

INSTRUCTIONS FOR FILING YOUR CONTESTED DIVORCE WITH MINOR CHILDREN

In Georgia, if you want to end your marriage, you must file a complaint for divorce in the Superior Court. You can either hire an attorney who will prepare your case and represent you in court, or you can use the sample forms included in this packet and represent yourself in court. After a court issues a final judgment and decree, you can remarry.

A contested divorce is one in which the parties cannot work out a written agreement regarding issues such as child custody, child support, visitation, alimony, property division, division of debts and the like. The parties ask the Judge to settle arguments between them, and each will have to present evidence at a trial. This process can be quite complicated. You will probably need additional documents in order to conduct discovery, which is a formal process of gathering evidence for use at trial. Discovery can include depositions, interrogatories, requests for production of documents, and other procedures. Because discovery is a highly individualized process, it is not possible to include those documents in this packet.

YOU MAY NEED AN ATTORNEY IF:

The case becomes contested and your spouse has a lawyer.

- You cannot find your spouse to serve him or her with your papers.
- You think you will have difficulty getting information and documents from your spouse
- regarding income, retirement funds, etc.

Even if it is a friendly divorce, you should talk to a lawyer before you sign any settlement papers or file anything in court.

- STEP 1: Complete the Domestic Relations Filing Information and Final Disposition forms.
- STEP 2: Complete the Complaint for Divorce.
- STEP 3: Complete the Summons Form
- STEP 4: Complete the Verification form.
- STEP 5: Attach other necessary documents (see details later).
- STEP 6: Produce the required financial documents.
- STEP 7: Pay the filing fee.
- STEP 8: File the forms.
- STEP 9: Attend the required seminar.
- STEP 10: Prepare your case for trial.
- STEP 11: Receive the Final Judgment.

DETAILED INSTRUCTIONS:

STEP 1: Complete the Domestic Relations Filing Information and Final Disposition Forms

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia

Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a divorce, you will check " Divorce (includes annulment)."
- e. In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the Judge.
- b. Leave the second line, "Docket #," blank. The clerk will assign this number.
- c. Write your name where it says "Reporting party."
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner's Attorney, you will check the box which says Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

STEP 2: Complete the Complaint for Divorce.

Fill in your full name as the Plaintiff and your spouse's full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name in the space provided just before paragraph one (1).

Paragraph 1: Subject Matter Jurisdiction

Check box a) if you have lived in the state of Georgia for at least six months prior to filing your complaint for divorce.

Check box b) if you are not a resident of the state of Georgia, but your spouse has lived in Georgia and in the county where you are filing for at least six months prior to your filing the complaint for divorce. If neither a) or b) applies to you, you cannot file for divorce in this county.

Paragraph 2: Venue and Service

About Venue

The word venue originally meant neighborhood. Today, venue means the proper place to hold a trial based on issues such as fairness and convenience to the parties, as well as the county's connection to the events in dispute.

In Georgia, the general rule is that the proper venue (place) to sue a Defendant for divorce is in the Defendant's county of residence.

When the Defendant in a divorce case is incarcerated, Georgia courts have held that venue is proper in the county where the Defendant resided with his or her spouse before the incarceration.

About Service of Process

Serving the Defendant with the complaint and other papers filed against him or her is *essential*. Without proper service, the court has no jurisdiction (authority) to decide the case. In our legal system, a Defendant has a Constitutional right to receive notice that he or she has been sued. For this reason, the preferred method of Service is that someone physically put the legal papers into the Defendant's hand. Because this is not always possible, there are exceptions.

Choose one of the following provisions

a) Acknowledgement of Service

Check box a) if your spouse will sign the Acknowledgement of Service which is on page sixteen (16) of the forms packet. You will need to give your spouse a copy of your completed Complaint for Divorce and have him/her sign the Acknowledgement of Service. By signing this form, your spouse is letting the court know that he/she has received a copy of your petition and, therefore, will not need to be served with a copy of your petition by the sheriff.

b) Waiver and Jurisdiction and Acknowledgement of Service

Check box b) if one of the following statements is true:

your spouse lives in Georgia but does not live in the county where you are filing; or
your spouse lives in another state and will consent (agree) to let you file for divorce in Georgia.

In either of these situations, your spouse must sign the Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction, which is on page seventeen (17) of the forms packet.

c) Service by the Sheriff.

Use paragraph c) if your spouse lives in the county where you are filing, but will not sign any papers. In this situation, he will be served by the Sheriff, using the Certificate of Service form, which is on page eighteen (18) of the forms packet.

Use this paragraph if the following statements are true:

1. You are filing in the county of your marital residence (where you last lived together).
2. The Plaintiff still lives in the county of the marital residence.
3. The Defendant moved to another Georgia county within the previous six months.

In this situation, he will be served by the Sheriff, using the Certificate of Service form, which is on page eighteen (18) of the forms packet.

- e) Service by Publication for a Georgia resident: Use this paragraph if your spouse lives in Georgia, but his or her exact whereabouts are unknown. In this situation, you will use all of the Service by Publication forms, which are on pages twenty through twenty-four (20-24) of the forms packet.
- f) Serving an out-of state spouse : Use this paragraph if your spouse is NOT a Georgia resident, then choose one of the following:
 1. Use this paragraph if your spouse is subject to Georgia's long arm statute. The long arm statute gives a Georgia court personal jurisdiction over a non-resident defendant if he or she had enough contacts with the state. You will probably need to do additional research at the law library in order to determine whether your spouse is subject to the long arm statute. In this situation, your spouse will be served by second original. The clerk will stamp a copy of your Complaint "Second Original." These papers will be forwarded to the sheriff of the Defendant's county of residence and served by that Sheriff.
 2. Use this paragraph if your spouse lives outside of Georgia, but his or her exact whereabouts are unknown. In this situation, you will use all of the Service by Publication forms, which are on pages twenty through twenty-four (20-24) of the forms packet.

Paragraph 3: Date of Marriage

Check box a) if you and your spouse have a marriage certificate. Insert the date you were married in the space provided.

Check box b) if you and your spouse are common law married. Insert the date you and your spouse entered into your marriage in the space provided. You were common law married if the following statements are true:

1. You and your spouse were able to enter into a contract at the time you established a common law marriage. You were over age sixteen and mentally competent.
2. You and your spouse actually entered into a contract of marriage meaning that you and your spouse agreed that you were married.
3. You and your spouse have had sexual intercourse.
4. All of the above were done before January 1, 1997.

Paragraph 4: Date of Separation

Insert in the space provided the date you and your spouse separated. It is not essential that the husband or wife leave the marital homeplace; separation can occur when one spouse moves into another room with the intent and purpose of suspending conjugal rights. The suspended conjugal rights include the company, cooperation, assistance, aid and intimacy of the other spouse in every conjugal way.

Paragraph 5: Children Born of the Marriage

Check the box underneath paragraph 5. List all children born to you and your spouse together, even if the children were born before your marriage. List the child (ren)'s name(s), date(s) of birth(s), and sex(es).

Paragraph 6: Grounds for Divorce

Check the reason(s) you are requesting a divorce. You can check more than one. The most common ground for divorce is that the marriage is "irretrievably broken." This means that you and your spouse are unable to live together, and there is no hope that the two of you will get back together again. This is what is commonly called a "no fault" divorce. However, if you check one of the other twelve grounds for divorce, you must be able to prove your grounds for divorce.

Paragraph 7: Alimony

Check box a) if you are seeking temporary alimony which will last until the divorce is final. Check box b) if you are seeking alimony which is both temporary (will last until the final decree) and permanent (will last until the spouse dies or you remarry). If you engaged in adultery, desertion, cruel treatment, or other fault grounds for divorce, you will not be able to get alimony.

Paragraph 8: Marital Property

Check box a) if you and your spouse do not have any marital property.
Check box b) if you and your spouse have already divided your marital property to your mutual satisfaction.
Check box c) if you and your spouse have marital property which needs to be divided up by the Court. Check off the various items of property which you own, and give additional information if necessary.

Paragraph 9: Joint Debts

Check box a) if you and your spouse do not have any joint debts.
Check box b) if you and your spouse have joint debts. Insert in the spaces provided information about these debts. Indicate which person should pay for each debt.

Paragraph 10: Name Restoration

Check this box if you want your former name restored to you. Insert in the space provided the name you want restored. You cannot change your name to a different name if it was not your former name. For example, you can return to your maiden name or to the surname of a former spouse if you had that name in the past.

Paragraph 11: Children's Past Living Arrangements

This information is required by O.C.G.A. § 19-9-69. Insert in the space provided the addresses of where the children lived, the dates they lived at each place, and the names of who they lived with.

Paragraph 12: Other Actions Involving the Children.

This information is required by O.C.G.A. § 19-9-69. The kinds of proceedings that the court wants to know about include: custody, visitation, family violence, protective orders, termination of parental rights, and adoptions.

Check box a) if there has never been any other custody action concerning your child(ren).

Check box b) if there has ever been or is presently another custody action concerning your child(ren). Insert in the space provided the location of the custody action, the type of action, when it began, and what happened at that action.

Paragraph 13: Other Parties with a Custody Claim

Check box a) if no one other than you or your spouse has a court order stating what legal rights they have to your child(ren). This means that there is no court order granting anyone else custody or guardianship of your child.

Check box b) if someone other than you or your spouse has any legal rights to your child(ren). Insert in the space provided the name of the person or agency, and what legal rights that person or agency has to your children.

Paragraph 14: Child Custody

Check box a) if you want for you and your spouse to share legal custody of the children, but you want one spouse to have primary physical custody.

Check box b) if you want one party to have legal custody and the other party to have physical custody.

Check box c) if you want one party to have both legal and physical custody.

Paragraph 15: Visitation

Check box a) if you want to write up your own visitation schedule in the blank provided.

Check box b) if you want to use the attached visitation schedule.

Paragraph 16: Child Support Amount

Please go to <http://www.georgiacourts.org/csc/> and complete the Child Support Worksheet. You may complete it by using the Excel worksheet, or you may print out the Excel worksheet as a PDF file and complete it by hand using a calculator.

Paragraph 17: Child Support Method of Payment

Choose paragraph a) if you want the child support to come directly to the custodial parent.

Choose paragraph b) if you want the child support to go to the custodial parent through Georgia's Child Support Enforcement Agency.

Paragraph 18: Health Insurance

This paragraph allows you to designate which party will cover the minor children under a health insurance policy, and to divide up any medical expenses which are not covered by health insurance.

STEP 3: Summons

Complete the Summons form. Insert your name as Plaintiff and your spouse's name as Defendant. Do not fill in where it says Civil Action File No. The Clerk will assign a number to your case when you file your complaint. A Summons form must be filled out by Plaintiff and filed with the Clerk of Court. If the Defendant is served by the Sheriff, then the Summons form must be included with the complaint for service. The Summons notifies the Defendant that if an answer is not filed with the Court within 30 days of service, then a judgment by default can be entered against the Defendant.

STEP 4: Verification

By completing the Verification form, you are swearing that everything you said in your complaint is true. Insert your name as Plaintiff and your spouse's name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

STEP 5: Other Court Documents

In addition to the complaint for Divorce and the Verification, you will need to attach the following forms to your complaint (they are in the packet):

1. Service/Venue Forms (Choose one of the following letters):
 - a. Acknowledgment of Service (page 16 of the forms packet) and Rule Nisi with Temporary Restraining Order (page 19 of the forms packet).
 - b. Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction (page 17 of the forms packet) AND Rule Nisi with Temporary Restraining Order (page 19 of the forms packet).
 - c. Certificate of Service AND Rule Nisi with Temporary Restraining Order (pages 18-19 of the forms packet).
 - d. Motion for Service by Publication AND Affidavit of Due Diligence AND Order for Service by Publication AND Notice of Summons—Service by Publication (Pages 20-24 of the forms packet).See the instructions on pages three to four (3-4) of this document to help you decide which ones apply to you.
2. Lis Pendens Notice (page 32 of the forms packet). You need this notice if you own real property such as a house or land.
3. Final Order (pages 34-38 of the forms packet).
 - a. **Caption:** Fill in your full name as the Plaintiff and your spouse's full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.**
 - b. **Contents of Order:** (You will use the numbers from your Child Support Worksheet)
 - i. Change of Name—In the first blank, fill in the current name of the spouse whose name will be changed. In the second blank, fill in the name of that spouse as it will be after the change of name.

- ii. Names of Children (Paragraph 1)—Fill in the names of the children and their dates of birth.
- iii. Name of Custodial Parent (Paragraph 2 a)—Fill in the name of the Custodial Parent.
- iv. Name of Non-custodial parent (Paragraph 2 b)—Fill in the name of the Non-custodial parent.
- v. Parenting Time (Paragraph 2 c)—Fill in the number of days which the non-custodial parent will visit with the child(ren).
- vi. Gross income of Husband (Paragraph 3 a)—Fill in the gross income of the Husband.
- vii. Gross income of Wife (Paragraph 3 b)—Fill in the gross income of the Wife.
- viii. Non-custodial parent’s adjusted income (Paragraph 4 a)—Fill in the adjusted income of the non-custodial parent.
- ix. Custodial Parent’s adjusted income (Paragraph 4 b)—Fill in the adjusted income of the custodial parent.
- x. Combined adjusted income (Paragraph 4 c)—Fill in the amount of the parties’ combined adjusted income.
- xi. Basic Support Obligation (Paragraph 5)—Fill in the amount of the Basic Child Support Obligation which is listed on the “Child Support Obligation Schedule Table” based on the parties’ Combined Adjusted Income. This table can be found at <http://www.georgiacourts.org/aoc/publications/sb382.htm>. Move the bar on the far right-hand side of the screen about one-third of the way down the document in order to see this table.
- xii. Basic Child Support Obligation/Custodial Parent (Paragraph 6 a) Fill in the amount of the Basic Child Support Obligation for the Custodial parent.
- xiii. Basic Child Support Obligation/Non-custodial parent (Paragraph 6 b)—Fill in the amount for the Basic Child Support Obligation for the Non-custodial parent.
- xiv. Health Insurance (Paragraph 7)—Check the box to show whether health insurance is available at a reasonable cost. Fill in the name of the parent who is responsible for maintaining health insurance for the children.
- xv. Presumptive Amount of Child Support/Custodial Parent (Paragraph 8 a)—Fill in the Presumptive Amount of Child Support for the Custodial parent.
- xvi. Presumptive Amount of Child Support/Non-custodial Parent (Paragraph 8 b)—Fill in the Presumptive Amount of Child Support due to the Non-custodial Parent.
- xvii. Presumptive Amount of Child Support/Custodial Parent—Fill in the Presumptive Amount of Child Support due to the Custodial Parent.
- xviii. Title II Social Security Benefits (Paragraph 9)—Fill in the amount of benefits which the child receives each month under Title II of the Federal Social Security Act on the Obligor’s account.
- xix. **Special Circumstances (Paragraph 10)—Leave this area blank because the Judge has discretion on whether and how to use deviations from the Presumptive Amount of Child Support. The Judge will fill in this part of the Order.**

- xx. **Final Amounts (Paragraphs 11 and 12)—Leave these areas blank. If the Judge alters the Presumptive Amount of Child Support based on Special Circumstances, the final amounts may be different from the numbers on your Child Support Worksheets and Schedules.**
 - xxi. Name of the Non-custodial Parent—Fill in the name of the Non-Custodial Parent.
4. Income Deduction order AND Income Deduction Order Notice (pages 39-40 of the forms packet). **All divorce decrees must contain an income deduction order unless:**
- a. The court issuing the order finds there is good cause not to require immediate withholding; or
 - b. A written agreement is reached between both parties which provides for an alternative arrangement.

STEP 6: Financial Documents to be Produced

Along with the divorce packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.
2. Domestic Relations Financial Affidavit (pages 25-31).
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.
7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.

11. Any court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

STEP 7: Fees

Unless you are able to have your filing fee waived, there is an filing fee in Southern Judicial Circuit. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit.

STEP 8: File your forms

You should make two copies of all of your documents. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to your spouse.

STEP 9: Attend the required seminar

Each of you must attend the seminar for parents regarding the effects of divorce on minor children after the filing of this action and BEFORE you ask the Court to grant the divorce. A Seminar Schedule, together with fee requirements and locations, can be found in the Clerk of the Superior Court's office. Seminar attendance by both parties is mandatory. Failure to complete this seminar in a successful manner will result in appropriate action against you by the Court, including denial of the grant of divorce until the class is completed, or the dismissal of your case.

STEP 10: Prepare your case for trial

In most civil cases, **pretrial discovery** is conducted. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

Interrogatories are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the court.

Depositions are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross

examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be “impeached,” or discredited by referring back to the deposition testimony.

Requests for Production of Documents are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party’s tax returns, bank statements, or other important documents.

Physical and Mental Examinations may be used only with the court’s permission, when a party’s physical or mental condition is an issue in the trial, and when the requesting party can show “good cause,” i.e., the information is extremely important and cannot be otherwise obtained.

Requests for Admissions are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

For more information about trial preparation, see the following informative websites:

<http://www.georgiacourts.org/aoc/selfhelp/>

STEP 11: Receive the final judgment

Your divorce is not final until the Judge signs the final order in the case. Each party will receive a copy of the signed final order. Once you have the signed order granting your divorce, you are free to remarry.

If the Defendant does not answer your Complaint for Divorce, the final judgment may be awarded any time 46 days after service, unless the time for response has been extended by court order.

If the Defendant was served by publication, the final judgment may be granted any time suitable to the Judge 61 or more days after the date of first publication.

If your divorce goes to trial, the entire process can take anywhere from several months to several years, depending on how hard you two fight. Even though you have filed a contested divorce, you can still sign a settlement agreement at any time before the Judge issues a final order. Settling out of court greatly speeds up the process of getting a divorce.