

YOUR DIVORCE CASE  
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Your divorce case

West Virginia Legal Services Plan, Inc. is pleased to assist you with your divorce. We have prepared the following information to assist you in working with your attorney and understanding the legal process of obtaining a divorce.

Contacting the office

The office is open Monday through Friday. Our regular business hours are from 9:00 a.m. - 12:00 noon and from 1:00 p.m. - 4:00 p.m.

Please feel free to stop by our office at your convenience, during our regular business hours, if you have pleadings to review and sign or information to leave for your attorney. Because your attorney is busy interviewing clients, preparing cases and appearing in court, she/he is not available to see you on a drop-in basis. However, if you need to meet with your attorney in person, please contact the office and make an appointment with your attorney.

If you have any questions concerning your case or new information to bring to our attention, please feel free to call. Our phone number is (304)623-6649. If you are calling long distance, you may

wish to use our toll-free number: 1-800-642-8279. That number is answered in our Charleston office. They will take your name and number; then relay the information to us. Someone from our office can then return the call, saving you a long distance telephone charge.

Because of your attorney's work load, she/he may be unavailable when you call. If that is the case, please leave your name, phone number and detailed message. Your attorney is not always able to return your call immediately. However, if she/he knows what you are calling about, she/he may be able to respond more quickly by having another staff person return your call with the information you have requested. Also, if you are calling for information about your case, the attorney may be able to get the information before calling you back.

Clients often have questions regarding the status of their case. (e.g. Have my pleadings been prepared? Has my spouse been served with papers? Did my spouse file an Answer? Is there a hearing scheduled?) If you are calling to inquire as to the status of your case, please leave a message and someone will try to get back with you.

While we try very hard to make ourselves available to you during the course of our representation, it is equally important that you make yourself available to us. We should always have on file your current address, and if available, telephone number or contact number. If you move, please call us with your new address and/or phone number. This is particularly true for our clients who were staying at the Domestic Violence Shelter when we began representation, but later moved into a new home or returned to their former home.

#### Client confidentiality

Because of the nature of family law, personal and intimate information sometimes needs to be discussed. Your attorney is sensitive to that issue. Please be assured that information you share with your attorney, or the office of West Virginia Legal Services, is held in confidence. Please do not feel that you need to withhold information as it may affect our ability to adequately represent you.

#### Representation of your spouse

Once your spouse has received his/her divorce Complaint, your spouse may wish to contact an attorney to either contest the divorce or to provide him/her with legal information. Under no circumstances may our office represent both you and your spouse. If your spouse contacts our office seeking representation in this case, he/she will be advised that we have a conflict.

## Costs

You may be concerned about what this divorce will cost. A divorce may involve some court costs. The court costs include a filing fee when the action is initiated, a service fee for the sheriff to serve the Complaint on your spouse, as well as to serve any subpoenas you may request, and finally a hearing fee when appearing before the Family Law Master.

If you are unable to pay the court costs necessary to pursue your case, we will prepare a financial affidavit for you to sign; which we will then file with the court. This affidavit will allow the court to waive the court costs and allow you to proceed without charge. Though you will not have to pay court costs, the court may order your spouse to pay these charges if he/she has not filed a similar affidavit.

Our services are free for eligible clients; thus you will not be charged for our attorney fees. However, if your spouse is financially able, we may ask the court to order him/her to pay reasonable attorney fees. If the court should so order, the fees will not go to your attorney. Rather they are paid to West Virginia Legal Services Plan to enable the office to provide services to more eligible clients.

## Filing the complaint

If you are the person filing for divorce, you are the Plaintiff and your spouse is the Defendant. The action is initiated when your Complaint is filed with the Circuit Clerk's Office. The Complaint is a legal document which sets forth information about you and your spouse, as well as your marriage. It also advises the court and your spouse of the relief that you are requesting.

Our office will prepare the divorce Complaint for you, using information from our interview and the divorce questionnaire you filled out. Your appointment is for you to come to the office during our regular business hours and review the Complaint to make sure the allegations are correct, to the best of your knowledge, as well as the relief you are requesting.

Once the Complaint has been prepared to your satisfaction, we will have you sign what is called a verification page, which essentially states that the information contained in the Complaint is true to the best of your knowledge. If you cannot afford to pay the court costs necessary to pursue a divorce case, you will also be given a financial affidavit to sign. There are also other forms the court requires you to complete and sign.

In order to have your divorce finalized, you will need to submit a certified copy of your marriage record to the court. It will not be returned to you. We like to give it to the Court at the beginning of the case, so that there is not a wait at the end while you obtain it.

If you have not already provided us with an address for your spouse, you will need to do so at your appointment. We will file the divorce Complaint with the Circuit Clerk's Office; who then sends copies of the divorce Complaint to the Sheriff's Department to serve it on your spouse.

#### Serving the papers on your spouse

The divorce papers must be served on your spouse by the Sheriff's Department or other credible person. Even in a friendly divorce it is not possible for our office to mail the divorce papers to your spouse. Because of this, it is not adequate to have a Post Office Box address for serving papers. You must have a street or Route with a house number, or good description and map that will enable the Sheriff's Department to locate your spouse to serve the papers.

In addition, the papers must actually be served on your spouse in person, rather than left on the door or given to someone else. The only way the Sheriff can leave your spouse's papers with a family member is if your spouse and that family member actually live together in the same house and the family member is over the age of 16 years.

If you do not have a home address for your spouse, the Sheriff can serve papers at his/her place of employment. If he/she must be served papers at work, please try to provide us with the general hours that your spouse works, to make it easier for the Sheriff to serve the papers.

Once your spouse has received the divorce papers, he/she has 20 days to respond. During that twenty-day period, it is not possible for you to obtain your divorce.

#### Divorce by publication

If you do not have an address for your spouse, or your spouse lives out of the state of West Virginia, it will not be possible for the Sheriff to serve him/her with the divorce papers. Normally, it is our policy not to represent clients in divorce cases in which the spouse lives out of state or cannot otherwise be served with divorce papers by the Sheriff. However, we have been allowed to make exceptions to this policy on a case by case basis.

If the Sheriff is unable to serve the divorce papers in your case, service of the divorce Complaint must be obtained by publishing notice in the local newspaper. It will be published in the legal classified section and must run once a week for two consecutive weeks. It advises your spouse that a divorce has been filed and where your spouse can go to answer or pick up a copy of the divorce Complaint. When service is obtained by publishing in the newspaper, your spouse will have 30 days to file an Answer, rather than 20.

Usually when a divorce Complaint is served by publication, your spouse will be unaware of the case. Because of this, the court is severely limited in the type of relief it can grant in a publication divorce. The court has no authority to make orders concerning support, alimony, payment of joint debts, distribution of marital property, or a restraining order against your spouse. However, it is possible to obtain an order of divorce, as well as custody of your children, if they are living with you. Because of the limited relief available, divorce by publication is not a preferable option.

#### Temporary hearings

Your final divorce hearing will not be held until after your spouse's answer period has run. However, in some situations it is not possible to wait until the final hearing to obtain certain relief. Therefore, it is possible to schedule a hearing for temporary relief, pending the final divorce hearing. For example, you may need a temporary order for support, custody, visitation, restraining order, or determination of who is to use the marital home during the divorce proceedings.

If you feel that you need a temporary order, please notify our office. Your attorney can then schedule the matter on the court's docket and prepare a notice of the hearing advising your spouse when and where it is to be held, as well as what you will be requesting. Your spouse must be served with notice of this temporary hearing.

Not all cases require a temporary hearing. If you have a Family Violence Final Protective Order, it is automatically extended if the divorce is filed before it expires. This makes it similar to a temporary divorce order. If your spouse is not creating any problems for you, or you are able to work things out yourselves, we generally do not schedule a temporary hearing. Instead we wait for the answer period to expire, and schedule your case for final hearing.

#### Scheduling your case for final hearing

If the answer period runs and your spouse does not file an answer, we will schedule a final hearing. If your spouse files an Answer contesting some of the issues, it may be necessary to have a conference with the Family Law Master to schedule your final hearing. The date of your hearing will depend upon your attorney's schedule, as well as that of the court. Once the case has been scheduled for final hearing, your spouse will be mailed a notice of the hearing. The notice advised your spouse as to the day, time, and place of the hearing. You will also be sent a copy of this notice.

#### Hearing Preparation

Prior to final hearing, your attorney will prepare you for your court appearance. Unless it is contested case, this generally only takes a short time; it can be done over the telephone or through an office appointment. After you receive your notice of hearing, you will receive a letter scheduling a hearing preparation appointment.

Your attorney will also need to talk with any witnesses that will be testifying on your behalf. If your witness is unable to come with you for the preparation appointment, please provide your attorney with a phone number where he/she can be reached.

#### The Family Law Master

Your divorce hearing, and any temporary hearings that are required, will be heard by a Family Law Master, rather than a Circuit Judge. A Family Law Master is an attorney who has been appointed by the Governor to serve as a special judicial officer in family law matters. After hearing the evidence in your case, the Family Law Master will make a recommendation to the Circuit Judge. If there is no objection, the Family Law Master's recommendation will be accepted. The Family Law Master can make a temporary order without the judge's approval.

The Family Law Masters for our coverage area are:

#### HARRISON COUNTY

M. Drew Crislip

#### LEWIS, UPSHUR & RANDOLPH COUNTIES

Beth Longo

#### GILMER COUNTY

Jeff Hall

#### DODDRIDGE COUNTY

Joseph W. McFarland, Jr.

Since all the Family Law Masters worked as attorneys prior to their appointments to the position of Family Law Master, it may be possible that either you or your spouse, or both of you may have been represented at some point by the Family Law Master when he/she worked as an attorney. If that is the case, please notify our office as soon as possible, so that we can resolve any possible conflicts.

#### Attending the hearing

Please try to arrive for your hearing approximately 15 minutes before it is scheduled. There may be additional questions that you and your attorney may need to talk about, or your attorney may need to talk with your witness. Even though your hearing is scheduled for a certain time, the Family Law Master may have several hearings set. Thus your hearing may not start promptly as scheduled. You may wish to bring a newspaper or magazine to read while you wait.

As a family law matter, your divorce hearing is not open to the general public. Your hearing will take place in the Family Law Master's Office. Present will be the Family Law Master, you and your attorney, your spouse (if he/she wishes to come), an attorney for your spouse (if one has been retained). Your witness will wait outside until called to testify. The only other people that might be around during your hearing would be the Child Support Enforcement Division of the State of West Virginia.

#### The use of witnesses

You may or may not need a witness to testify at your hearing. This is something that your attorney will talk with you about in more detail. If you are getting an irreconcilable differences (no-fault) divorce, you do not need a witness. However, your spouse must file a verified Answer admitting irreconcilable differences. (If your spouse doesn't have an attorney, answer forms re available at the Circuit Clerk's Office.) If you are getting a divorce on some other basis, you will need one person to testify in support of your fault grounds for your divorce. That person must have actual first-hand knowledge about the fault you are alleging. Witnesses may also be used in other situations, such as determining custody, visitation, or ownership of property.

Your attorney will expect you to talk with your witness and make arrangements for him/her to come to court on your behalf. If your witness will not do this voluntarily, he/she can be subpoenaed. If a subpoena is necessary, you will need to notify your attorney as soon as possible, so that arrangements can be made. You will also need to provide an address for your witness.

#### What happens at the hearing

When the hearing is ready to begin, everyone who will be testifying is asked to swear or affirm to tell the truth. At that point, your attorney will ask you questions regarding the information in the divorce Complaint, such as where you and your spouse live, when and where you were married, when and where you separated, names and ages of the children, etc. You will then be asked questions regarding your grounds for divorce. (For example, if you're getting your divorce on grounds of cruelty, you will need to give specific examples as to how your spouse has treated you cruelly.) Finally, you will be asked what relief you are requesting.

After you have been questioned by your attorney, the other side will be allowed to ask you questions related to your testimony and the divorce case. If your spouse has an attorney, the attorney will ask the questions. If not, your spouse will be allowed to question you.

If you have any witnesses, they will be called to testify. After you have completed your case, your spouse will be given an opportunity to present evidence on his/her behalf. At the conclusion of all testimony, the Family Law Master will make

findings regarding the evidence and recommendations on what relief should be granted.

You're not divorced yet!

At this point, you are still married. Your divorce does not become final until the divorce decree or final order has been prepared, signed and entered into the court records.

Getting your final divorce order

Following the hearing, the Family Law Master must submit a recommended order to the Judge. If you object to his/her recommendation, you have ten days to file a Petition with the Judge, seeking review. (Because of the short time period, you must advise your attorney of any objections immediately.) If you have no objections, you may wish to waive this ten-day period.

Your attorney will then prepare the Final Order for your divorce case and submit it to the Family Law Master. If the Family Law Master believes that the Final Order was written correctly, he/she will submit it to the Judge. After the ten-day period, if no objection has been filed, the Judge will sign the Final Order. If you waived the ten-day objection period, your Final Order can be signed sooner.

Once your Final Order has been signed by the Judge, it will be entered in the court records. You are now officially divorced. At the conclusion of your case, your attorney will send you a copy of the Final Order, for your records. Your now ex-spouse will also be sent a copy.

Important dates

Appointments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Hearings: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_