

INSTRUCTIONS FOR FILING A COMPLAINT FOR DIVORCE WITHOUT MINOR CHILDREN

GENERAL COMMENTS

This is the packet for people who want to file their own divorce in Cobb 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 individual form very carefully. Missing or misreading a word could cause you to make serious errors in your case, putting 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 paragraph that does not apply to your case).**

Please read and complete the steps listed in this packet in order to finalize, file, and serve your complaint for divorce.

State law, **O.C.G.A. § 15-19-51**, prohibits court personnel (including staff attorneys, law clerks, calendar clerks, Clerk’s Office staff, and Sheriff’s Department staff) from giving legal advice or answering legal questions. This rule also applies to the Cobb County Law Library.

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 for purposes of having 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 NEEDED TO START YOUR DIVORCE:

If this divorce action **may be contested** (meaning that you do not have a signed *Settlement Agreement*), you must file the following documents along with the *Complaint*:

- (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*

OR

Acknowledgment of Service

OR

All of the following publication paperwork:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication*, and
- (3) *Order of Publication, Return of Service, Order Perfecting Service*
- (h) *Notice of Lis Pendens* (if applicable) *We suggest that you consult an attorney if you think you need this form.*
- (i) *Rule Nisi* (only if you want a hearing on temporary issues)
- (j) *Affidavit of Poverty* and *Order on Affidavit of Poverty* (if applicable)

Note: Only use this form if you are indigent and cannot afford to pay the filing and service fees. See the list of fees enclosed with this packet.

All of these forms are included in this packet or are available from the Cobb County Law Library, except for *Sheriff's Entry of Service* and *Domestic Relations Case Filing Information Form*, which are available at the Superior Court Clerk's Office.

If this action is **uncontested** (meaning you have a signed *Settlement Agreement*), you must file the following documents with the *Complaint*:

- (a) *Complaint for Divorce*
- (b) *Verification*
- (c) *Summons*
- (d) *Domestic Relations Financial Affidavit*
- (e) *[Standing] Order*
- (f) *Domestic Relations Case Filing Information Form (Clerk's Office)*
- (g) *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* (original signed by Defendant and notary public)

OR

- Acknowledgment of Service* (original signed Defendant and notary public)
- (h) *Notice of Lis Pendens* (only if applicable)
 - Note:** It is unlikely that you will need this document if you have a signed *Settlement Agreement* (see instructions for Paragraph 9 of the *Complaint*). We suggest that you consult an attorney if you think you need this form.
- (i) *Rule Nisi* (only if you want a hearing on temporary issues)
 - Note:** It is unlikely that you will need this document if you have a signed *Settlement Agreement*.
- (j) *Affidavit of Poverty and Order on Affidavit of Poverty* (only if applicable)
 - Note:** Only use this form if you are indigent and cannot afford to pay the filing and service fees. See the list of fees enclosed with this packet.
- (k) *Settlement Agreement* (signed before notaries by both parties)

All of these forms are included in this packet or are available from the Cobb County Law Library.

FORMS NEEDED 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:

- (a) *Final Judgment and Decree of Divorce With Minor Children (Without Settlement Agreement)*
- (b) *Domestic Relations Case Disposition Form (Clerk's Office)*

If you have a signed *Settlement Agreement*, you will need the following forms when you go to the final hearing your divorce:

- (a) *Final Judgment and Decree of Divorce Incorporating Settlement Agreement*
- (b) *Domestic Relations Case Disposition Form (Clerk's Office)*

All of these forms are included in this packet or are available from the Cobb County Law Library or the Clerk's Office.

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: PETITION FOR DIVORCE

- **Caption (Heading):**

Fill in your name as the Petitioner and your spouse's full name as the Defendant. Leave the Civil Action Case Number blank. 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 (1) box.

- (a) 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.)
- (b) 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 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. If this is the case, you should 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**

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 Cobb County or you may need to make particular changes to this form.

Check only one (1) box.

- (a) Check box **a** if the Defendant currently resides in Cobb County.
- (b) Check box **b** if all of the following are true:
 - (1) The Defendant is not a resident of Cobb County, but resides in Georgia;
 - (2) The two of you lived together in Cobb County at the time you separated;
 - (3) You still live in Cobb County; and
 - (4) The Defendant has moved out of Cobb County only within the past six (6) months prior to you filing this *Complaint for Divorce*.
- (c) Check box **c** if the Defendant does not live in Cobb County and did not live with you in Cobb County at your time of separation, but currently resides in Georgia.

- (d) Check box **d** if you live in Cobb County and the Defendant does not live in Georgia. Then check number (1), (2), or (3) in the same paragraph.

Check only one (1) box. (If both 1 and 3, or 2 and 3 apply, check only 3.)

- (1) Check box **1** if the Defendant was a resident of Cobb 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 O.C.G.A. § 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. Enter 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 *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* (this is one form) with this *Complaint*.
- (e) Check box **e** if you reside in Cobb 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 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 publication cases.

• **Paragraph 3: Service of Process**

Check only one (1) box.

- (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 *Acknowledgment 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 Cobb County and you want the Sheriff's Department to serve him or her. If you check this box, 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 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 more information about Service of Process, read **Step 7** of these instructions.

• **Paragraph 4: Date of Marriage**

Check only one (1) box.

- (a) Check box **a** if you and the Defendant were married with a license and a ceremony, such as one by a clergyman 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 in 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 have 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, or 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 (1) 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**

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 determine the income. The key issue in deciding alimony is the income of both parties.

Check only one (1) box.

- (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**

Notes:

- 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.
- 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.
- 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.
- 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.
- 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 those assets. If it is important to you to try to learn more about the Defendant's assets, you should see a lawyer.

Check only one (1) box.

- (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 (or if the property is already all gone).
- (c) Check box **c** if you and the Defendant did acquire property during your marriage and you are asking for a fair division of that property.

Note: If you check this box, 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 8 and 9. Carefully read the "Notes about Marital Property" section at the beginning of the instructions for Paragraph 21.

- (d) Check box **d** 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 10: Joint or Marital Debts**

Note: Creditors are not parties in your divorce cases. Consequently, the Court cannot take away 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, s/he may be held in contempt.

Check only one (1) box.

- (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 9 and 10.
- (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**

Do not check this box if there has not been any history of violent acts against you by the Defendant.

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.

The restraining order in a divorce is not enforceable by warrantless arrest. It can only be enforced by a *Motion for Contempt*.

Note: If there has been recent violence (or past violence plus a recent threat to renew that violence), you should consider filing a Temporary Protective Order (TPO) immediately. A TPO provides *much* stronger and faster protect 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 TPOs.

• **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.

Note: 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 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 under O.C.G.A. § 19-5-3, and tell the Court what other grounds for divorce you are asserting. Use the space provided or attach additional paper between pages 10 and 11.

- **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 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 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 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.

- **Signature and Date**

To finish the *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. Instead, you should write another address where you can be sure that you will receive any information that is mailed to you by the Court or the Defendant.

STEP 2: VERIFICATION FORM

The *Verification* form must be filled out 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*."

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. 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 pages 2 and 3 above 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 Cobb County Superior Court Clerk's Office can notarize this document for free, but you must have proper identification.

STEP 3: OTHER DOCUMENTS & COPIES

To start your divorce case, you must complete and file several other forms in addition to the *Complaint* and *Verification*. Some of these forms need to be signed in front of a notary public. (The forms you will need are listed on pages 2 and 3 of these instructions.)

After you have finished filling out all of the required papers to start your case, and all have been signed (in front of a notary public where required), make two (2) complete sets of copies of all papers that you are going to file. Then, separate the copies into three packets: (1) all of 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 own records.

STEP 4: FEES

The court filing fee for a divorce action may be obtained from the Superior Court Clerk's Office. You should contact someone in that office to determine what forms of payment are acceptable. The phone number to the Superior Court Clerk's Office is 770-528-1300.

In addition, there is a service fee of \$25.00, if the Cobb County Sheriff's Department is going to serve this action. Please note that this fee is subject to change.

Note: If you have a low income and feel that you cannot afford to pay these fees, you can ask the Court to waive the court filing fee and service fee. To do this, you should file the *Poverty Affidavit* and *Order on Poverty Affidavit* forms along with your other forms that you have taken to the Clerk's Office. A judge must sign the *Order* approving the *Poverty Affidavit*, before the filing of your case can be completed by the Clerk's Office staff. If the judge signs the order of approval, both the filing fee and the service fee are waived. If the judge does not approve your *Poverty Affidavit*, you must pay all 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. This fee will have to be paid separately from the Clerk's Office fees. Even if the judge approves your *Poverty Affidavit*, you will have to pay this fee of \$80.00 (subject to change) to *The Marietta Daily Journal*. Please note that the fee amount is subject to change.

STEP 5: FILING

After you have completed, signed (in front of a notary, where applicable), copied, and sorted all of your paper work, you are ready to file your case. Take all three (3) sets of forms (with the Court's set on top), along with your case or money orders to pay the fees, to the Cobb County Superior Court Clerk's Office. Give all three sets of documents to the clerk.

Tell the clerk if there have ever been cases about you in this court so that the case can be assigned to the proper judge. If your paperwork is complete, the clerk will keep the originals for the Court's file. Once your fees have been paid or a *Poverty Affidavit* has been approved by the judge, the clerk will write the case number on the top of the set of your copies, stamp them, and return them to you. Keep these copies for your records. Your divorce case has now been filed, but you still need to arrange for service (unless you have filed an *Acknowledgment of Service*). You should use the third set of copies for service.

STEP 6: SERVICE

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

- **Service by Acknowledgement of Service**

This is the easiest and least expensive method, but only if the Defendant is cooperative and willing to sign an *Acknowledgment of Service* form in front of a notary public. You cannot sign for the Defendant, and you cannot sign as the notary witnessing the Defendant's signature, nor is it good enough for the Defendant to sign without the signature being witnessed by a notary public.

There are two different *Acknowledgment of Service* forms available from the Cobb County Law Library:

- (1) The *Acknowledgment 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*. This form is best because it includes the consent to the present case in the same form with the acknowledgement, so you are saved a step later.
- (2) The plain *Acknowledgment 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. You should then file it with your other papers, as explained in Steps 3, 4, and 5 above.

- **Service by Sheriff's Department**

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 Superior Court of Cobb County 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, you should make arrangements for the Sheriff's Department to serve the papers.

If the Defendant can be served in Cobb County, then the Cobb 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.

Note: If you prefer, you may take the fee and service copy of the papers directly to the Sheriff's Department yourself (after you have completed Step 5 above). The Sheriff's Department is not at the jail; it is located in the Superior Court building.

If the Defendant must be served in another county or state, the Cobb County Sheriff's Department cannot serve the papers. You will need to arrange for service directly with the Sheriff's Department of the proper county. You should 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.

Whether you have service completed by the Cobb County Sheriff's Department or some other Sheriff's Department, you should 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 the Clerk's Office, which will then send the yellow copy to you (if you have properly filled out the form).

- **Service by Publication**

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

Using service by publication places 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, such as child support and alimony, as part of the divorce. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will no longer be limited by the restrictions that apply to publication cases.

To serve by publication, you will need to prepare and file the following three (3) forms:

- Affidavit of Diligent Search*
- Notice of Publication, and*
- Order of Publication, Return of Service, and Order Perfecting Service*

In the *Affidavit of Due Diligence*, you will explain to the Court the steps you took to try to find the Defendant. You must make reasonable effort to find the Defendant before you fill out this form, which is available through the Cobb County Law Library 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 all three above 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 and if the Court grants permission, the judge will then sign an *Order of Publication*. You will need to pay the cost of publication (\$80.00) at the Clerk's Office. The *Notice of Publication* will then be published in the county's official legal newspaper, called *The Marietta Daily Journal*, four times (usually four weeks in a row). The Defendant will then have 60 days to file an *Answer* if s/he wants to contest the case.

To be on the safe side, you should also mail a set of all the papers, called the "service copy," to the Defendant's last known address. Be sure to put enough postage on it, and be sure to list a return address so that the post office can return it to you if they are unable to deliver it.

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

If you later find out where the Defendant lives or works (before the case is over), 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, which is 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 alimony, living arrangements, use of an automobile, or who is responsible for certain payments while the divorce is pending.

To schedule a *Rule Nisi* temporary hearing, you should complete a *Rule Nisi* form which has its own 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, 4, and 5 above). After your case is filed with the Clerk's Office, you should take the original copy of the *Rule Nisi* 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

- **Final Hearing**

- With a Signed *Settlement Agreement*

If you have a signed *Settlement Agreement*, you may arrange to have the final hearing take place any time at least 31 days after the Defendant was personally served (or the *Acknowledgment 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 Cobb County Law Library 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.

o Without a Signed *Settlement Agreement*

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 the 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. 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 will mail notice 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).

o Before Hearing Dates

Whether temporary or final, you must prepare your case to be presented to the Court before your hearing dates. You are your main witness. You must also gather 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.

If you have a Final Divorce Hearing set on a case involving minor children, be sure to bring one of the following to the hearing:

- (a) *Settlement Agreement* – completed, signed, and notarized by both parties. Be sure that the *Settlement Agreement* includes the attached *Parenting Plan*, which is consistent with the provisions for visitation contained in your *Settlement Agreement*. (Exhibit A – Visitation Schedule).
- (b) *Final Judgment and Decree of Divorce With Minor Children* completed for the judge to review. Be sure to attach a *Parenting Plan* with your *Final Judgment*, which is consistent with the provisions for visitation included in your *Final Judgment and Decree*. (Exhibit A – Visitation Schedule).

The Cobb County Law Library has materials to help you prepare for the hearings. You should also talk to a lawyer about the hearing to learn more about how to present your case.