

HANDLING YOUR OWN DIVORCE CASE
MATERIALS FOR PARTICIPANTS IN THE
PRO SE DIVORCE WORKSHOP

HANDLING YOUR OWN DIVORCE CASE

Do I have to have a lawyer?

_____ Under West Virginia law, you are not required to have a lawyer in order to get a divorce. Each year, many people obtain divorces acting pro se (representing themselves, without a lawyer). It is almost always better to have a lawyer to handle things for you, but this workshop is designed to help you learn the basic steps for obtaining a divorce, if you choose to go forward without a lawyer.

There are some situations where a lawyer's help can be especially important. We strongly recommend that you have a lawyer to represent you, if at all possible, if:

- You and your spouse disagree about who will have custody of your children.
- You or your spouse acquired valuable property, such as a house or other substantial assets, during your marriage. (You should consult with a lawyer if either person has pension rights relating to a job he or she has had during the marriage, even if that person has not yet begun to draw the pension benefits).
- The wife has had a child by a man other than the husband during the time of their marriage.
- The wife is now pregnant.
- You or your children are in immediate danger from your spouse, and need to have your spouse kept away from you while the divorce case is being decided.

You should keep in mind that no forms or booklet can be a substitute for a lawyer. If you have any problems or complications in your case, you should consult a lawyer.

Where should I file for divorce?

Before you file for a divorce, you should make sure that you are filing in the right state and in the right county. You can file for divorce in West Virginia if:

- Either you or your spouse has lived in West Virginia at all times during the past twelve months,
- OR
- You and your spouse were married in West Virginia.

If you have children, they must have lived in West Virginia for the past six months (or other requirements must be met) for the West Virginia courts to decide custody.

If you meet the requirements for filing in West Virginia, you have to know which county to file in. If your spouse lives in West Virginia, you must file either in the county where he or she lives or in the county where you last lived together. If your spouse lives outside of West Virginia, you can file in the county where you live.

Does this packet contain all the forms that I will need?

_____ The forms you will be using in the workshop are designed for use in most relatively simple divorce cases in West Virginia. You will need additional forms if your spouse is in the armed forces, incarcerated, incompetent, under the age of eighteen, or living outside of West Virginia. The packet also does not include forms for certain documents, such as property settlement agreements or divorce decrees, since those documents will depend heavily on the facts of your case. Samples of these other documents are available for you to review in preparing your own property settlement agreement.

What if I need more help?

If you have decided to represent yourself in a divorce, you must be prepared to be your own lawyer. You will be expected to abide by the same court rules as lawyers. If you do not know how to do this, you will need to find out prior to scheduling your divorce hearing. In seeking assistance, you must remember that the Family Law Master cannot be your divorce lawyer. He/She must hear and decide your case impartially. He/She is not able to assist in preparing your forms or in advising you on the merits of your case impartially. Neither the Family Law Master's secretary nor the employees of the Circuit Clerk's Office are lawyers. They are unable to assist you in preparing legal documents or in offering legal advice. Please do not ask them to practice law for you.

In providing this pro se workshop, West Virginia Legal Services Plan or the volunteer attorney does not become your lawyer.

*****CHECKLIST*****

Date Completed

- _____ Attend workshop.
- _____ Prepare papers listed in Step 1.
- _____ Go to Notary Public and sign complaint, and affidavit of indigency.
- _____ Make copies of papers listed in Step 1.
- _____ Go to Circuit Clerk's office and file complaint (original and two copies of each); civil case information sheet (original and 3 copies); pauper's affidavit and vital statistics form (original only). Keep a copy of each for your records.
- _____ File marriage certificate with Circuit Clerk.
- _____ Get Civil Action Number from Circuit Clerk and mark it on your copy of the complaint.
- _____ Wait for your spouse to be served -- you should receive a postcard or notice from the clerk's office when service is completed.
- _____ Find out if your spouse is willing to cooperate.

If spouse cooperates

- _____ Spouse completes answer, signs in front of a notary, files original with Circuit Clerk, mails copy to you.
- _____ Both spouses complete financial statements, file original and mail copy to other spouse.
- _____ Prepare written property settlement agreement. Both spouses sign in front of a notary.
- _____ The Family Law Master will mail you and your spouse an Initial Hearing Order.

If spouse doesn't cooperate

- _____ Complete financial statement form, and file originals with Circuit Clerk and mail copies to spouse.

With or without spouse's cooperation

- _____ Family Law Master will send you an Order setting Initial Hearing.
- _____ Go to Initial Hearing with the Family Law Master.
- _____ Prepare non-military affidavit, and sign in front of notary on day of hearing.
- _____ Take your non-military affidavit, settlement agreement (if any), your proposed decree (if any), and your witness (if any) to the final hearing. It's a good idea to take all of your papers with you to the hearing.
- _____ When your divorce is final, complete the last page of this pamphlet and send to Legal Services.

STEP 1 - PREPARING THE PAPERS FOR FILING

_____ A divorce case is begun by filing a complaint and certain other papers with the Circuit Clerk's office. You will need to complete the following forms, and should check them off as you fill out each one.

- ___ Complaint
- ___ Affidavit of Indigency
- ___ Civil Case Information Sheet
- ___ Vital Statistics Form
- ___ Application and Income withholding form
- ___ Certified copy of your marriage license

You will also need additional forms, if your spouse is living outside of West Virginia, is incarcerated, in the military forces, under the age of eighteen, or incompetent. Please ask if you are unsure about whether you need additional forms.

At the workshop, you will fill out practice forms, which you can then use to prepare your forms for filing. The forms you file must be readable, and should be typed, if possible. If you have significant changes in the forms that are provided through the workshop, you should retype the entire form, so that it is neat and readable.

The names and purposes of these papers are explained below:

Complaint

_____ Your divorce complaint will tell the court what you want to do and the reason you want a divorce. You may need to make some modifications to the complaint form you receive in the workshop, depending on your situation. The last page of the complaint is called the verification, and it must be signed in front of a notary. In signing your complaint, you will be swearing that everything contained in the complaint is true.

Affidavit of Indigency

This form can be used if you can't afford to pay filing fees, hearing fees, and other costs related to your case. By stating under oath that you are a poor person unable to pay these fees and costs, you are entitled to a waiver of them. This document must also be signed in front of a notary.

Civil Case Information Sheet

_____ This form asks the Circuit Clerk to take the steps necessary to have your spouse served with a summons and a copy of your complaint. It also helps the court system keep track of your case after it is filed.

Vital Statistics Form

This form will be used to provide information to the state Bureau of Vital Statistics after your divorce is made final.

Application and Income Withholding from Child Support Enforcement Division

This form must be completed if there are minor children of the marriage. This is for services from the Child Support Enforcement Division.

STEP 2-FILING YOUR PAPERS

_____ If you have completed your forms, you need to sign some of them in front of a notary. The forms that must be notarized are the Complaint, Financial Statement and the Affidavit of Indigency. The other forms must be signed, but do not need to be notarized.

After you have completed and signed your papers, you will need to make copies of them. You will need to file the original and two copies of the complaint; the original and three copies of the civil case information sheet, and the original only of the other documents. While you are making copies, you should make a copy of all of the documents for you to keep for your own records.

In addition to these papers, which must be filed to start your divorce case, you can also go ahead and file a certified copy of your marriage certificate. By filing this paper now, at the beginning of your case, you will not have to worry about remembering to bring it in to a hearing later. A certified copy of your marriage record is one that has the official seal on it. If you do not have a certified copy of your marriage record, you can obtain one from the County Clerk's office in the county where you and your spouse were married.

After you have made your copies, take your papers to the Circuit Clerk's office. Tell the person at the clerk's office that you are filing a divorce case on your own and give him or her your papers for filing. If you file the affidavit of indigency, you should not be charged any fee. Be sure to ask the person in the Clerk's office for your civil action number. This number identifies your case, and you will need it later. Write the number in the line above and on the first page of your copy of your complaint.

My Civil Action Number is: _____

STEP 3-YOUR SPOUSE'S RESPONSE

_____ You can go forward with a divorce even if your spouse doesn't agree with it, but the process may be a bit more complicated. If your spouse is willing to agree to the divorce, he or she can file a paper called an answer admitting that there are irreconcilable differences between you. This answer will allow the divorce to be granted on a "no-fault" basis.

Your spouse can obtain the answer form at the Circuit Clerks office. If your spouse is in agreement about the divorce, he or she can use this form. You should note that form must be signed in front of a notary, and the original should be filed with the Circuit Clerk, with a copy sent to you.

If your spouse refuses to file an answer, or files an answer denying that there are irreconcilable differences, you can still get a divorce, but you will have some extra work to do.

STEP 4 - EXCHANGING FINANCIAL INFORMATION

Financial Statements

You and your spouse will be required to complete a financial statement. The original of this form is filed with the Circuit Clerk and a copy is sent to your spouse. You may be given a deadline for filing a financial statement by the Court.

If your spouse refuses to complete a financial statement, you can present evidence at the final hearing to show how much your spouse is earning or could earn. Child support can be based on that amount.

West Virginia has adopted child support guidelines that must be used in all cases, unless there are special reasons why the guidelines should be disregarded. The Family Law Master will calculate your child support at the hearing in your case.

If you and your spouse are not able to work out an agreement about how to divide your property and debts, this form will show the Family Law Master what items of property you have and how much they are worth, so they can be divided fairly between you and your spouse. The form also asks you to list the debts that you and your spouse owe, so they can be divided fairly, too.

In filling out this form, you will need to remember the difference between “marital property” and “separate property.” Your separate property includes all items of property that you brought into the marriage, or that were given to you during the marriage, or that you inherited during the marriage. Any property that you and your spouse acquired in any other way during the marriage is considered marital property – even if it is titled in the name of only one of you.

In a divorce, each party generally gets to keep his or her separate property. All marital property – no matter whose name it is in – is generally divided equally, unless there are good reasons why one spouse ought to receive more than half. For example, a person might get more than half of the marital property if his or her spouse was responsible for intentionally damaging or destroying part of their property, or if the spouse wasted marital property on drinking and drugs.

You will also need to remember the difference between “marital debts” and “non-marital debts.” Marital debts are those debts that are incurred during the marriage, and that are not for the special benefit of only one spouse. Marital debts might include mortgages, credit card bills, utility bills, loans, and other debts. If you want your spouse to be assigned his or her fair share of the debts, you need to make sure that these debts are presented to the Family Law Master. The division of debts in a divorce does not affect a creditor’s right to collect from any person who was responsible for the debt before the divorce.

STEP 5 - WORKING OUT AN AGREEMENT

If you and your spouse are in agreement about the custody of your children, visitation, how property and debts will be divided, and all other issues in the divorce, you can prepare a property settlement agreement. A property settlement agreement will make your final hearing easier and will move your case along more quickly, but you do not have to have one in order to get a divorce. **DO NOT MAKE AN AGREEMENT THAT WILL BE A PROBLEM FOR YOU LATER, JUST TO MAKE YOUR DIVORCE EASIER. YOU WILL REGRET IT LATER, AND YOU MAY BE UNABLE TO CHANGE THE AGREEMENT.**

Because each case is different, no form property settlement is provided in this workshop.

IF YOU WILL HAVE CUSTODY OF YOUR CHILDREN YOU SHOULD NOT AGREE TO GIVE UP CHILD SUPPORT. CHILD SUPPORT IS FOR THE CHILDREN, AND EVEN IF YOU DON'T WANT ANY MONEY FROM YOUR SPOUSE, THE CHILDREN SHOULD HAVE THE SUPPORT THAT THEY ARE ENTITLED TO. The state has developed guidelines for determining the amount of child support in divorce cases, based on the incomes of both parents and on other factors. Unless there are extremely unusual circumstances, **YOU SHOULD NOT AGREE TO LESS CHILD SUPPORT THAN THE GUIDELINES WOULD REQUIRE.**

If you and your spouse agree on all the issues in your divorce case and write up an agreement, you should both sign it in front of a notary. Make two extra copies of the agreement -- one for each of you -- and file the original with the Circuit Clerk or take it with you to the final hearing.

STEP 6 - RECEIVING NOTICE OF HEARING DATE

The Family Law Master **CANNOT SET THE HEARING UNTIL SERVICE HAS BEEN OBTAINED UPON THE DEFENDANT AND CANNOT HOLD THE HEARING UNTIL TWENTY (20) DAYS AFTER THE COMPLAINT** was personally **SERVED** upon Defendant. However, if Defendant was served by Order of Publication, the hearing **cannot be held until** thirty (30) days after the first notice appeared in the newspaper. If you are not sure about the date your spouse was served, ask the Circuit Clerk. You will receive notice of your hearing by mail, entitled Order Setting Initial Hearing. Note place, time and date and be there.

STEP 7 - FINAL HEARING

When you receive the **Order Setting Initial Hearing** telling you of the date, time and place make note of this information and be there. If the grounds for divorce are irreconcilable differences, either you or the Defendant **must** attend the hearing. If any other ground is used, the Plaintiff and witness **must** be present. If possible both parties should attend the final hearing.

NOTE: It takes two (2) persons to obtain a divorce, either 1) Plaintiff and Defendant **must** agree on irreconcilable differences or (2) the Plaintiff and a witness must testify at the hearing on the grounds for the divorce. When the Defendant has not filed and Answer admitting irreconcilable differences, the Plaintiff **must** bring a witness to the hearing or the divorce cannot be granted.

If you don't have cooperation from your spouse, the process is again a little more involved. You will need to prepare the non-military affidavit (and have it notarized **ON THE SAME DAY AS YOUR HEARING**), and get a certified copy of your marriage certificate (if you didn't file it already).

You will also need to line up at least one witness who can testify about why you are entitled to a divorce. In your complaint, you included one or more "grounds" for divorce. If your spouse doesn't file an answer admitting that there are irreconcilable differences, you will have to prove one of the other grounds included in your complaint. Your testimony will help to prove these grounds, but the law requires at least one other witness to support your testimony.

Make sure your witness knows about the hearing and is willing to help you by testifying truthfully. It may be a good idea to go over the testimony with your witness before the hearing, but let the witness tell the story in his or her own words. Under no circumstances should you try to have a witness tell anything but the truth at your hearing.

Divorces are not open to the public, therefore only the parties and any necessary witnesses are allowed to be present. The Family Law Master will tape record the hearing. The Family Law Master will ask everyone to raise his/her hand and swear or affirm to tell the truth.

STEP 8 - THE FINAL HEARING

On the day of your hearing, go to the Family Law Master's office at least a few minutes before the time the hearing is scheduled. Check in with the secretary, then have a seat and wait for your hearing. Your spouse does not have to attend, but it is usually better if he or she does attend, especially if you are in agreement about all issues.

When your case is called, you will go into the hearing room with the Family Law Master and your spouse (if he or she is present). Other persons will generally not be allowed, except a lawyer for one of the parties. Witnesses will be allowed to come in only when they are testifying.

The hearing will be tape recorded, and any persons who testify will have to swear to tell the truth. You will need to tell the Family Law Master certain information, listed below. He may ask you questions to get this information, or he may want you to provide this information on your own.

- your name and address.
- the date that you and your spouse got married.
- the county and state where you got married.
- the date that you and your spouse last lived together.
- the county and state where you last lived together.
- how long you have lived in West Virginia, and how long your spouse has lived in West Virginia.
- whether your spouse is under 18, in the armed forces, incompetent, or in jail.
- how old you are and how old your spouse is.
- the names and ages of all your children, and who is to have custody of them.
- where you work and how much money you make.
- where your spouse works and how much money he/she makes.
- whether you own any property and how it should be divided.
- whether you have any debts and how they should be divided.

- whether you and your spouse agree on alimony, give up any right to alimony that you might have, or want the Family Law Master to decide how much alimony (if any) should be awarded.

- whether you want and need an order for your spouse not to bother you, and why you need it.

- whether you want your maiden name back, and what that name is.

- that you and your spouse don't get along and have irreconcilable differences.

If your spouse did not file an answer admitting irreconcilable differences, you and your witness will also need to tell the facts that support other grounds for your divorce. For example, if you are asking for a divorce based on cruelty, you and your witness would have to tell the Family Law Master how your spouse had mistreated you during the marriage.

If your spouse is present, the Family Law Master will give your spouse an opportunity to tell his or her side and to ask you and your witnesses questions. You will have the right to ask questions of any persons who testify for your spouse. The Family Law Master may also ask questions.

_____The Family Law Master prepares the Decree of Divorce. If both parties appear on the day of the final hearing they are presented with the final Decree of Divorce document. If both parties agree with the details of this document they may at that time sign it and the Family Law Master will also sign the Decree. The Decree will then be recommended to the Judge for signature and most likely will be signed either on that day or the day after your hearing. **YOU ARE NOT DIVORCED UNTIL YOU RECEIVE A CERTIFIED COPY OF THE DECREE OF DIVORCE SIGNED BY THE JUDGE!!**

If only one of the parties appear for the hearing there will be a waiting period. After the hearing, the Family Law Master's office will mail copies of the recommended order (Decree of Divorce) to both parties for their review. **READ IT CAREFULLY!!**

STEP 9 - WAITING

After your hearing, you will still need to wait for your divorce to be final. **YOU ARE NOT DIVORCED UNTIL AFTER THE JUDGE HAS SIGNED YOUR DECREE.**

When the Family Law Master signs a decree, it is only a recommendation to the Judge. It is not a final divorce decree yet. After the Family Law Master signs the decree, you and your spouse will each receive a copy of it in the mail, along with a notice telling you that the Family Law Master is recommending it to the judge. Read the proposed decree very carefully. If you agree with it, you don't need to do anything, except keep waiting. If you disagree, you must file another document called a "petition for review" within ten days after the notice was sent. The deadline for filing a petition for review will be included in the notice of the recommended decision. You should get a lawyer to help you prepare your petition for review if you do not agree with the proposed decree.

If neither party files a petition for review within the time allowed, the Judge will sign the decree, and the divorce will be completed. You should receive a certified copy of the divorce decree in the mail from the clerk's office.

After you receive your divorce decree, please fill out the form on the last page of this pamphlet and return it to us. By filling out this form, you will help us to know whether our workshop was helpful to you and how we can improve it.

PLEASE SEND THIS FORM IN WHEN YOUR DIVORCE IS FINAL.

Current name: _____

Name at time attended workshop: _____

Current address: _____

Date you attended pro se workshop: _____

County where you filed your divorce case: _____

Date divorce was final: _____

What was most helpful about the pro se workshop at West Virginia Legal Services?

What problems (if any) did you have in getting your divorce? _____

What could the workshop do to make getting a divorce easier? _____

Would you recommend the pro se workshop to a friend? _____

Please feel free to make additional comments on the back of this page or on separate sheets. We do want to hear how your divorce worked out, and how we can improve the workshop in the future.

PLEASE RETURN TO: DIANE YOUNG
PRO SE WORKSHOP
115 S. FOURTH STREET
CLARKSBURG, WV 26301