

PRO SE DIVORCE PACKET INSTRUCTIONS

Recently you spoke with us concerning legal service. 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.

I have reviewed the information which you provided, and I am sorry to say that West Virginia Legal Services Plan will not be able to represent you in your case. However, we are sending you the enclosed materials to aid you in your divorce. These materials will help you do your divorce on your own, or *Pro Se* (Pro Say). *Pro Se* means you will not be represented by an attorney, you will go before the Family Law Master and represent yourself in your divorce. It is very important that you read all information we give to you.

***Pro Se* is not the best way to get a divorce.** You are usually 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.

However, if you need to do the divorce on your own, the enclosed materials we are mailing you will be useful. One packet is titled "Divorce Packet". These are the official Court forms. These are the papers you will use in Court to get the divorce. There is other material attached to these instructions and contains some background and explanatory materials. Also attached to these instructions is one form you may file in Court called an "Affidavit of Indigency and Application for Waiver of Fees..." 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 (see Fees).

We recommend that you read all the materials in both packets before proceeding. Read the instructions packet first. Then read through the other packet prepared by the Supreme Court there are also instructions there on how to fill out your papers, and use those papers to get your divorce.

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. This is **NOT** a reason to stop getting your divorce, it is a reason to be careful. As these papers explain, you can get a Domestic Violence Protective Order (DVPO) from Magistrate Court before you start filing your divorce. If you file your divorce within 90 days after getting the 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 before you leave in order to plan the safest possible separation. A list of those programs or shelters is included with the packet of material attached to this letter.

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.

DIVORCE PETITION

The "petition" is the papers you file in Court that starts the divorce. You will find the "Petition for Divorce" in the Divorce Packet. The petition will give all the information to the Court about why you want the divorce and what you want. The last part of the divorce petition form has boxes for you to check to indicate to the Court what it is that you want the Court to do for you in the divorce. This is your one and only chance to ask for these things. If you check a request for something on the papers at the time you file the divorce you CAN change your mind later and ask the Court to DROP it. However, if you do not check the box at the time you file the complaint, you CANNOT change your mind later in Court and ADD it to what you want. So when in doubt, ask for it now.

In addition, 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. Again, if you don't ask now, you can't change your mind later without starting back at the beginning again.

When you begin filling out your papers you will be the Petitioner and your spouse will be the Respondent.

GROUND S

A divorce may be awarded on many grounds. Only three grounds are included in these forms. 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 your spouse files an "Answer" and agrees to the divorce. **It is therefore important to check more than one box for grounds other than just "irreconcilable differences".** If you only check irreconcilable differences and your spouse does not agree in writing to the divorce, then you will not be able to get the divorce without starting all over again. If you have been separated one year or more, check that box, but only if that statement is true. Otherwise, check the "mental or physical cruelty" box. If either of these boxes are checked you must bring a witness to your hearing to testify about the separation or the mental or physical cruelty. The Courts apply a very loose standard here. Courts do not stand in the way of people who want divorces. Just about anything your spouse did that upset you will be enough to get the divorce on the grounds of mental or physical cruelty as long as you have a witness that it happened and that it upset you.

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

As some of the materials explain, 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 custody of children gets the property the children need. Each of the spouses 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 exactly everything that went on. As the enclosed materials explain, you will get a copy of what the Family Law Master is recommending, called the Recommended Order. You will have the opportunity to appeal that to the Circuit Judge if you don't like it. However, if you waive your 10 day period, then you disagree with what the Family Law Master is recommending, you cannot appeal to the Circuit Judge.

These forms we have sent to you will be the original court forms. If you think you will need more, (for practice or in case of mistakes) make copies *before* you begin filling them out. After you have filled out the forms you will need to make copies, the original forms with your actual signature will be filed with the Circuit Clerk, make two copies (one copy for yourself and one copy to send to the other party).

I hope you find these materials useful. Good luck to you in this matter.

Attachments: List of Domestic Violence Programs and Shelters; Some Questions You Might Have About Doing Your Own Divorce; What Happens at Your Hearing; 9 Step Check List; Visitation Schedules
Enclosure: Divorce Packet & Pro Se Divorce Instruction Packet; Proposed Parenting Plan;

Prepared July 9, 2001 by:

West Virginia Legal Services Plan
922 Quarrier Street, Suite 550
Charleston, WV 25301

