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# INSTRUCTIONS FOR FILING A COMPLAINT FOR DIVORCE WITHOUT MINOR CHILDREN

## GENERAL COMMENTS

This is the form packet for people who want to file their own divorce in Clayton County, and who do not have any minor children together with their spouse. If you and your spouse have minor children together, you must not use this form packet. Instead, you must use the version called *Complaint for Divorce With Minor Children*.

**Please read these instructions and each form very carefully.** Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your divorce case in jeopardy.

## INTRODUCTION

In the State of Georgia, if you want to end your marriage, you must file a complaint for divorce in the Superior Court. There are two options available to you for filing a divorce case: (1) you can hire a lawyer who will prepare your paperwork and represent you in court, or (2) you can use the forms included in this packet and represent yourself in court. After a court grants your divorce and issues a *Final Judgment and Decree of Divorce*, you will be legally able to remarry.

It is advisable to speak with a lawyer before filing any action with the court. This divorce is no exception to that rule. There are often more issues involved in a divorce than you might realize if you fail to get legal advice. However, you may want to review the forms and instructions in this packet before you talk to a lawyer, so that you will be able to make the best use of your time with the lawyer.

Dissolution of a marriage can be a very complicated process. If documents are not completed, signed, notarized and filed as prescribed by law, the divorce pleadings are not in compliance with the law, a judge cannot grant your request for divorce, and may dismiss your case.

If you want a court to grant your divorce, **you must follow the law and you must complete each and every paragraph that applies to your case (but not any paragraphs that do not apply to your case).**

Please read and complete the eight (8) steps listed below in order to complete, file and serve your complaint for divorce.

STATE LAW, **OCGA § 15-19-51** PROHIBITS COURT PERSONNEL (INCLUDING STAFF ATTORNEYS OR LAW CLERKS, CALENDAR CLERKS, CLERK'S OFFICE STAFF, OR SHERIFF'S DEPARTMENT STAFF) FROM GIVING LEGAL ADVICE OR ANSWERING LEGAL QUESTIONS.

## YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents your spouse.
- You or your children are victims of family violence against you by your spouse.
- You are unable to locate your spouse to have him/her served with this action.
- You and your spouse have a house, pension, or large amount of property or income to be divided.
- You think you may have difficulty getting financial information from your spouse.

**Whether your case is contested or uncontested, you should speak with a lawyer before signing a settlement agreement or filing any other documents with the court.**

## FORMS YOU WILL NEED TO START YOUR DIVORCE:

If this divorce action **may be contested** (that is, you do not have a signed *Settlement Agreement*), you must file the following documents with the *Complaint*. All of these forms are included in this packet or are available from the Clayton Family Law Information Center, except the *Sheriff's Entry of Service*. You can get the *Sheriff's Entry of Service* from the Superior Court Clerk's office on the 2<sup>nd</sup> floor of the Clayton Courthouse (where you will be filing your case).

- (a) *Complaint for Divorce*
- (b) *Verification*
- (c) *Summons*
- (d) *Domestic Relations Financial Affidavit*
- (e) *[Standing] Order*
- (f) *Domestic Relations Case Filing Information Form*
- (g) *Sheriff's Entry of Service* (3-part carbon form)

### **OR**

*Acknowledgement of Service*

### **OR**

Publication paperwork, as follows:

- i. *Affidavit of Diligent Search*
- ii. *Notice of Publication*
- iii. *Order of Publication, Return of Service, Order Perfecting Service*
- (h) *Notice of Lis Pendens* (only if applicable — see instructions for Paragraph 9 of the *Complaint*)
- (i) *Rule Nisi* (only if you want a hearing on temporary issues)
- (j) *Affidavit of Poverty and Order on Affidavit of Poverty* (only if you are indigent and cannot afford to pay the filing & service fees — see list of fees enclosed with this packet)

If this action is **uncontested** (that is, you have a signed *Settlement Agreement*), you must file the following documents with the *Complaint*. All of these forms are included in this packet or are available from the Clayton Family Law Information Center.

- (a) *Complaint for Divorce*
- (b) *Verification*
- (c) *Summons*
- (d) *Domestic Relations Financial Affidavit*
- (e) *[Standing] Order*
- (f) *Domestic Relations Case Filing Information Form*

- (g) *Acknowledgement of Service*

**OR**

*Acknowledgement of Service, Consent to Jurisdiction and Venue, and Consent to Present Case*

- (h) *Notice of Lis Pendens* (only if applicable, which is unlikely if you have a signed *Settlement Agreement* — See instructions for Paragraph 9 of the *Complaint*.)
- (i) *Rule Nisi* (only if you want a hearing on temporary issues, which is unlikely if you have a signed *Settlement Agreement*)
- (j) *Affidavit of Poverty and Order on Affidavit of Poverty* (only if you are indigent and cannot afford to pay the filing & service fees — see list of fees enclosed with this packet)
- (k) *Settlement Agreement* (signed before notaries by both parties)

## FORMS YOU WILL NEED AT THE FINAL HEARING TO FINISH YOUR DIVORCE:

If you do not have a signed *Settlement Agreement*, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Clayton Family Law Information Center.

- (a) *Final Judgment and Decree of Divorce Without Minor Children (Without Settlement Agreement)*
- (b) *Domestic Relations Case Disposition Form*
- (c) *Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Enforcement State Case Registry Form*

If you have a signed *Settlement Agreement*, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Clayton Family Law Information Center.

- (a) *Final Judgment and Decree of Divorce Incorporating Settlement Agreement*
- (b) *Domestic Relations Case Disposition Form*
- (c) *Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Enforcement State Case Registry Form*

**THE FOLLOWING ARE DETAILED INSTRUCTIONS ON HOW TO COMPLETE AND FILE THIS COMPLAINT FOR DIVORCE WITHOUT MINOR CHILDREN, AS WELL AS SOME OF THE RELATED DOCUMENTS. (Read these instructions carefully and more than once, if necessary.)**

### ▲ **Step 1: Completing the Petition for Divorce**

#### **Caption (Heading):**

Fill in your full name as the Petitioner, and your spouse's full name as the Defendant. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your petition in the Clerk's office.** After completing the heading, write your full name again in the space provided just before Paragraph 1.

**Paragraph 1: Subject Matter Jurisdiction \* CHECK ONLY ONE BOX \***

- (d) Check box "a" if **you have been a resident of the State** of Georgia for at least six (6) months immediately before filing your petition for divorce. (It is not good enough if you used to live in Georgia in the past, moved away, and have returned more recently than six months ago.)
- (e) Check box "b" if you are not a resident of the State of Georgia, but your **spouse has been living in Georgia** for at least the past six (6) months. (It is not good enough if your spouse used to live in Georgia in the past, moved away, and has returned more recently than six months ago.)

**Note:** If you live in Georgia, but have not lived here for a full six months, but your spouse has been living here for at least the past six months, you may still use this *Complaint* and file in Georgia. Just check box "b" and cross out the first eleven words ("I am not a resident of the State of Georgia, but"), so that the sentence is accurate.

**Paragraph 2: Venue \* CHECK ONLY ONE BOX \***

**Note:** The issue of venue in a divorce action is very complicated. It is also very important, since the divorce may be defective if venue is not addressed properly. Read these instructions *very carefully*. If your situation does not seem to fit any of the choices exactly, you should talk to a lawyer. You may not be able to file your case in Clayton County, or you may need to make particular changes to this form.

- (a) Check box "a" if the Defendant **currently resides in Clayton County**.
- (b) Check box "b" if **all** of the following are true:  
(1) the Defendant is not a resident of Clayton County but resides in Georgia;  
(2) the two of you lived together in Clayton County at the time you separated;  
(3) you still live in Clayton County; **and**  
(4) the Defendant has moved out of Clayton County only within the **past six (6) months** prior to you filing this *Complaint for Divorce*.
- (c) Check box "c" if the Defendant is not a resident of Clayton County but **resides in Georgia** and has **acknowledged** service of process **and consented** to the jurisdiction and venue of this Court. (You will also need to file the original signed and notarized *Acknowledgement of Service* when you file this *Complaint*.) You must currently live in Clayton County to check this box.
- (d) Check box "d" if you live in Clayton County and the Defendant **does not live in Georgia**. Then, check number (1), (2) or (3) in the same paragraph. Check only one of these. (If both 1 & 3 or 2 & 3 apply, check only "3".)
- (1) Check box "1" if the Defendant **was a resident** of Clayton County but currently resides in another state (enter the name of the state in the space provided), and the Defendant is subject to the personal jurisdiction of the Court under Georgia's Long Arm Statute. (See OCGA § 9-10-91[5].)
- (2) Check box "2" if the Defendant has **never resided** in the State of Georgia and

currently resides in another state. Add the name of the state in the space provided.

- (3) Check box “3” if the Defendant does not live in Georgia, but has **acknowledged** service of process **and** has **consented** to the jurisdiction of the Court. If you check this box, you must file the original signed and notarized form entitled *Acknowledgement of Service, Consent to Jurisdiction & Venue, and Consent to Present Case* (one form) with this complaint.
- (e) Check box “e” if you reside in Clayton County, but you **do not know where the Defendant lives**. You must prove to the Court that you have tried to locate the Defendant and cannot find him or her. **You must also file the original signed and notarized “Affidavit of Due Diligence” with this Complaint. In that Affidavit, you will explain to the Court about the steps you took to try to find the Defendant.**

**Note:** In this situation, you will have to serve the Defendant by publication. (See Paragraph 3-c, below.) That means you will not be able to get certain kinds of relief as part of the divorce, such as alimony, division of debts and division of some property. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will not be limited by the restrictions that apply to publication cases.

**Paragraph 3: Service of Process \* CHECK ONLY ONE BOX \***

**Note:** To find out more information about Service of Process, read **Step 7** of these instructions.

- (a) Check box “a” if the Defendant has acknowledged service of process. If you check this box, you must also file the original signed and notarized *Acknowledgement of Service*.
- (b) Check box “b” if you want the Sheriff’s Department to serve the Defendant with this *Complaint* and the other court papers. You must fill in the address where the Defendant should be served, and circle whether this is a home or work address.
- (1) Check box “b-1” if the Defendant lives outside of Clayton County and you want the Sheriff’s Department to serve him or her. **If you check box “b-1,” you must inform the Clerk’s office (when you file the case) that the other party must be served by “second original.” The clerk will then stamp the service copy of your papers as a “second original.”**
- (c) Check box “c” if you do not know where the Defendant lives and you are serving him or her by publication. Write the Defendant’s last known address on the lines provided. **You must also file the original signed and notarized “Affidavit of Due Diligence” with this Complaint. In that Affidavit, you will explain to the Court about the steps you took to try to find the Defendant.**

To find out more about Service of Process, read **Step 7** of these instructions.

**Paragraph 4: Date of Marriage \* CHECK ONLY ONE BOX \***

- (a) Check box “a” if you and the Defendant were married with a license and a ceremony, such as one by a pastor or by a judge at the courthouse. Write the date of the marriage in the space provided.

- (b) Check box “b” if you and the Defendant did not have a marriage license and a ceremony, but you believe you have established a common law marriage. Under Georgia law, this generally means that you and the Defendant lived together and held yourselves out as husband and wife **before** January 1, 1997. Write the date you began your common law marriage on the space provided.

**Paragraph 5: Date of Separation**

In the space provided, write the last date that you and the Defendant separated and remained separated up to the present time. Provide only one date. If you and the Defendant has separated, gotten back together, and then separated again, use the date of the most recent separation.

**Paragraph 6: Settlement Agreement**

Check this box **only if** you and the Defendant have signed a *Settlement Agreement* telling the Court the arrangements concerning your minor children (such as custody, visitation, child support, medical expenses, insurance), how you will divide your joint and marital property and debts, and how you will resolve any other issues between the two of you. The parties must agree voluntarily and this document must be signed by both parties in front of a notary public.

**Paragraph 7: Minor Children \* CHECK ONLY ONE BOX \***

- (a) Check box “a” if you and the Defendant do not have any minor children together (by birth or adoption).
- (b) Check box “b” if you and the Defendant have minor children together. ***STOP HERE. If you and the Defendant have minor children together, you must use a different complaint form, entitled “Complaint for Divorce With Minor Children.”***

**Paragraph 8: Alimony \* CHECK ONLY ONE BOX \***

**Note:** If you want alimony, but do not have proof of the Defendant’s income, you should see a lawyer. There are procedures called “discovery” that may be used to try to find out about the income. The income of the two parties is a key issue in deciding alimony.

- (a) Check box “a” if you are financially dependent on the Defendant and want the Court to order the Defendant to pay alimony for your support.
- (b) Check box “b” if you are not asking the court to order alimony payments for your support.
- (c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 2-e.)

**Paragraph 9: Marital Property \* CHECK ONLY ONE BOX \***

Notes About Marital Property:

- (1) **All** property that was acquired by either party during the marriage is considered marital property (no matter whose name is on the title), except for gifts and inherited property.

- (2) If the marital home or other real estate is titled in the Defendant's name alone (or you are not sure whose name is on the property deed), you must file a separate document called a *Notice of Lis Pendens*. If you do not file a *Lis Pendens*, and the property is sold before the divorce becomes final, you will not be able to get the home (or a share of it) as part of the divorce, because it will be gone. See a lawyer if this may apply to your case.
- (3) If the marital home belonged to one of the parties before the marriage, it still may be claimed as marital property if its value has increased (or the mortgage has decreased) during the marriage. See a lawyer if this may apply to your case.
- (4) If you or the Defendant have rights to a pension that have built up during the marriage, the pension may be considered marital property. Figuring out the value of a pension (and writing the proper QDRO order if it is distributed in the divorce) is very complicated. See a lawyer if this may apply to your case.
- (5) If you think the Defendant may have acquired assets during the marriage that are unknown to you, the law has procedures to use (called "discovery") to try to find out about them. If it is important to you to try to learn more about the Defendant's assets, you should see a lawyer.

**\* CHECK ONLY ONE BOX in Paragraph 9\***

- (a) Check box "a" if you and the Defendant have already divided your marital property and you are both satisfied with the division.
- (b) Check box "b" if you and the Defendant did not acquire any property during your marriage to each other (or if the property is already all gone).
- (c) Check box "c" if you and the Defendant have acquired property during your marriage to each other and you are asking for a fair division of that property. ***If you check box "c," you must provide the Court with information about the property that you and the Defendant have acquired at any time during the marriage. Use the spaces provided under box "c" to describe the property and check each box that applies. Use additional paper if necessary, and attach the paper to this Complaint, between pages 4 and 5. Carefully read the "Notes about Marital Property" at the beginning of the instructions for Paragraph 9.***
- (d) Check box "d" if this issue cannot be decided by the Court in this divorce action because none of the marital property is located in Georgia and the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 2-e.)

**Paragraph 10: Joint or Marital Debts \* CHECK ONLY ONE BOX \***

**Note:** The creditors are not parties in your divorce case. Therefore, the Court cannot take away the creditors' rights in the divorce. This means that the Court cannot prevent creditors from trying to collect from any person who is liable to a particular debt. However, the Court can enter an order in the divorce case that says one party or the other must pay a particular marital debt. If the responsible party does not pay as ordered, she or he may be held in contempt.

- (a) Check box "a" if you and the Defendant do not have any joint or marital debts.

- (b) Check box “b” if you and the Defendant have joint or marital debts. In the spaces provided, list each creditor (for example, Visa, MasterCard, etc.), the balance owed, and who you believe should pay each debt. Use additional paper if necessary, and attach it to the *Complaint* between pages 5 and 6.
- (c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Defendant. (See the instructions above for Paragraph 2-e.)

**Paragraph 11: Restraining Order Where Violence Has Occurred**

Check this box **only if** there has been a history of violence by the Defendant toward you, and you are afraid that the Defendant will continue the violent acts or harassment against you. ***Do not check this box if there has not been any history of violent acts against you by the Defendant.***

**Note:** If there has been **recent violence** (or past violence plus a recent threat to renew the violence), you should consider filing for a **Temporary Protective Order (TPO) immediately**. A TPO provides much stronger and faster protection than a restraining order in a divorce case. There is no charge for filing a TPO petition, and free help is available for filing one. Contact the **Women’s Resource Center at 404-688-9436** to get more information about filing for a TPO.

The restraining order in a divorce is not enforceable by warrantless arrest. It can only be enforced by a motion for contempt. So, it can provide useful protection, but it is much more limited than a TPO.

**Paragraph 12: Restore Former Name**

Check this box **only if** you want the Court to restore your former or maiden name. On the space provided, write the name you want to have restored. *This is not a name change action and cannot be used for anyone except the wife or husband in this divorce action.*

**Paragraph 13: Grounds for Divorce**

Check only the boxes that you **can prove** in court if your case goes to trial.

- (a) Check box “a” if there is no hope that you and the Defendant can save this marriage. This is the language for grounds in most cases, and may be the only grounds you choose. It is the basis for granting a divorce when fault is not proven. It can and should also be used as a “back-up,” if you check other grounds based on some kind of fault.
- (b) Check box “b” if the Defendant has committed acts of cruelty against you. On the spaces provided, you must tell the Court what cruel acts the Defendant did to you.
- (c) Check box “c” if the Defendant has had sexual relations with someone else while you have been married to each other.
- (d) Check box “d” if the Defendant left you intentionally and has not come back for at least a year.

- (e) Check box “e” if you can prove and want to state other grounds for divorce. **You must** research the law at OCGA § 19-5-3, and tell the Court what other grounds for divorce you are asserting. Use the space provided or use and attach additional paper between pages 6 and 7.

***Final Paragraph: Request for Relief \* CHECK ONLY THE BOXES THAT APPLY \****

- (a) Check box “a” if you want the Court to grant you a total divorce from the Defendant. Make sure you have also completed Paragraph 13.
- (b) Check box “b” if you want the *Settlement Agreement* signed by you and the Defendant to be incorporated in the *Final Judgment and Decree of Divorce*. Make sure you have also completed Paragraph 6 and that both parties have signed the *Settlement Agreement* in front of a notary public.
- (c) Check box “c” if you want the Court to order the Defendant to pay alimony for your support. Make sure you have also completed Paragraph 8.
- (d) Check box “d” if you want the Court to divide the marital property as described in Paragraph 9. Make sure you have correctly and completely filled out Paragraph 9, after carefully reading the notes at the beginning of the instructions for that paragraph.
- (e) Check box “e” if you want the Court to assign responsibility for payments of joint or marital debts as described in Paragraph 10. Make sure you have correctly and completely filled out Paragraph 10, after carefully reading the notes at the beginning of the instructions for that paragraph.
- (f) Check box “f” if you want the Court to temporarily and permanently restrain the Defendant from harassing you or committing any further acts of violence toward you. Make sure you have also completed Paragraph 11.
- (g) Check box “g” if you want the Court to restore your former or maiden name according to Paragraph 12. Make sure you have also completed that paragraph.
- (h) Check box “h” if you want the Court to schedule a Rule Nisi (hearing on temporary issues). Complete a *Rule Nisi* form for the Court to complete and sign. See additional information about this in **Step 8** below.
- (i) Check box “i” as a “back-up” to allow for any other relief the Court finds appropriate in your case.

***To finish filling out this Complaint form***, add the date on which you are signing it, sign your name in the space provided on the last page, write your address and a daytime telephone number where the Court staff could reach you if necessary. **However, if you are living in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER. To do so would violate OCGA § 19-13-23.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. **Also, if the Defendant does not know your address and it should kept confidential because of family violence, do not write that address here.** Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Defendant.

### ▲ Step 2: Complete the Verification Form

The Verification form must be filed with the *Complaint for Divorce*. In the caption, insert your name as the Plaintiff and your spouse's name as the Defendant. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the Clerk's office.** Insert your name in the space underneath the word "Verification," which is the title of this document. In the next space, insert the title of the document you are verifying as true, which is "*Complaint for Divorce Without Minor Children.*"

Now, before you sign this *Verification*, remember that you will be swearing under oath that the information you have provided in the *Complaint for Divorce* is true. Therefore, you should re-read the *Complaint* one more time, from start to finish, to make sure it is all true. Then, take the *Complaint* and this *Verification* to a notary public. (See **Step 3** below to find out the other forms you will need to have notarized.) **Sign your name in front of the notary public** in the space provided, and check the box to indicate that you are the Plaintiff. The notary must complete the rest of the *Verification* form after you sign it under oath. The staff at the Family Law Information Center can notarize this document for free, but you must have proper identification.

### ▲ Step 3: Complete Other Court Documents & Copying Your Papers

In addition to the *Complaint* and the *Verification*, you must complete and file several other forms together with the *Complaint* to start your divorce case. Like the *Verification*, some of these forms must also be signed by you in front of a notary public. (The ones you need are listed on pages 2-3 of these instructions.)

After you have finished filling out all the papers you need to start your case, and all have been signed (in front of a notary when required), **make two complete sets of copies** of all the papers you are going to file. Then, separate them into three packets: (1) all the originals (for the court), (2) one set of copies for your spouse (called the "service copy"), and (3) one set of copies for you to keep for your records.

### ▲ Step 4: Fees

The court **filing fee** for a divorce action is **\$80.00**. In addition, if the Clayton County Sheriff's Department is going to serve this action, there is a **service fee** of **\$25.00**. You should take cash or two separate money orders for these amounts with you when you take your papers to file your case.

If you have a very low income, and feel that you cannot afford to pay these fees, you can ask the Court to waive the fees. To do this, you should file the *Poverty Affidavit* and *Order on Poverty Affidavit* forms with the other papers when you file your divorce action at the Clerk's office. (See list of forms on pages 2-3 above.) A judge must sign the *Order* approving your *Poverty Affidavit*, before the filing of your case will be completed by the Clerk's office staff. If the judge signs the order of approval, both the \$80.00 filing fee and the \$25.00 service fee are waived. If the judge does not approve your *Poverty Affidavit*, you must pay the fees before your case will proceed.

If you are serving the Defendant by publication (because you do not know where she or he can be found for service), there is a **publication fee** charged by the newspaper that publishes the notice. Even if the judge approves your *Poverty Affidavit*, you will have to pay this fee, which is **\$80.00**, to *The Clayton News Daily* newspaper.

## ▲ Step 5: Filing Your Case in Court

After you have completed, signed (in front of a notary, where applicable), copied and sorted all your paperwork (and you have your filing and service fees ready, unless you are filing a *Poverty Affidavit*), you are ready to file your case.

Take all 3 sets of forms (with the Court's set on top), along with your cash or money orders, to the Clayton Superior Court Clerk's office. They are located on the 1<sup>st</sup> floor of the Harold R. Banke Justice Center (9151 Tara Boulevard, Jonesboro, GA 30236).

When it is your turn, give all 3 sets to the clerk. Tell the clerk if you and your spouse have ever had any cases between you in Clayton County Superior Court, so that the case can be assigned properly. If your paperwork is in order, the clerk will keep the originals for the Court's file. If you are paying the fees, you will probably be sent to a different clerk to pay the money, and then bring the receipt back to the filing clerk to show that you paid. If you are not paying the fees, but are filing a *Poverty Affidavit* instead, the clerk will instruct you about how the *Poverty Affidavit* and the *Order on Poverty Affidavit* are to be presented to the appropriate judge for review and signing.

After the fees have been paid, or the *Poverty Affidavit* has been approved by the judge, the clerk will write your case number on the top page of your set of copies, stamp them with the date & time stamp, and return them to you. The last number in the case number shows you which judge has been assigned to the case. Keep these for your records. Your divorce case has now been filed. But, do not rush out of the Clerk's office yet. Unless you filed an *Acknowledgement of Service*, you must also arrange for service. The third set of copies will be used for service.

## ▲ Step 6: Arranging for Service

Service is the required formal process of notifying the Defendant that the divorce action has been filed. There are basically **three ways** for service to be completed: (1) the Defendant signs an *Acknowledgement of Service*, (2) service by the sheriff's department or other approved process server, or (3) publication.

### Acknowledgement of Service

This is the easiest and least expensive method, **but only if** the Defendant is cooperative and willing to sign an acknowledgement form in front of a notary public. You cannot sign the form for the Defendant and you cannot sign as the notary witnessing the Defendant's signature. Also, it is not good enough for the Defendant to sign without the signature being witnessed by a notary public.

The forms available through the Clayton Family Law Information Center include two different acknowledgement forms. Either one is valid for service. They are:

- (1) The *Acknowledgement of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* is appropriate if you and the Defendant have reached an agreement and will be signing a *Settlement Agreement*. The reason it is best is that it includes the consent to present the case in the same form with the acknowledgement, so it saves a step later.
- (2) The plain *Acknowledgement of Service* form is appropriate if you and the Defendant have not reached a complete agreement yet, but the Defendant is willing to acknowledge service. This saves the Defendant the possible embarrassment or inconvenience of being served by

the deputy sheriff, but does not give up the Defendant's right to file an *Answer* and have a trial if an agreement is not reached.

To use this method of service, you need to complete the appropriate form and have the Defendant sign it in front of a notary public. Then, you file it with your other papers, as explained in **Steps 3-6** above.

### **Service by the Sheriff** (“Personal Service”)

This is the usual way for service to be completed. It is sometimes called “Personal Service,” which means that the deputy sheriff or other court-approved process server hands the papers to the Defendant in person. The forms provided by the Clayton Family Law Information Center do not include the special motion and order required to have a special process server appointed. Therefore, if the Defendant will not sign an acknowledgement, and you know an address where the Defendant can be served, then you should make arrangements for the Sheriff's Department to serve the papers.

**If the Defendant can be served in Clayton County**, then the Clayton County Sheriff's Department can serve the papers. You may pay the service fee at the Clerk's office when you file the case, and leave the service copy of the papers with the clerk. The clerk will forward your payment and legal documents to the Sheriff's Department for service. If you prefer, you may take the fee and service copy directly to the Sheriff's Department yourself (after you have completed **Step 6** above). The Civil Process Division of the Sheriff's Department is located at in the Harold Banke Justice Complex (9151 Tara Boulevard, Jonesboro, GA 30236).

- Make sure the service copy includes the *Sheriff's Entry of Service* form. After the Clayton sheriff's department completes service, they will send the white and yellow copies to the Clerk's office, which will then send the yellow copy to you (if you have properly filled out the form).

**If the Defendant must be served in another county or state**, then the Clayton County Sheriff's Department cannot serve the papers. **You must arrange for service directly with the sheriff's department of the proper county.** You must find out the amount of the fee, and take or send it to the proper sheriff's department, along with the service copy of the papers.

- Make sure the service copy includes the *Sheriff's Entry of Service* form. After the sheriff's department completes service, they will send the white and yellow copies to you (if you have properly filled out the form). When you get the white and yellow copies, you must file them with the Clayton Superior Court Clerk's office; they will return the yellow copy to you.

### **Service by Publication**

This is the method of last resort. If you can find the Defendant, you must use one of the other two methods of service. But, it is your only choice if you do not know where the Defendant lives or works, and you cannot find out that information. You must prove to the Court that you have tried to locate the Defendant and cannot find him or her.

If you have to serve the Defendant by publication, there are special limitations on your divorce case, because the Court will not have “personal jurisdiction” over the Defendant. You will not be able to

get certain kinds of relief as part of the divorce, such as child support and alimony. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will not be limited by the restrictions that apply to publications cases.

To serve by publication, you must prepare and file three forms:

- i. *Affidavit of Diligent Search*
- ii. *Notice of Publication and*
- iii. *Order of Publication, Return of Service, Order Perfecting Service*

In the *Affidavit of Due Diligence*, you will explain to the Court about the steps you took to try to find the Defendant. You must make reasonable efforts to find the Defendant before you fill out the *Affidavit* form. The *Affidavit of Due Diligence* form is available through the Clayton Family Law Information Center, and has its own set of instructions. The other two forms are available through the Clerk's office.

If you know you must use service by publication when you prepare your *Complaint for Divorce*, then you should prepare the three listed forms at that time. However, if you have already filed your divorce case, and have tried to complete service by a different method, you can still request the Court's permission to serve by publication.

After you file the forms, if the Court grants permission, the Judge will sign the *Order of Publication*. You must pay the cost of publication (\$80.00). Then, the *Notice of Publication* will be published in the county's official legal newspaper (*The Clayton News Daily*) four times (usually four weeks in a row). The *Notice* gives the Defendant 60 days to file an *Answer*, if she or he wants to contest the case.

Meanwhile, the Court Clerk is required to mail the *Notice of Publication* to the Defendant's last known address (which you have provided in the *Affidavit of Due Diligence*), and then to complete the *Return of Service* part of the 3-part form listed as (iii) above.

However, to be on the safe side, you should also mail a set of all the papers (the "service copy") to the last known address. Make sure you put enough postage on it, and make sure you list a return address, so the post office can return it to you if they are not able to deliver it.

After it has been published all four times, you should receive an *Affidavit of Publication* from the newspaper, stating that publication is complete. You must bring this *Affidavit of Publication* with you to your hearing, to prove that service by publication has been completed. Usually, the Judge will then sign the *Order Perfecting Service* (part of the 3-part form listed above) at the hearing, showing that the Court has reviewed the service and finds it was done properly.

**You may later find out where the Defendant lives or works (before the case is over).** If this happens, then you should arrange for the Sheriff's Department to serve the Defendant, or for the Defendant to acknowledge service.

## ▲ Step 7: Hearings

After you have filed your case, and the Defendant has been properly served, you are ready for the next step: either a temporary hearing (called a *Rule Nisi*) or the final hearing.

## **Temporary Hearing (Rule Nisi)**

A temporary hearing is not required. However, if your case will not be ready for a final hearing (because you do not have a signed agreement and do not expect to have one soon), there may be issues that need to be decided on a temporary basis before the final hearing. In that situation, you may ask the Court to schedule a *Rule Nisi* (temporary hearing). In a divorce without minor children, temporary issues may include temporary alimony, living arrangements, use of an automobile, and who is responsible for certain payments while the divorce is pending.

To schedule a *Rule Nisi* temporary hearing, you should complete the *Rule Nisi* form (see separate instructions). If you know you want a temporary hearing when you are getting ready to file your divorce case, you can copy, sort and file the *Rule Nisi* form with your other paperwork. (See **Steps 3-6** above.) After your case is filed with the Clerk's office, you should take the *Rule Nisi* (original and at least one copy) to the office of the Judge assigned to your case. The Judge's staff will schedule a date for the *Rule Nisi* and fill out that part of the *Rule Nisi* form, and the Judge or a designated staff person will sign the *Rule Nisi*. Then, you or the Judge's staff must file the *Rule Nisi* with the Court Clerk's office.

After filing with the Clerk, make sure you have a copy and that a copy is served on the Defendant. If the Sheriff has not served the initial divorce papers yet, you can ask to have the *Rule Nisi* served together with them. If the Sheriff has already served the Defendant, you must mail or personally deliver a copy of the *Rule Nisi* to the Defendant. Then you must complete and file a *Certificate of Service* form, showing the Court that the Defendant was properly served. The *Rule Nisi* form (showing when and where the temporary hearing will take place) must be served on the Defendant at least fifteen (15) days before the hearing (18 days if service is by mail).

## **Final Hearing**

**If you have a signed *Settlement Agreement***, then you may arrange to have the final hearing take place any time **at least 31 days** after the Defendant was personally served (or the *Acknowledgement of Service* was filed with the Clerk). Most of the judges and other court personnel call this type of hearing an "uncontested" divorce hearing. The judges schedule them in different ways. You should check with the staff for the Judge assigned to your case, to find out how that particular Judge schedules these hearings.

- If the Defendant signed the form called: *Acknowledgement of Service, Consent to Jurisdiction and Venue, and Consent to Present Case*, then you are not required to give the Defendant notice of the date and time of the final hearing.
- If the Defendant signed the other *Acknowledgement of Service* form (which does not waive the right to notice of the hearing), then you should mail a notice to the Defendant, telling the date, time and place of the final hearing. Then, you should file a *Certificate of Service* with the Superior Court Clerk's office (showing that you mailed or delivered proper notice to the Defendant).
- Some judges will even finalize a divorce action without any final hearing. This is through a process called "Judgment on the Pleadings." The Clayton Family Law Information Center does not yet have a form motion for this purpose, but you should check with your Judge's staff to find out if one is required.

**If you do not have a signed *Settlement Agreement***, then your final hearing may take place any time **at least 46 days** after the Defendant was personally served (or the *Acknowledgement of Service* was filed with the Clerk). If service was by publication, the hearing may take place any time **after 61 days** from the date of the first publication. The judges schedule these final hearings in different ways too. You should check with the staff for the Judge assigned to your case, and make sure you make it clear to them that there is not a signed settlement agreement.

- Sometimes, the Judge's staff mails notices of the hearing date to both parties. However, to be on the safe side, you should also mail a copy of the hearing notice to the Defendant. Then, you should file a *Certificate of Service* with the Superior Court Clerk's office (showing that you mailed or delivered proper notice to the Defendant).

**Before the hearing date, whether temporary or final, you must prepare your case to be presented to the Court.** You are your main witness. You must also gather your other evidence (such as documents and photographs), and you must arrange for any other witnesses that you want to have testify at the hearing. You must also prepare the proper documents to be provided to the Judge at (or soon after) the hearing.

- For a temporary hearing, you may use *Affidavits* from witnesses, so that they do not have to testify in person. However, there are special procedures for this. See *Uniform Superior Court Rule 24.5*.
- At the final hearing, *Affidavits* are not proper evidence. Your witnesses (if any) must testify in person at the hearing.