

INFORMATION PACKET

FOR

DIVORCE (No Children)

Provided by:

Judges of the Sixth Judicial Circuit,
Pinellas County

Administrative Office of the Courts

Clerk of the Circuit Court

November 2004

COMMONLY ASKED QUESTIONS
from Pro Se Litigants - Family Law
(cases without children)

as of November, 2004

1. How do I get a divorce?

If you and your spouse don't have any minor children and are basically agreeing to everything, you might contact the Clerk of Court and ask for assistance in filing a Simplified Dissolution action. However, you both must appear in front of the Clerk to fill out the paperwork, and you both must appear again in front of the judge who will grant your divorce.

2. I cannot find my spouse to be served with the Petition for Dissolution of Marriage. What can I do?

You may explore a method called "Constructive Service" when your spouse cannot be located to be personally served with the Dissolution (Divorce) petition. You can do this by posting or publication. You should contact the Clerk of Court for more information on this method. Constructive service is a very technical area of the law; legal advice is strongly recommended. Failure to correctly follow the law may prevent you from getting divorced.

3. These forms are too confusing. I don't understand some of the words. Can you help me fill them out?

The court cannot assist you in filling out the forms. If you think you need assistance, you may try contacting the Clearwater Courthouse Legal Assistance Project at 727-464-3267, the Community Law Program, the Clearwater Bar Foundation, or Lawyer Referral Service. Both the St. Petersburg and Clearwater Bars have a lawyer referral program where you can talk to a lawyer for 1/2 hour for a fee.

4. What's a Petition?

"Petition" is a legal term, but basically it is just a piece of paper that tells the judge what you want and why you think you should get it. Petitions are used to start several different types of lawsuits, such as divorce, paternity, modification of child support, etc. All petitions require personal service on the other party by the sheriff or a private process server.

5. What should my Motion say?

The court cannot tell you what your Motion should say. You should try your best to tell the judge what it is you want the court to do, and why you think the court should do it. Your Motion should not just focus on what you personally think is right, but should be supported by evidence and applicable law. It is always advisable to seek legal advice before coming to court.

6. I just got served with this Injunction that says I have to be at a hearing this Thursday. I can't take off work. What will happen if I don't go? Should I file a written response?

You should read the Injunction carefully because it tells you what will happen if you don't go. You are not required to attend; however, the hearing may go on without you.

You may file a written response if you'd like, but there is no guarantee that it will have any effect on the outcome of the hearing.

7. I filed a petition for divorce and there was no answer. What do I do now so I can get a hearing. Somebody told me something about a default motion and a non-military affidavit, what are those and where do I get them?

If the Petition was served on your spouse and your spouse did not file a written response within twenty (20) days of the date of service, you may go to the Clerk of Court and ask for a Request for Default form. Note: the clerk cannot process defaults until 25 days has lapsed due to allowances for postal mail. You will also have to complete a Nonmilitary Affidavit, stating that your spouse is not currently serving in the military. After you have completed and filed these forms, the Clerk may enter a Default, if appropriate, in your case.

Once the Default is entered, you may proceed with your case without further notice to your spouse. However, the law requires that your spouse receive notice of any final hearing in the dissolution (divorce) action.

8. I don't have a lawyer. My husband's lawyer never sends me copies of stuff from the hearing and now this is signed and it's all wrong the way he wrote it. I never got my chance to object. (OR: This draft the lawyer sent me is nothing like what the judge ordered at the hearing, it's all changed around in my husband's favor; I object. What do I do?

You may file a written Motion to the judge, with a copy to the attorney, stating your objections to the Order, or how you feel the Order does not reflect the judge's ruling. It will be up to the judge to decide whether or not his or her order accurately reflected the ruling at the hearing.

9. I don't have any kids and my wife and I are agreeing how to divide our property and debts. What's the easiest way for me to get a divorce?

You are probably eligible for what is called a "simplified" divorce. Both you and your spouse must go together to file the paperwork. You must also both appear at the final hearing. You may contact the Clerk of Court for assistance with this process.

10. How can I withdraw a motion?

File another motion to ask that the first motion be withdrawn.

11. The Clerk requires that I file a Nonmilitary Affidavit before they will enter a default in my case. My problem is, my wife IS in the military, so I can't truthfully file one. Does this mean I can't get a default?

It probably means you can't get a default issued by the Clerk. You can also have your Motion for Default heard by a judge or one of the General Masters instead of requesting one from the Clerk. However, this situation is complicated by Federal Law and you should have a lawyer assist you.

What to expect...DIVORCE in the Sixth Judicial Circuit, Pinellas County

Introduction

A divorce is a painful and difficult experience. If you understand the functions and limitations of the legal system, the process becomes more tolerable. This pamphlet should provide you with a greater understanding of the process to help you get through your divorce with realistic ideas and goals.

Limitations

Florida's divorce system is based on the principle of "no-fault," meaning that a divorce will be granted if either party believes that the marriage is over. Generally, the causes of the failure of the marriage are not an issue in court. All that matters is that the marriage needs to be ended.

It is impossible for us to heal the emotional wounds created by your divorce. You must understand that the legal system is not a tool for punishment of your spouse. The courtroom is no place for revenge. We must decide your case on the basis of its unique facts. In most cases, the law does not permit us to compensate either of you for the other's misconduct.

Please do your best to keep emotions out of the case. Your feelings of anger, pain, and betrayal are understandable but expressing them inappropriately in court may interfere with your ability to provide us with the information we need.

Settlement

The best way to conclude your case is to settle it. Through compromise and cooperation, a settlement can lead to greater mutual satisfaction and lessened animosity between you and your spouse. In most cases, negotiations toward settlement can be more productive and far less expensive than trial.

If negotiations fail and you must try your case, we will make rulings that will permanently affect you and your children. Our rulings must be made exclusively upon the limited evidence that is presented in court, and nothing else. Because we are restricted in what we can and cannot do, a settlement can offer a wider range of options.

Variations

Every divorce is different. Your results may be very different from your neighbor's, friend's, or relative's. You cannot rely upon what happened in their cases and assume that your results will be the same. Cases that seem similar may, in fact, be very different and will be treated differently under the law. For this reason, you should look to your lawyer for your legal advice and information. Your friends and relatives usually do not have a grasp of the law and your case, and accepting their advice may hinder you in the long run.

Finances

Unless you settle your case, we must allocate the income and assets accumulated during the marriage. The law is that you and your spouse were financial partners during the marriage and are presumed entitled to share in both the assets and income the partnership made. You must make a full disclosure of your finances on a court approved Financial Affidavit.

For most people, lifestyles change after a divorce. Since divorces do not create property or income, we must divide the marital resources between two separate households. It costs more

to run two households than one. If you or your spouse has not been employed during the marriage, it may be necessary to seek employment.

In considering a settlement, you should consider whether you can afford the attorney's fees to fully litigate your case. Fees and costs in contested cases can be quite high. Usually, a settlement prior to trial reduces the expenses considerably, an important consideration if you come to the divorce with limited resources.

Issues

A divorce generally involves four major issues: Child custody/visitation, child support, alimony, and a division of property/debts. We may also be asked to enter an order (called an Injunction) prohibiting or requiring certain actions. After the case is concluded, we may later be asked to modify custody and/or support.

You need to understand each of these aspects of your case.

Child Custody

All parents seeking a divorce in the 6th Circuit must first attend an approved parental education and family stabilization course. Please ask the clerk for a current list of approved courses. The course will help you understand what affect divorce has on children, and how you can make the transition less traumatic for them. Remember, your marriage may be ending, but you will always be parents to your children.

Most parents will share parental responsibility for their children after the divorce. In doing so, you must communicate and confer with each other in making decisions that will affect your children.

Usually, we will give one parent primary residential care (custody) of the children. Unless there is a good reason, we will grant the other parent frequent visitation. In determining primary custody, we will give great weight to the issue of which of you is more likely to encourage the children to visit the other.

We decide custody solely on what is best for the children. Often, one of the parties is hurt by our decision, especially if that party sees the decision in a "win/lose" light. In truth, there can be no loser if the children's welfare is protected.

In virtually all custody contests we will direct both parties to participate in mediation to resolve that issue. A mediator is an unbiased third party who can often assist the parties in reaching agreement upon what is best for the children. An agreement on custody will certainly make your case easier and help your children immeasurably in dealing with your divorce.

Child Support

Aside from continuing to love your children and seeing them often, you have no higher obligation as a parent than to continue supporting your children after the divorce. Child support is more important than any other debt or financial obligation. Both parents are required to support the children but the nonresidential parent will be directed to pay his/her portion of the support to the other. This does not mean that the residential parent is not contributing to the support.

Florida has adopted guidelines for child support that we are required to follow. Your friends and relatives may have been involved in divorces years ago or in other states and receive or pay lower support than our guidelines provide. The child support in your case will be based

upon your income, your spouse's income, and the needs of your children under the guidelines established by the State.

Alimony

We find it necessary to award alimony, or spousal support in many cases. As with child support, we will consider two factors: one party's need and the other's ability to pay. Both of these factors must be proven in court by the requesting spouse. Alimony may be awarded to either a husband or wife and, depending on the length of the marriage and other factors, the alimony may be permanent or for only a short duration.

Property Division

Under Florida law, we must try to make an "equitable distribution" of marital property and debts. "Equitable" does not always mean "equal," although that is the starting point. Many factors, including child support, custody, and alimony awards, can cause us to make an unequal (but still equitable) division of property. We will not generally divide the property and debts that arise outside the marriage.

Injunctions

If needed, we can order you or your spouse to do, or not do, certain things. We may order a party not to telephone the other, not to come to the other's place of business, not to interfere in the other's activities, and the like.

Attorney's Fees

We can order one party to pay some or all of the other's attorney's fees. We do this to assure that both parties have equal access to competent counsel. We do not award fees in every case; we must first find that one party has a greater ability to pay than the other.

You cannot ever be certain that we will award fees. For this reason, and because of the great drain that fees can be on marital assets, everyone (parties and attorneys alike) should make every effort to resolve a divorce case as economically as possible.

Do's and Don'ts

There are some rather clear cut rules that apply to every divorce. Pay heed to these rules and your divorce will be easier and less painful for all involved.

Have Reasonable Expectations

You will certainly be disappointed if you expect to "win" on every issue. Rarely is either party happy about every ruling in a case. Even the best rulings leave both parties somewhat dissatisfied. Encourage your attorney to give you a realistic projection of the outcome of your case.

Keep communication open with your spouse/ex-spouse

As long as you have children, you and your (ex-) spouse will have to work together. Your children will suffer to the degree that you and your former spouse cannot communicate or cooperate.

Do not write letters to us

We are not permitted to read such letters nor can we speak with you or your friends/relatives on the telephone. If there is something we need to know, inform us by scheduling a hearing.

Get professional help to deal with your emotions

If you have trouble with the hostility, anger, or depression that often occur in divorces, don't hesitate to get counseling to help you through it. Use professional help to deal with your hostility. Don't use us, your attorney, or the system to vent your anger; that would be counterproductive. A good counselor can help you, and your children, get through this difficult time.

Encourage and support visitation

If you are the custodial parent, you have a duty to encourage visitation. You must do more than just stay out of the way or leave the choice to the children. Encourage your children to see your former spouse frequently and to enjoy the contact. Never use support or visitation as a lever or bargaining chip in dealing with the other parent.

Give your children a chance

The way you and your spouse handle your divorce will have an enormous impact upon your children. If you argue and fight, their problems and pain will be magnified. By acting civilly, you can help them through one of the most difficult events of their lives.

IMPORTANT! PLEASE READ!
(Cases assigned to a Clearwater section 14, 22, 23, 25)

You have just filed a Petition for Dissolution of Marriage (Divorce). Your divorce will not be final until after you have had a final hearing and the judge has signed your Final Judgment of Dissolution of Marriage.

You **cannot** set your final hearing immediately after filing your Petition. You must wait **at least** twenty (20) days before you can have your final hearing **EVEN IF YOU AND YOUR SPOUSE HAVE BOTH SIGNED A MARITAL SETTLEMENT AGREEMENT, UNLESS THERE IS A SPECIFIC WAIVER OF THIS PERIOD**. Additionally, if there are minor children involved in your divorce, you **MUST** attend an approved Parent Education and Family Stabilization course before you can set your final hearing. You can ask the Clerk for a list of the classes approved in Pinellas County.

You must have your Petition served on your spouse by the Sheriff or private process server unless you have filed a notarized Waiver of Service of Process signed by your spouse. You must wait twenty (20) days after the Sheriff or process server finds your spouse and hands him or her the divorce papers. Handing the papers to your spouse yourself **IS NOT GOOD ENOUGH**. If you cannot find your spouse to be served, return to the Clerk's Office and ask about service by posting or publication. Note: Constructive service is a complicated area of the law, if you cannot locate your spouse you should seek legal advice.

After your spouse is served, either by the Sheriff, private process server, or through posting or publication (constructive service), you might receive a written response (Answer) from your spouse on or before the twenty (20) day time period. If this occurs, you may call to request your final hearing. If you do not receive a written response and the twenty (20) day time period has gone by, (28 days after posting or publication) you may return to the Clerk's office and file a written request for Default. Note: due to allowances for mailing, the clerk will not process a default until 25 days have lapsed (32 days for publication or posting). After the Clerk enters the Default, (generally 3 to 5 days to process) you may set your case for final hearing. If the clerk cannot process your default you may have to set a court hearing for the court to enter the default.

When your case is ready to be set for final hearing you may call **727-582-7200** to request a final hearing date.

Simply because you are given a date for a final hearing does not insure that a final hearing will be held. You are responsible for making sure all necessary documents have been filed and proper procedure followed in bringing the case to final hearing. If there are serious deficiencies at the time of final hearing, the hearing will be continued and you will be required to correct these deficiencies before returning. Neither the Clerk of Court, the General Master's office, the Court's Information and Resource Center, or a judge's office can give legal advice or act as your attorney.

We appreciate your cooperation and patience.

CAUTION: ANY INFORMATION PROVIDED IN THIS DOCUMENT SHOULD NOT BE CONSTRUED AS, NOR TAKE THE PLACE OF, LEGAL ADVICE. THIS INFORMATION IS INTENDED TO ASSIST YOU IN AVOIDING COMMON ERRORS. YOU SHOULD RETAIN A LAWYER TO ASSIST YOU WITH YOUR LEGAL QUESTIONS.

IMPORTANT! PLEASE READ!
(Cases assigned to St. Petersburg sections 9, 12, 17, 24)

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You cannot set your final hearing immediately after filing your Petition. You must wait **at least** twenty (20) days before you can call to set your final hearing **EVEN IF YOU AND YOUR SPOUSE HAVE BOTH SIGNED A MARITAL SETTLEMENT AGREEMENT**. If you and your spouse have signed a marital settlement agreement, you may call twenty (20) days after the date you filed your Petition to request that your final hearing be scheduled. Note: If there are minor children involved in your divorce, you **MUST** attend an approved Parent Education and Family Stabilization course before your Final Judgment will be entered. You can ask the Clerk for a list of the classes approved in Pinellas County.

You must have your Petition served on your spouse by the Sheriff or private process server unless you have filed a notarized Waiver of Service of Process signed by your spouse. You must wait twenty (20) days after the Sheriff or process server finds your spouse and hands him or her the divorce papers. Handing the papers to your spouse yourself **IS NOT GOOD ENOUGH**. If you cannot find your spouse to be served, return to the Clerk's Office and ask about service by posting or publication. **Note:** Constructive service is a complicated area of the law, if you cannot locate your spouse you should seek legal advice.

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When your case is ready to be set for final hearing you may call **727-582-7200** to request information on how to set your final hearing date. When you call, your docket will be reviewed for readiness. If your case appears to be ready to set you will be given another phone number. This number is a recording. Please leave your name, case number and telephone number. Your message will be taken by a court staff member, who will order your court file for review. If your file does not appear ready for hearing after this review, you will be notified in writing of what you still need to do before your case will be set for final hearing. If your file appears to be in order, you will be notified in writing of your hearing date. Due to the heavy volume of divorce cases in family court, this can be a time consuming process. This service is provided as a courtesy to assist you in setting your case for final hearing, but you should be aware that it may take several weeks before you are notified by court staff about when your final hearing will take place.

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CASE PROGRESSION CHECKLIST

DISSOLUTION OF MARRIAGE WITH PROPERTY BUT NO DEPENDENT OR MINOR CHILD(REN) AND WITHOUT DEPENDENT OR MINOR CHILD(REN) OR PROPERTY

This checklist has been prepared to assist you with the necessary procedure for bringing your case to a final hearing. This checklist lists the minimum requirements and though fairly specific, may not be all inclusive for every case. **It is not intended, and should not be substituted for, proper legal advice from an attorney.** You should, however, find that making sure all the necessary steps noted below are followed would reduce procedural difficulties and time delays.

1. Initial filing

A. Required forms

- Petition for Dissolution of Marriage With Property but No Dependent or Minor Children - Form 12.901(b)(2) **OR** Petition for Dissolution of Marriage With NO Property or Dependent or Minor Children - Form 12.901(b)(3)
- Civil Cover Sheet (local requirement)
- Notice of Social Security Number - Form 12.902(j)
- Notice of Related Cases – Form 12.900(h)
- Supplemental Information Regarding Parties (local requirement)
- Financial Affidavit – Form 12.902(b) or 12.902(c) **OR** both Notice of Joint Verified Waiver of filing Financial Affidavit – Form 12.902(k)
- Certificate of Compliance of Mandatory Disclosure – Form 12.932 (this must be filed within 45 days of service of the Petition on the Respondent if not filed at the time of the Petition OR Waiver of Mandatory Disclosure signed by both parties.
- Marital Settlement Agreement for Dissolution of Marriage with Property but no Dependent or Minor Child(ren) – Form 12.902(f)(2), if you and your spouse have reached an agreement on any or all issues, must be signed by both parties and notarized.
- Legal description of any real property owned (together or individually)

- Photo copy of a valid Florida Driver's License, Florida ID Card or Voter's Registration (issue date of the document used must be at least 6 months prior to the filing of the Petition with the Clerk of the Circuit Court) **OR** an Affidavit of Corroborating Witness – Form 12.902(i)
- Disclosure from Non-Lawyer (This form is used when someone other than a Lawyer or Paralegal assists you with completing your documents.
- Summons: Personal service on an individual – Form 12.910(a)
- Process Service Memorandum – Form 12.910(b)
- Designation of Email Address for a Party not Represented by an Attorney – Form 2.602

B. Required Fees

- Filing fee paid or waiver granted by the Clerk of Court
- Fees for Process Server paid directly to process server. The cost for service is set by the Process Server. The filing party must obtain service procedures, including fees, from the Process Server. A complete list of Pinellas County process servers may be obtained online at www.MyPinellasClerk.org

II. Service of Process

A. Personal Service

- Summons returned “served” and filed by the Clerk – Form 12.910(a)
After 20 days have passed from the day the Respondent was served, check to see if the Respondent has filed an Answer or any other paperwork within the 20 day period.
- Summons returned “not served” and filed by the Clerk – Form 12.910(a)
- Request that the Clerk issue an alias summons, if address known.
(if proper service is not obtained, the Court cannot hear your case)
- Constructive Service (also known as service by Publication or Posting. This can be used only if you do not know where the other party is. This can be a very complicated area of the law.

- Affidavit of Diligent Search and Inquiry – Form 12.913(b). This form must be fully completely, check all that apply.
- Notice of Action for Dissolution of Marriage - Form 12.913(a)(1)

If constructive service is used, other than granting a dissolution, the Court may grant only limited relief. This is a complicated area of the law and you may wish to consult with an attorney before using constructive service.

B. Default

- Respondent failed to answer or file any paper after service.
- Motion for Default filed with the Clerk – Form 12.922(a) (no sooner than 20 days after date of service.
- Affidavit of Military Service – Form 12.912(b)
- Default entered by Clerk – Form 12.922(b)
- If the Respondent file a form, but not an answer, you will need to motion the Court to enter a Default and set a hearing on your motion.

Only now is the case potentially ready for setting trial/final hearing

III. SETTING A HEARING

After an Answer is filed or the Clerk enters a Default:

Call the Family Law office to request a review of your case to see whether or not it is ready for a hearing (727)582-7200. Your court case will be checked for completeness (if the other party filed a counter-petition, you are required to file an answer to it). If it is ready for hearing the Family Law office will pass it on to the General Magistrate's office for scheduling and you will receive a notice of hearing from their office.

Any delays in filing requested items may delay the scheduling of your hearing.

Please make arrangements for child care, if applicable. Children are not allowed to attend (in person or via Zoom) without prior order per Fla.Fam.L.R.P. 12.407.