

INSTRUCTIONS FOR COMPLETING THE SELF-REPRESENTED LITIGANT SIMPLE DIVORCE PACKET

DEFENDANT

WARNING: You are strongly encouraged to seek the advice of an attorney before filing any legal matter. This packet is designed to provide information and forms to people who are representing themselves in court. If you proceed without an attorney, it may negatively affect your legal rights. If you are unsure whether to proceed, or have questions about these forms or your legal rights, consult an attorney. Please note that clerks of court, court staff and judges cannot give you legal advice.

DISCLAIMER: The information in this packet is not legal advice and cannot replace the advice of competent legal counsel licensed in your state. Divorce laws vary from state to state and the information contained in this packet is specific to South Carolina. Please note that the information contained in this packet is subject to change and make sure that you have the most current version of this packet before filing.

PART 1: YOUR ROLE AS A DEFENDANT

The following instructions will help you file an Answer for a simple divorce in South Carolina *pro se*, or without an attorney. *Pro se* is a Latin term meaning “in person” or “on one’s own behalf.” As the courts see more people representing themselves in court, you may also hear the term self-represented litigant instead of *pro se*. While the self represented litigant may not incur the attorney expense, the self-represented litigant does not have the expert guidance that a lawyer can provide.

Getting a divorce is not an easy process, and divorce should not be taken lightly. The self-represented simple divorce packet is designed for people who meet **all** of the following:

- ✓ Are filing on the ground of One (1) Year Continuous Separation without co-habitation
- ✓ Have no marital property **OR** have reached an agreement on how to divide the marital property
- ✓ Have no marital debt **OR** have reached an agreement on how to divide the debt
- ✓ Have no children **AND** none are expected **AND**

- ✓ Have minor children and have reached an agreement as to custody, visitation, and child support that meets the minimum requirements as set by the South Carolina Child Support Guidelines.

If you and your spouse have been living in separate dwellings for less than one (1) year or cannot agree on the issues regarding minor children, property, and debt, then obtaining a divorce on your own is not recommended. You need to hire an attorney.

If you do not know an attorney who can assist you, you may call the South Carolina Bar's Lawyer Referral Service at 1-800-868-2284 and ask for a Family Law attorney in your county. Members of the South Carolina Bar's Lawyer Referral Service have been in practice for more than 3 years, are in good standing, have provided proof of malpractice insurance, and have agreed to provide a 30 minute consultation for no more than \$50. If you believe you qualify for South Carolina Legal Services (SCLS), you may contact their Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592. Please note that to qualify for SCLS, your income must not be more than 125% of the Federal Poverty Guidelines.

If you and your spouse have been living in separate dwellings for more than one (1) year without co-habitation and can agree on all of the issues involving minor children, property, and debt, the next step is to study **all** of the forms listed below. The name of each form can be found in the upper right hand corner and the form number in the bottom left hand corner.

The following three (3) forms are included in this packet:

- ✓ Defendant's Answer (SCCA 400.05 SRL-DIV)
- ✓ Financial Declaration Form (SCCA 430)
- ✓ Affidavit of Service by Mailing (Answer) (SCCA 400.06 SRL-DIV)

PART 2: COMPLETING YOUR PAPERWORK

If you were sued for divorce, a Summons and Complaint has been filed by your spouse. You will be served these documents in one of three ways:

- By Certified U.S. Mail, Return Receipt Requested, Restricted Delivery; or

- By receiving the Summons and Complaint from your spouse and voluntarily signing an Acceptance of Service; or
- By a law enforcement officer or private process server.

You must file an Answer within 30 days after you receive a Summons and Complaint. You may want to talk to an attorney about your options. If you do not know an attorney who can assist you, you may call the South Carolina Bar's Lawyer Referral Service at 1-800-868-2284 and ask for a Family Law attorney in your county.

Read all the documents carefully. If you received an Acceptance of Service form, complete it and return it to your spouse. Next, read the Complaint carefully and complete the Answer to the best of your abilities. At the end of the Answer there is a space where you can ask the Court for additional relief. If you are the Wife, this is where you can request the Court to allow you to resume your prior name.

Please pay special attention to the Financial Declaration Form. This form asks questions about the finances of both you and your spouse. Fill out the sections of the form that apply to you. You must take the Financial Declaration Form to a notary public before you sign it. After the Answer and Financial Declaration Form are completed, make two copies of each form.

File the Answer and Financial Declaration Form with the same Clerk of Court's office where the Complaint was filed. Take the original and the copies to that Clerk of Court's office. Ask the Clerk to stamp both the originals and copies of the forms. The Clerk will keep the original forms and will return two stamped copies of each form to you.

Mail a stamped copy of both the Answer and Financial Declaration Form along with the Affidavit of Mailing (Answer) to your spouse or to your spouse's attorney by first class mail. Keep the other stamped copies for your files.

PART 3: THE HEARING

On the day of your hearing, you should arrive at the courthouse at least thirty (30) minutes prior to your scheduled time and bring a copy of your paperwork. **Dress appropriately and turn off your cell phone.** Appropriate dress includes suits, jackets, dresses, or dress slacks. Males should tuck their

shirts into their pants. Casual clothing such as sweat clothes, tank tops, shorts, and similar summer beach wear is not appropriate for the courtroom. Remove hats when entering the courtroom, unless they are required for a medical condition. Most courts do not allow children into the courtroom so make arrangements for a responsible adult to watch your children while you are in court.

Your spouse will present his/her case first. You should only speak when asked to do so. You will have the opportunity to ask your spouse and any witnesses questions. After your spouse and witnesses have testified, you will be given an opportunity to testify and present witnesses for your case. The judge may interrupt you from time to time to ask you a question. Listen carefully, and answer the questions the judge asks you. If the judge grants the divorce, the judge will sign the Final Order for Divorce and you will receive a copy.

NOTE: You are not divorced until the Final Order for Divorce has been signed by the judge and filed with the Clerk of Court. You are divorced when you receive a clocked copy of the Final Order of Divorce from the Clerk of Court.

Defendant Simple Divorce Checklist

- Once you are served with a Summons and Complaint for Divorce, complete the Answer. Also, complete the section of the Financial Declaration Form that applies to you and have the form notarized.
- File the completed Answer and Financial Declaration Form with the Clerk of Court's office **within 30 days after service.**
- Mail a stamped copy of the Answer and Financial Declaration Form along with the Affidavit of Mailing (Answer) to your spouse or spouse's attorney **within 30 days after service.**
- Your spouse or spouse's attorney will then mail you a Notice of Hearing, which will give you the date and time of your divorce hearing.
- Arrive on the day of your hearing at least 30 minutes early and be sure to dress appropriately, turn off your cell phone, remove your hat, and make sure you have appropriate childcare.
- At the hearing your spouse and his/her witness will testify first. The judge will give you the opportunity to ask your spouse and the witness questions and to present your case.
- At the end of the hearing the judge will sign the Final Order for Divorce and you will receive a copy.
- Be sure that the signed Final Order for Divorce is filed with the Clerk of Court's office and you receive a clocked copy for your files.