The second set of copies will be used for service.

□ **Step 6: Arranging for Service**

Service is the required formal process of notifying the Defendant that the divorce action has been filed. There are basically **three ways** for service to be completed: (1) the Defendant signs an *Acknowledgment of Service*, (2) service by the sheriff's department or other approved process server, or (3) publication.

Acknowledgment of Service

This is the easiest and least expensive method, **but only if** the Defendant is cooperative and willing to sign an acknowledgment form in front of a notary public. You cannot sign the form for the Defendant and you cannot sign as the notary witnessing the Defendant's signature. Also, it is not good enough for the Defendant to sign without the signature being witnessed by a notary public.

The forms available through the Family Law Clinic include two different acknowledgment forms. Either one is valid for service. They are:

- (1) The *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* is appropriate if you and the Defendant have reached an agreement and will be signing a *Settlement Agreement*. The reason it is best is that it includes the consent to present the case in the same form with the acknowledgment, so it saves a step later.
- (2) The plain *Acknowledgment of Service* form is appropriate if you and the Defendant have not reached a complete agreement yet, but the Defendant is willing to acknowledge service. This saves the Defendant the possible embarrassment or inconvenience of being served by the deputy sheriff, but does not give up the Defendant's right to file an *Answer* and have a trial if an agreement is not reached.

To use this method of service, you need to complete the appropriate form and have the Defendant sign it in front of a notary public. Then, you file it with your other papers, as explained in **Steps 3-5** above.

Service by the Sheriff (“Personal Service”)

This is the usual way for service to be completed. It is sometimes called “Personal Service,” which means that the deputy sheriff or other court-approved process server hands the papers to the Defendant in person. The forms provided by the Family Law Clinic do not include the special motion and order required to have a special process server appointed. Therefore, if the Defendant will not sign an acknowledgment, and you know an address where the Defendant can be served, then you should make arrangements for the Sheriff’s Department to serve the papers.

If the Defendant can be served in Gwinnett County, then the Gwinnett County Sheriff’s Department can serve the papers. You may pay the service fee at the Clerk’s office when you file the case, and leave the service copy of the papers with the clerk. The clerk will forward your payment and legal documents to the Sheriff’s Department for service.

- ⊃ Make sure the service copy includes the *Sheriff’s Entry of Service* form. After the Gwinnett sheriff’s department completes service, they will send the white and yellow copies to the Clerk’s office, which will then send the yellow copy to you (if you have properly filled out the form).

If the Defendant must be served in another county or state, then the Gwinnett County Sheriff’s Department cannot serve the papers. **You must arrange for service directly with the sheriff’s department of the proper county.** You must find out the amount of the fee, and take or send it to the proper sheriff’s department, along with the service copy of the papers.

- ⊃ Make sure the service copy includes the *Sheriff’s Entry of Service* form. After the sheriff’s department completes service, they will send the white and yellow copies to you (if you have properly filled out the form). When you get the white and yellow copies, you must file them with the Gwinnett Superior Court Clerk’s office, which will then return the file-stamped yellow copy to you.

Service by Publication

This is the method of last resort. If you can find the Defendant, you must use one of the other two methods of service. But, it is your only choice if you do not know where the Defendant lives or works, and you cannot find out that information. You must prove to the Court that you have tried to locate the Defendant and cannot find him or her.

If you have to serve the Defendant by publication, there are special limitations on your divorce case, because the Court will not have “personal jurisdiction” over the Defendant. You will not be able to get certain kinds of relief as part of the divorce, such as child support and alimony. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will not be limited by the restrictions that apply to publications cases.

To serve by publication, you must prepare and file three forms:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication and*
- (3) *Order of Publication, Return of Service, Order Perfecting Service*

In the *Affidavit of Due Diligence*, you will explain to the Court about the steps you took to try to find the

Defendant. You must make reasonable efforts to find the Defendant before you fill out the *Affidavit* form. The *Affidavit of Due Diligence* form is available through the Family Law Clinic, and has its own set of instructions. The other two forms are available through the Clerk's office.

If you know you must use service by publication when you prepare your *Complaint for Divorce*, then you should prepare the three listed forms at that time. However, if you have already filed your divorce case, and have tried to complete service by a different method, you can still request the Court's permission to serve by publication.

After you file the forms, if the Court grants permission, the Judge will sign the *Order of Publication*. You must pay the cost of publication (\$80.00). Then, the *Notice of Publication* will be published in the county's official legal newspaper (*The Gwinnett Daily Post*) four times (usually four weeks in a row). The *Notice* gives the Defendant 60 days to file an *Answer*, if she or he wants to contest the case.

Meanwhile, the Court Clerk is required to mail the *Notice of Publication* to the Defendant's last known address (which you have provided in the *Affidavit of Due Diligence*), and then to complete the *Return of Service* part of the 3-part form listed as (3) above.

However, to be on the safe side, you should also mail a set of all the papers (the "service copy") to the last known address. Make sure you put enough postage on it, and make sure you list a return address, so the post office can return it to you if they are not able to deliver it.

After it has been published all four times, you should receive an *Affidavit of Publication* from the newspaper, stating that publication is complete. **You must bring this *Affidavit of Publication* with you to your hearing**, to prove that service by publication has been completed. Usually, the Judge will then sign the *Order Perfecting Service* (part of the 3-part form listed above) at the hearing, showing that the Court has reviewed the service and finds it was done properly.

You may later find out where the Defendant lives or works (before the case is over). If this happens, then you should arrange for the Sheriff's Department to serve the Defendant, or for the Defendant to acknowledge service.

Step 7: Hearings

After you have filed your case, and the Defendant has been properly served, you are ready for the next step: 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 custody, visitation, child support, health insurance, alimony, living arrangements, use of an automobile, and who is responsible for certain payments while the divorce is pending.

To schedule a *Rule Nisi* (temporary hearing), you should complete the *Rule Nisi* form (see separate

instructions). If you know you want a temporary hearing when you are getting ready to file your divorce case, you can copy, sort and file the *Rule Nisi* form with your other paperwork. (See **Steps 3-5** above.) After your case has been filed with the Clerk's office, you will have to send the *Rule Nisi* (original and at least one copy) to the staff 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, and the Judge or a designated staff person will sign the *Rule Nisi*. Then, the Judge's staff will file the *Rule Nisi* with the Court Clerk's office and send you a copy in the mail.

You must mail or personally deliver a copy of the *Rule Nisi* to the Defendant. Then you must complete and file a *Certificate of Service* form, showing the Court that the Defendant was properly served. The *Rule Nisi* form (showing when and where the temporary hearing will take place) must be served on the Defendant at least fifteen (15) days before the hearing (18 days if service is by mail).

Final Hearing

If you have a signed *Settlement Agreement, Permanent Parenting Plan, and Child Support Addendum*, then you may arrange to have the final hearing take place any time at least 31 days after the Defendant was 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.

- ⊃ If the Defendant signed the form called: *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case*, then you are not required to give the Defendant notice of the date and time of the final hearing.
- ⊃ If the Defendant signed the other *Acknowledgment of Service* form (which does not waive the right to notice of the hearing), then you should mail a notice to the Defendant, telling the date, time and place of the final hearing. 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 Defendant).
- ⊃ Some judges will even finalize a divorce action without any final hearing. This is through a process called "Judgment on the Pleadings." The Family Law Clinic does not yet have a form motion for this purpose, but you should check with your Judge's staff to find out if one is required.

If you do not have a signed *Settlement Agreement*, then your final hearing may take place any time **at least 46 days** after the Defendant was personally served (or the *Acknowledgment of Service* was filed with the Clerk). If service was by publication, the hearing may take place any time **after 61 days** from the date of the first publication. The judges schedule these final hearings in different ways too. 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 mails notices 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 Defendant. 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 Defendant).

Before the hearing date, whether temporary or final, you must prepare your case to be presented to the Court. You are your main witness. You must also gather your 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.

The Family Law Clinic has materials to help you prepare for the hearings. You should also talk to an attorney about the hearing, to learn more about how to present your case.