

PRO SE DIVORCE ANSWER PACKET

Recently you contacted our office for help with a divorce. Each year thousands of West Virginians request help from the West Virginia Legal Services Plan. However, over the years our budget from the federal government has been cut back. For this reason, we cannot represent everyone who seeks help. It is impossible to provide assistance to all those persons who qualify as low income and present a case which is eligible for our services. This is true no matter how strong the case. The information which you provided has been reviewed, and I am sorry to say that West Virginia Legal Services Plan will not be able to represent you in your case. We are, however, sending you the enclosed materials to aid you in your divorce. These materials will help you answer the divorce Petition on your own, or *Pro Se* (Pro Say). *Pro Se* means you will represent yourself in your divorce.

Pro Se is not the best way to get a divorce. You are almost always better off if you have an attorney to represent you. This is particularly true if: a) you and your spouse own a house, land, or a mobile home; b) you think you have a right to alimony because you gave up something because of the marriage, or you find yourself in a situation that you would not have been in if you had not been married (no work experience to get a job because you were a homemaker); c) there are pensions or other important items of personal property at stake; or d) you cannot agree on who will have custody of the children. Even if you cannot afford a lawyer, it may be a good idea to pay a lawyer for an hour or so to give you advice or help you with pieces of the divorce. If you check around you might find a lawyer who would give you advice or help you with the part of the divorce you think is a problem. If you have trouble finding an attorney in your area you can contact the West Virginia Lawyer Referral Service. Their telephone number is (304) 558-7991 or 1-800-642-3617 Tuesday 6 p.m. to 8 p.m.

However, if you do the divorce on your own, the enclosed packet we are mailing you will be useful. The packet is titled "Divorce Answer Packet" and was prepared by the West Virginia Supreme Court of Appeals. These are the official Court forms. These are the papers you will use in Court to Answer the divorce Petition. This packet also contains one form you may file in Court called an "Affidavit of Indigency and Application for Waiver of Fee". It is attached to this letter. This is what you need to file with the Circuit Clerk's office if you cannot afford to pay for the filing fees and other costs of a divorce (see Fees).

We recommend that you read this letter and ALL the materials first. FOLLOW ALL DIRECTIONS. The actual form you will use is in the DIVORCE ANSWER PACKET, starting at, FORM 1. Either type or print neatly in ink. **DO NOT SIGN YOUR ANSWER FORM UNTIL YOU ARE IN FRONT OF A NOTARY PUBLIC.**

DOMESTIC VIOLENCE

If your spouse has been violent toward you it is important to know that, according to statistics, violent spouses will be most violent at the time of separation and divorce. If your spouse has been physically violent you can get a Domestic Violence Protective Order (DVPO) from Magistrate Court. If your divorce is started within 90 days after getting your DVPO, the protective order will stay in effect while the divorce is going on. If you have any questions or you need help on this, contact your closest domestic violence program or shelters. If your spouse is so violent you fear for your life or you are afraid of serious bodily injury, then it is important to contact a program or shelter.

FEES & COSTS

You will need to call the Circuit Clerk's office to ask about specific fees. However, if you are low income and few assets, there will probably be no cost for the divorce. In order for there to be no cost, and for the Circuit Clerk to drop the fees, you have to file an "Affidavit of Indigency and Application for Waiver of Fees..." If it is not included in this packet, you can ask the Circuit Clerk's office for that form.

DISCLOSURE

"Financial Disclosure" tells the Court what your income and expenses are. **These have to be completed.** If they are not in your packet you can get a copy at the Circuit Clerk's office. These financial forms are important, particularly since you don't have a lawyer. It is important to fill these out thoroughly and accurately so that the proper information will get to the Court. If your spouse does not file disclosures, then the Court can rely on your disclosures only. For that reason it is important to do the best you can when you fill out your disclosure forms. That is particularly true when it asks about your spouse's income. Make your best estimate. If you are off on the high side, then your spouse should be filling out his/her own forms and supplying the Court copies of documents showing the accurate figures. On the other hand, if you are on the low side, child support, etc., may get set too low and there will be no way to fix it later.

PETITION AND ANSWER

A "Petition" is the papers that were filed in Court that started the divorce. The Petition gave all the information to the Court about why your spouse wanted the divorce and what they wanted. Now you need to "Answer" that Petition and tell the Court if you agree or disagree with what was stated in the divorce Petition. In addition you can ask for things, it is important to ask for things now, even if you are not sure you want them, in order to have some negotiating leverage with your spouse. For example, ask for alimony even if you are not sure you really want it. Then you can agree later to drop your claim for alimony if the spouse will agree not to fight you over something you want.

GROUND S

A divorce may be awarded on many grounds. The most common ground is "irreconcilable differences". That is the "no fault" divorce in West Virginia. However, a divorce can only be granted on the grounds of irreconcilable differences if you file an "Answer" and agree to the divorce.

SUPPORT

The amount of child support will be determined by a Court formula. **Do not negotiate your child support amount.** It is after all, for your children and not you. When discussing these matters with your spouse only agree that you will accept the amount of child support the Court sets.

CUSTODY & VISITATION

Custody and visitation issues are generally the most important matters facing parents. Custody of children is usually given to both parents jointly, called shared parenting, the parent who is primarily responsible for the care and nurturing of the child usually gets physical custody and the other parent gets liberal visitation and is to be involved in any decisions regarding the children. You must submit a "Parenting Plan" to the court showing what you and your spouse have worked out regarding the shared parenting of the children. You also must attend "Parenting Education Classes" before your divorce can be final. As a child gets older the Court may listen to the child's desires in order to make an award of custody. A child of fourteen years generally can decide with which parent to live.

REMEMBER: It is difficult to change a custody/visitation order in the future unless both parties agree. Therefore, it is *important* to carefully consider any agreement into which you enter.

THE HEARING

After you have filed your Answer you will be waiting for a hearing date. If after 2 weeks or so, you have not received a "Notice of Hearing" from your spouse, call the Circuit Clerk's office and ask when the hearing for your case is scheduled. If a hearing has not been scheduled then you set it up. Ask them for a hearing date for a divorce hearing. Get the date, time, and Family Law Master's name and fill it out on your "Notice of Hearing" form in your packet then send a copy of the Notice of Hearing to your spouse, keep a copy for your files and take or send the original to the Circuit Clerk's office. **Go to the Hearing!** When you go to the hearing be sure to take with you a list of the property (and other things) you want. As a general rule, the person who has physical custody of the children gets the property the children need (house, car, etc.). Each spouse gets the things that were theirs before the marriage or were a gift from their side of the family. The rest is divided down the middle.

At the end of the Family Law Master hearing you may be asked if you want to waive the 10 day period to "object" or appeal to the Circuit Judge. **We strongly suggest you DO NOT waive this 10 day period.** Getting a divorce is a complex and important process. The hearing is bound to make you nervous. You may not have understood or heard exactly everything that went on. You will get a copy of what the Family Law Master is recommending in the mail, called the Recommended Order. You will have the opportunity to appeal that to the Circuit Judge if you don't like it or agree with it. However, if you waive your 10 day period, and then you disagree with what the Family Law Master is recommending, you cannot appeal to the Circuit Judge.

I hope you find these materials useful. Good luck.

Enclosure: Divorce Answer Packet

Prepared by
The West Virginia Legal Services Plan, Inc.