

WHAT HAPPENS AT YOUR HEARING?

PREPARE FOR HEARING: Tell your witness the day and time of the hearing. Make a list of everything you want the Court **to give you** - custody, child support, alimony, property, debts. For each **thing you** want, you will need to provide information. If you want custody, list all the primary caretaker duties you have performed. If you want child support, fill out and file your Financial Statement for Child Support before the hearing.

Please Remember: Marital property and debts will usually be divided in half. Separate property and debts will remain owned by the individual spouse. Marital Property is the property acquired while you are married and cohabiting, except property that was given to you or inherited by you. Separate Property is property acquired by a spouse before the marriage or after you have stopped living together. Marital Property can include property titled in one spouse's name only. Some examples of marital property are: house, land, trailer, car, bank account, stocks, household furnishings, contributions to pension, etc. Some examples of marital debts are: credit cards, car loans, bills, mortgage, etc. Make a list of the property that you want.

If you want alimony, fill out and file your Financial Statement before the hearing. Be prepared to tell the Law Master whether you need permanent or rehabilitative alimony. Also, tell the Law Master the length of the marriage, the expenses of any proposed training, etc. Make a list comparing information about you and your spouse:

<u>YOU</u>	<u>SPOUSE</u>
Age _____	_____
Education _____	_____
Work History _____	_____
Present Income _____	_____
Income Earning Ability _____	_____
Health Care Costs _____	_____

ON THE DAY OF YOUR HEARING: The day of your hearing you go to the Family Law master's office at the time your hearing is scheduled. When you get there, you should let one of the secretaries know that you're there. Once you do that, you sit and wait for your hearing.

BRING YOUR WITNESS WITH YOU TO YOUR HEARING!

NEWSPAPER: If your divorce was by publication [in the newspaper], you should bring a copy of the "Publication Affidavit" the newspaper sent you (after they published your divorce). If you never received the "Publication Affidavit", you should call the newspaper and get a copy.

When it is time for your hearing, you and your spouse, if your spouse is there, will go alone into the Family Law Master's office. The Law Master will tape record what you say. When you first get in the office, the Law

Master will have you raise your hand and swear to tell the truth. Once that is finished, you will need to testify; or tell the Law Master certain information. REMEMBER: this may be your ONLY chance to ask for alimony, property, etc. Be sure that you tell the Law Master what you want.

The Law Master will ask you to tell him or her:

1. Your name and address;
2. The date you and your spouse got married.
3. The last date that you and your spouse lived together.
4. The county and state where you got married.
5. The county and state where you lived together when you separated.
6. How long you have lived in West Virginia.
7. How long your spouse has lived in West Virginia.
8. The names and ages of all children that you and your spouse had during the marriage and who gets custody of them.
9. Whether or not your spouse is in jail, incompetent, under 18 or in the armed forces.
10. How old you are and how old your spouse is.
11. The maiden name of the wife.
12. Where you work and how much you make and where your spouse works and how much money he/she makes.
13. Whether or not you own any property or owe any debts and how you want to divide it.
14. That you and your spouse don't get along and have irreconcilable differences.
15. That you either agree on an amount of alimony or that you give up your right to alimony from your spouse.
16. Who has been the primary caretaker of the children and the primary caretaker should tell the Law Master all of the things that they did for the children on a daily basis: feeding, clothing, bathing, disciplining, arranging for babysitters, schooling, etc.
17. If your spouse didn't sign an answer, you and your witness will have to tell the Family Law Master about why you think that you were physically or mentally abused during the marriage.

After this, the Family Law Master will ask some of these questions to your spouse. You also need to give the Law Master the Financial Statement that you filled out before. When that is finished, you can go home.

AFTER THE HEARING:

Wait. After you leave the Family Law Master's office, **YOU WILL NOT BE DIVORCED.**

The Family Law Master will prepare a RECOMMENDED DECISION / ORDER. This will be a part of your final divorce papers.

After the RECOMMENDED DECISION / ORDER is finished, the Family Law Master's secretary will send you and your spouse a copy. **When you receive this, you still will not be divorced.**

READ: You should read the RECOMMENDED ORDER that you receive in the mail. If you agree with it, do nothing. If you do not agree with it, you must file another legal paper called EXCEPTIONS within 10 days. You should get a lawyer to help you do these exceptions if you do not agree with the recommended decision.

If you do not file exceptions, after ten days the Judge will sign the ORDER that will be your final divorce papers. When the Judge signs that order and the clerk puts it in your file, you will be divorced.

It can take from 2 to 8 weeks after your hearing to get your final papers.

AFTER THE DIVORCE:

SUPPORT: If you have problems getting child support, you should call the bureau of child support enforcement .

PROPERTY: If you have problems getting your property, take your final order to the sheriff and ask the sheriff to help you.

VIOLENCE: If you have problems with violence or threats of violence, call the police, and go to Magistrate Court and ask for a Domestic Violence Protective Order.

CHANGE SOMETHING: If you later want to change something, like custody, you will need to get a lawyer to file a PETITION FOR MODIFICATION.

We hope that you have found the information and forms in this material helpful. This material is no substitute for a lawyer. Remember that if you have any complications or problems which require assistance, you should consult a lawyer.

SOME QUESTIONS YOU MIGHT HAVE ABOUT DOING YOUR OWN DIVORCE

How Do I Get A Divorce and Where Do I File?

The first step in getting a divorce is filing a legal paper called a "Petition" in the Circuit Court. You need to file the Petition in the Circuit Clerk's office in the county where you and your spouse last

lived together or where your spouse lives now. If your spouse lives in another state, you can file in the county where you live.

When Can I File For Divorce?

If you were not married in West Virginia, you or your spouse must have lived in West Virginia for the year before you file. If you were married in West Virginia or if you or your spouse have lived in West Virginia for over one year, you can file anytime.

Does it Cost Anything To Get A Divorce?

If you file a poor person's affidavit because you cannot afford to pay the fees, you will not have to pay to file your divorce. If you cannot file an Affidavit of Indigency, you will have to pay when you file the Petition. There will also be fees for the hearings held before the Family Law Master, unless you have filed an Affidavit of Indigency. The fee for an uncontested divorce hearing is Fees for contested divorces are charged on an hourly basis.

Can I File The Divorce Petition Myself Or Do I Need An Attorney?

You can file a divorce Petition on your own without an attorney: but your rights may be better protected with the help of an attorney. Most Circuit Clerk's offices in the state have forms to fill out in order to obtain a no-fault divorce, on the grounds of irreconcilable differences. You can only get a no-fault divorce if your spouse files an "Answer" and admits that irreconcilable differences exist. Irreconcilable differences means that you and your spouse cannot get along and that it is not anyone's fault. Forms for the Answer are also available at the Circuit Clerk's office.

You can still do your own divorce even if your spouse won't agree to the divorce or won't file an Answer. However, this will not be a "no-fault" divorce. You will have to prove "fault" by showing that your spouse treated you cruelly, or was addicted to drugs, etc, or on the grounds that you were separated for over one year.

If you have children and can not agree who should have custody, you should try to hire an attorney, if at all possible.

If you have any property -- land, home, cars, bank accounts, pensions, etc. -- you should try to hire an attorney.

Even if you and your spouse have decided to do your own divorce and have come to an agreement on everything, you should consider taking the agreement, by yourself, to an attorney to have it looked over.

What if My Spouse Has Already Filed A Petition?

Once you have been handed a divorce Petition by the sheriff or other person (you have been personally served), then you have 20 days in which to file an Answer. You should see an attorney immediately, once you have been served; or get ready to file your own Answer.