

DIVORCE - ANSWER PACKET

YOUR LEGAL RIGHTS MAY BE BETTER PROTECTED WITH THE HELP OF AN ATTORNEY

IF YOU AND YOUR SPOUSE HAVE A **CHILD OR CHILDREN**, OWN A **HOME OR BUSINESS**, OR IF EITHER SPOUSE HAS A **PENSION OR RETIREMENT PLAN**, YOU SHOULD **SEE AN ATTORNEY**. IF YOU DO NOT HAVE THE MONEY TO PAY AN ATTORNEY, YOU MAY **ASK THE COURT TO ORDER YOUR SPOUSE TO PAY YOUR LEGAL COSTS.**

Once you have been served with a divorce Petition, you have **TWENTY (20) DAYS TO FILE AN ANSWER** with the **CIRCUIT CLERK**. You may represent yourself in the divorce, but your custody, property, and support rights may be better protected by talking with an attorney. The staff in the Circuit Clerk's office and the Family Law Master office **CANNOT GIVE LEGAL ADVICE**.

Please **READ** the instructions carefully and clearly fill in the blanks. You are the Respondent and your spouse is the Petitioner. Some of the legal terms used in this packet are explained at the end of these instructions.

FORMS WHICH MAY BE INCLUDED IN THIS PACKET:

1. *ANSWER: (Form 1) This is the written response to the Petition which the Respondent must file with the Circuit Clerk within twenty (20) days after he/she has been served with the Petition. A sample Answer agreeing to the ground of "irreconcilable differences" is included. The verification simply states that everything stated in the Answer is true. Sign the Answer and verification before a **NOTARY PUBLIC**.
2. APPLICATION AND INCOME WITHHOLDING FORM FROM THE CHILD SUPPORT ENFORCEMENT DIVISION (formerly the Child Advocate Office): (Form 2) If there are **MINOR CHILDREN** from the marriage, this form **MUST BE COMPLETED** by **BOTH** parties. This form for services from the Child Support Enforcement Division must be **FILED WITH THE CIRCUIT CLERK** when you file the Petition and the Respondent files an Answer.

NOTE: If you are a person with a disability requiring accommodation to participate in court, please notify the Circuit Clerk.

3. ***CIVIL CASE INFORMATION STATEMENT FOR DOMESTIC RELATIONS CASES:** (Form 3) This form gives the Court important information on your case. It is used by the Family Law Master to track cases on the Court's docket. You **MUST** file **THREE (3) COMPLETED COPIES** of this form with the Circuit Clerk. The case number, Judge, days to answer and type of service will be filled in by the Circuit Clerk.
4. ***FINANCIAL STATEMENT:** This form which asks about the parties' property and income must be completed by each party. It is available from the Circuit Clerk. You must send a copy of the completed form to the other party and **FILE THE ORIGINAL** with the **CIRCUIT CLERK** within forty (40) days after you are served with the Petition, but no less than five (5) days before the hearing.

This form **MUST** be **COMPLETED BEFORE** the **HEARING**.

5. ***NOTICE OF HEARING:** (Form 5) This form states **WHEN AND WHERE THE HEARING WILL BE HELD**. If you have not received a Notice of Hearing from your spouse or the Family Law Master and you have filed an Answer, you may schedule a hearing before the Family Law Master. You must send this Notice to your spouse at least ten (10) days before the hearing. Fill in the bottom part of the form which tells the Court that you sent the notice. Make a copy of the Notice and file the original with the Circuit Clerk and mail the copy to your spouse.

Make photocopies of your completed forms before filing them with the Circuit Clerk.

STEP 1. FILL OUT YOUR ANSWER AND MAIL A COPY TO YOUR SPOUSE

Prepare an Answer using the Answer (**Form 1**). (Practice on a separate sheet of paper until you know exactly what you want written in the Answer.) You may use this **ANSWER FORM** if the **ONLY GROUND** for divorce is "**IRRECONCILABLE DIFFERENCES**". You should only sign this Answer admitting irreconcilable differences if you agree to be divorced. **If other grounds for divorce are checked in the Petition, you must answer them.** Fill in the Certificate of Service at the bottom of the Answer and sign the Answer and verification in front of a **NOTARY PUBLIC**. Mail a copy of your Answer to your spouse or if your spouse has an attorney mail to the attorney.

STEP 2. FILE THE ORIGINAL ANSWER, THREE (3) COPIES OF YOUR CIVIL CASE INFORMATION STATEMENT AND THE APPLICATION AND INCOME WITHHOLDING FORM FROM THE CHILD SUPPORT ENFORCEMENT DIVISION

FILL OUT both sides of the Civil Case Information Statement (**Form 3**) and make copies. The Circuit Clerk will fill in the case number, Judge, and type of service. **FILE** with the **CIRCUIT CLERK** the original **ANSWER, THREE (3) CIVIL CASE INFORMATION STATEMENTS** and the Application and Income Withholding Form for **SERVICES FROM THE CHILD SUPPORT ENFORCEMENT DIVISION (Form 2)** (formerly the Child Advocate Office).

STEP 3. FEES

You **DO NOT PAY A FEE** to file your **ANSWER**. But at the hearing, you may be required to **PAY** all or part of the **\$105** fee for filing the divorce and the **\$20** service fee.

If you do not have the money to pay the Court costs, you may fill out an "**AFFIDAVIT OF INDIGENCY AND APPLICATION FOR WAIVER OF FEES**" at the Clerk's office. The Circuit Clerk or Deputy Clerk will review the financial information in the affidavit and decide whether you qualify for a waiver of all Court costs. If the Clerk or Deputy denies your request, you may ask the Family Law Master or Judge to review the Clerk's decision.

STEP 4. FILL OUT FINANCIAL STATEMENT (Form 4)

EACH PARTY must complete a **Financial Statement, SCA-C-DR-506**. Answer all of the questions that apply to you and your case. For example, if you are not seeking alimony, or you do not have children with the other party, you do not need to answer questions regarding child support or alimony. Sign the Statement before a **NOTARY PUBLIC**. Send a copy of the completed form, with the documents required by the form, to your spouse or your spouse's attorney and **FILE THE ORIGINAL FORM WITH THE CIRCUIT CLERK** within forty (40) days after you were served with the Petition, but no less than five (5) days before the hearing.

The Family Law Master **MUST HAVE THIS INFORMATION** in order to approve an agreement between the parties or divide marital property and award support.

STEP 5. PRE-TRIAL HEARINGS SCHEDULED BY THE FAMILY LAW MASTER

In many counties, the Family Law Master schedules a pre-trial hearing in all divorce cases. In these counties, the Family Law Master will send you a scheduling order with the date and time for a pre-trial hearing. The purpose of the pre-trial hearing is to determine what matters will be contested and how much hearing time will be needed. If the case is not contested, the final hearing is held at this time.

If you have not filed an Answer and/or do not attend this hearing, you will waive your right to contest issues or object to the relief your spouse requests in the Petition.

STEP 6. GET A DATE FOR YOUR FINAL HEARING

If you have not received a scheduling order from the Family Law Master or a Notice of Hearing from your spouse, and you have filed an Answer, you may ask for the hearing date. The Family Law Master **CANNOT HOLD THE HEARING** until **TWENTY (20) DAYS AFTER THE Petition** was personally **SERVED**, or thirty (30) days after the notice first appeared in the newspaper. If you are not sure about the date of service, ask the Circuit Clerk.

In some counties hearings are set by calling the Family Law Master Assistant, while in other counties hearings are set in the Circuit Clerk's office. Ask your Circuit Clerk which method is used

in your county.

STEP 7. GIVE YOUR SPOUSE NOTICE OF THE FINAL HEARING

After you file your Answer, if you schedule the case for a final hearing, you **MUST SEND A WRITTEN NOTICE OF HEARING (Form 5)** to your spouse. The Notice of Hearing must be sent at least ten (10) days before the final hearing. Fill in the hearing information and the bottom section stating when the Notice was sent. Make a copy of the Notice and file the original with the Circuit Clerk and mail the copy to your spouse.

If you **DO NOT GIVE** your spouse **WRITTEN NOTICE** of the hearing, the hearing may have to be **CONTINUED TO A LATER DATE**.

STEP 8. THE FINAL HEARING

Find out the location of the Family Law Master hearings and arrive before your hearing is scheduled. If the grounds for divorce are irreconcilable differences, either you or the Petitioner must attend the hearing. If any other ground is used, the Petitioner and witness must be present. NOTE: It takes two persons to obtain a divorce, either 1) the Petitioner and Respondent must agree on irreconcilable differences; or 2) the Petitioner and a witness must testify at the hearing on the grounds for the divorce. If you do not file an Answer admitting irreconcilable differences, the Petitioner **MUST BRING A WITNESS** to the hearing or the divorce cannot be granted.

Divorce hearings are not open to the public, therefore only the parties and witnesses are allowed to be present. The Family Law Master will tape record the hearing. The Family Law Master will ask everyone who testifies to raise their hand and swear or affirm to tell the truth.

TESTIMONY about the **INFORMATION IN THE Petition AND ANSWER** must be provided. In some counties, the Family Law Master will ask the questions, and in other counties the parties are responsible for presenting all of the information from the Petition, including the ground for divorce, and any request for **custody, child support and medical support, alimony, possession of property, division of debts, restraining order, or use of a party's maiden name**. Ask the Family Law Master Assistant how your Family Law Master wants the information to be given during the hearing.

If your spouse attends the hearing, he/she will be permitted to testify. The Family Law Master may permit you and your spouse to ask the other party questions about his/her testimony. At the end of the hearing, the **FAMILY LAW MASTER WILL ANNOUNCE HIS/HER DECISION**. When the hearing is finished you may leave, but you will **NOT BE DIVORCED**.

STEP 9. WAITING FOR THE FINAL ORDER

After your hearing, the **FAMILY LAW MASTER ASSISTANT WILL TYPE** the Family Law Master's **RECOMMENDED ORDER** and **MAIL COPIES** to you and your spouse. **READ IT CAREFULLY**.

IF YOU DO NOT AGREE with the Recommended Order and wish to appeal, you must **FILE WRITTEN OBJECTIONS** with the **CIRCUIT CLERK** within **TEN (10) DAYS** after you receive the Order from the Family Law Master. The deadline for filing your objections is written

on the "Notice of Recommended Order" which is attached to the Recommended Order. You should ask a lawyer to help you with your objections. But if you cannot find a lawyer, you must file your list of objections before the end of the ten (10) day period. The Circuit Judge will review the Recommended Order and any objections filed by you or your spouse. Ask the Judge's secretary whether the Judge will hold a hearing on your objections. If no hearing is held, you must wait for the Judge to issue the Final Order.

If you and your spouse agree with the recommended order, you simply need to wait for the Final Order to be signed by the Circuit Judge. The Circuit Clerk will send you a copy of the Final Order. Parties may obtain additional copies from the Clerk's office.

But remember, **YOU ARE NOT DIVORCED UNTIL THE JUDGE SIGNS THE FINAL ORDER.**

SOME LEGAL TERMS USED IN THIS PACKET

AFFIDAVIT	A sworn statement of facts in writing.
ALIMONY	Money paid by a spouse for the support of the their spouse or former spouse. Alimony is not the same as child support.
ANSWER	This is the written response to the Petition which the Respondent must file with the Circuit Clerk within twenty (20) days after he/she has been served with the Petition. The sample Answer in this packet is for a no-fault divorce based on the grounds of "irreconcilable differences."
APPLICATION AND INCOME WITHHOLDING FORM FROM THE CHILD SUPPORT ENFORCEMENT DIVISION (formerly the Child Advocate Office)	This is a form requesting child support enforcement services from the Child Support Enforcement Division, formerly known as the Child Advocate Office. The form must be filed by both spouses before a hearing can be held.
CHILD SUPPORT	The money paid by one parent to the other parent to help pay the expenses of the child or children of the marriage. The Family Law Master sets the amount of support by using West Virginia's child support formula.
CIRCUIT CLERK	This is the elected official at the Court House who is responsible for all of the documents which are filed in cases before the Circuit Court.
CIVIL CASE INFORMATION STATEMENT	This form must be filed with the Petition at the Circuit Clerks Office when the divorce case is filed.
PETITION	This is the first document in a divorce which is filed in the Circuit Clerks Office.
CUSTODY	Care and control of the children of the marriage. If the parties cannot agree, custody is decided by the Court.
RESPONDENT	The person against whom the divorce case is filed.
DIVORCE	The legal end to a marriage.
FAMILY LAW	The person who hears divorce cases and recommends an order for MASTER the Judge to approve. In most divorce cases, the hearing will be held before the Family Law Master.
FINANCIAL DISCLOSURE FORMS	Forms required by the West Virginia Supreme Court for each spouse to list income and property information and then file with the Circuit Clerk.

LEGAL TERMS Cont.

IRRECONCILABLE DIFFERENCES	The ground for divorce when both spouses ask the Court to end their marriage because they cannot get along with each other.
NO FAULT	This term is commonly used to describe divorces in West Virginia that are based on irreconcilable differences or one-year separation.
EXCEPTIONS	Written objections to the Family Law Master's Recommended Order that must be filed with the Circuit Clerk by a party within ten (10) days after receiving the Recommended Order.
FINAL ORDER	The final document signed by the Judge which legally ends the marriage.
ORIGINAL	Any legal paper that parties actually sign which is then filed with the Circuit Clerk.
PETITIONER	The person who files (starts) the divorce.
PRO SE	Representing yourself in Court without an attorney.
RECOMMENDED ORDER	The decision made by the Family Law Master that must be approved by the Judge before your order is final.
SEPARATION	When a husband and wife no longer live together as husband and wife, they are separated.
SERVICE OR SERVE	The process of giving a certified copy of a Court paper to the person who is the Respondent in the divorce.
SPOUSE	Your husband or wife.
VISITATION	The time spent with the child or children by the parent who does not have custody.

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

IN RE THE MARRIAGE OF: _____, Petitioner SSN _____
and _____, Respondent SSN _____

Civil Action No. _____

Circuit Judge _____

ANSWER

To answer the Petition, the Respondent:

- 1. Admits all of the allegations except paragraph(s) _____.
- 2. Admits that irreconcilable differences exist between the parties.
- [] Requests custody/visitation (circle one) with the child(ren) of the marriage.
- [] Requests child support be established.
- [] Waives/Requests (circle one) alimony.

WHEREFORE, the Respondent asks that the Court grant the parties an absolute divorce. The Respondent also asks the Court to grant the relief below and any other relief the Court may see fit to grant. (Write any further relief you wish to seek on lines below.)

[] Respondent be restored to former name of _____.

_____, Respondent, Pro Se

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF _____, TO-WIT

_____, the Respondent being duly sworn, says that the Answers are true, and where they are based on information, the Respondent believes them to be true.

_____, Respondent

Taken, swom to and subscribed before me this ___ day of _____, _____. My Commission expires _____.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that have mailed a true copy of the foregoing Answer to Petitioner or Petitioner's Attorney (if represented by an attorney) by first class mail to his/her last known address: _____
on this the ___ day of _____, _____.

_____, Respondent

Address

Phone

FORM 1

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

IN RE THE MARRIAGE OF: _____, Petitioner SSN _____
and _____, Respondent SSN _____

Civil Action No. _____
Circuit Judge _____

NOTICE OF HEARING

TO: _____

Address

City State Zip Code

You are hereby given notice that the undersigned will bring the above-styled action on for final hearing before the Family Law Master. The hearing will be on _____ (date), at _____ (time), or as soon thereafter as may be heard. Hearings before the Family Law Master shall be held at the following location:

_____.

You may be present to protect your interests.

Respondent, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of this **Notice of Hearing** to the Petitioner or Petitioner's Attorney at the above address by depositing a true copy of the same in the U.S. Mail, postage prepaid, this the _____ day of _____, _____.

Respondent

FORM 5