WEST VIRGINIA PETITIONER'S DIVORCE PACKET INSTRUCTIONS

* IMPORTANT INFORMATION *

YOUR RIGHTS MAY BE BETTER PROTECTED WITH THE HELP OF AN ATTORNEY.

You can obtain a divorce without the assistance of an attorney, but if minor children will be involved in your divorce, if you and your spouse own a home or business, or if you or your spouse have a pension or retirement plan, your custody, property, and support rights may be better protected with the help of an attorney.

The staffs of the Circuit Clerk's Office and the Family Court are prohibited by law from providing legal advice.

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TIME DEADLINES

In a divorce case, the parties must meet certain deadlines, such as filing papers and documents by a specific date. The failure to meet deadlines can result in the Court imposing penalties. If the other party meets the deadline and you do not meet the deadline, the Court can accept the information that was filed by the other party. FAILURE TO COMPLY WITH DEADLINES CAN HURT YOUR CASE! These Instructions contain information on deadlines. Read the instructions carefully, and pay attention to the deadlines.

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If you require any special arrangements to fully participate in court proceedings; for example, a language interpreter, hearing or visual aids, or accommodations for physical access, please notify the Circuit Clerk's Office by checking the appropriate box on the Petitioner's Civil Case Information Statement.

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INSTRUCTIONS FOR PETITIONER'S PACKET

The Petitioner's Divorce Packet contains forms and instructions you will need to represent yourself in your divorce case, without an attorney. As the person who starts the divorce case, you are the Petitioner. Your spouse is the Respondent. The meanings of these terms and others are explained in the "Definitions of Legal Terms" at the end of these instructions. You should take a few minutes to read these definitions before you continue with these instructions.

The first part of your Petitioner's Packet contains the instructions you are now reading. The forms follow the instructions. Please read these instructions carefully, and please write clearly when you fill in the forms. The forms are very important to your case. If required forms are not properly completed and filed on time, your case may be harmed, or delayed. You will file all of your forms and all other required documents in the Circuit Clerk's Office. Unless otherwise indicated, for every form and document you file, you will need an original that will be filed with the Circuit Clerk, a copy you will serve on the opposing party, and a copy for yourself. If the BCSE is a party, you will need a copy that will be served on that agency.

The forms in this packet require you to provide your name, address, and telephone number. **If you believe your safety, liberty, or health, or the safety, liberty, or health of your children would be put at risk by the disclosure of this information, you must check the box in the Important Notice section of the Petitioner's Civil Case Information Statement AND you must file an affidavit to have the information withheld from all persons except court employees who require the information to carry out their duties.** The affidavit you need to file is the Affidavit To Withhold Identifying Information. This affidavit is not included in the Petitioner's Divorce Packet. If you need this affidavit, you can obtain one at the Circuit Clerk's Office. You can file this affidavit in the Circuit Clerk's Office at the beginning of your case, or later, or you can ask the Court to enter an order allowing you to withhold the information. If your identifying information is withheld, the Respondent's court papers will be served through the Circuit Clerk or Family Court, and not directly on you.

TO BEGIN, you must make certain you can file your divorce in West Virginia. You can file your divorce in West Virginia **only if**:

1. You or your spouse have lived in West Virginia for at least one year before the divorce is filed.

OR

2. You now live in West Virginia, and you and your spouse were married in West Virginia.

If you can file your divorce in West Virginia, and you want to use the forms in the Petitioner's Divorce Packet to prepare your divorce, you need to begin by studying the following list of forms included in the packet. The list contains the names of the forms, and important information about the forms and how they will be used in your case. The forms on the list are divided into three groups; Forms Required in All Divorces, Forms Required in Divorces Involving Minor Children, and Other Forms You May Need. **Read the list of forms carefully to determine the forms you need to complete.**

FORMS REQUIRED IN: ALL DIVORCES.

1. **PETITION FOR DIVORCE:**

   The Petitioner files this document to begin the divorce. The Petition for Divorce tells the Court the reasons a divorce should be granted, and it tells the Court how the Petitioner wants the Court to handle matters such as spousal support, allocation of custodial responsibility for the children, child support, and the division of property. You will file an original and one copy of your Petition in the Circuit Clerk's Office. You will also want to keep a copy for your records.

2. **PETITIONER'S CIVIL CASE INFORMATION STATEMENT - DOMESTIC RELATIONS CASES:**

   This form gives the Court important information about the case and the parties. When you file your Petition in the Circuit Clerk's Office, you also must file three copies of a completed Petitioner's Civil Case Information Statement.

3. **FINANCIAL STATEMENT:**

   You and the Respondent will use this form to list income, assets, and liabilities. Each of you will complete one of these forms. In cases involving minor children and/or spousal support, each of you must file the additional information discussed in Step 1. **You must file your completed Financial Statement with the Petition. Any additional information required to supplement your financial disclosure, or any updates or changes to your financial statement, must be filed in the Circuit Clerk's Office as required by the scheduling order of the court. If you do not have a scheduling order, then the additional information must be filed no later than 5 days before the first hearing in your case. If one party files the financial information on time, and the other party does not, the Court can proceed with the financial information missing, can refuse to grant requested relief to the party who didn't file the information, and can base a decision solely on the information that was filed on time.**

4. **VITAL STATISTICS FORM:**

   This form is used to update the state's vital statistics records on births, deaths, marriages, and divorces. You must file this form with your Petition For Divorce.

FORMS REQUIRED IN: DIVORCES INVOLVING MINOR CHILDREN OR SPOUSAL SUPPORT.

1. **APPLICATION FOR CHILD SUPPORT AND INCOME WITHHOLDING SERVICES FROM THE BUREAU FOR CHILD SUPPORT ENFORCEMENT:**

   If minor children are involved in the divorce, or spousal support is being requested by either party, you must complete this form, and file it in the Circuit Clerk's Office when you file your Petition. The Respondent also must complete this form, and file it in the Circuit Clerk's Office with the Answer to Divorce Petition.

2. **PROPOSED PARENTING PLAN:**

   If minor children are involved in the divorce, you and the other parent must attempt to agree on a Joint Proposed Parenting Plan, unless your or your children's safety and well-being would be put at risk. A Joint Proposed Parenting Plan tells the Court in detail how the parents think the responsibilities for raising the children should be shared after the divorce. If you and the other parent cannot agree on a Joint Parenting Plan, each of you must file Individual Proposed Parenting Plans. **In either event, Joint or Individual Plans should be filed prior to the first hearing/conference in the case. If one party files an Individual Plan on time, and the other party does not, the Court can rely solely on the plan that was filed on time.** The Parenting Plan Instructions accompanying the Parenting Plan forms explain Parenting Plans in detail.

3. **PARENT EDUCATION NOTICE:**

   This notice explains that each parent must pay a $25 Parent Education Fee, unless fees have been waived, and must complete a Parent Education Class conducted by specially trained persons approved by the Courts.

OTHER FORMS YOU MAY NEED.

1. **ACCEPTANCE OF SERVICE:**
   This form is used if the Respondent voluntarily accepts the divorce papers, or picks them up in the Circuit Clerk's Office.

2. **AFFIDAVIT OF NON-RESIDENCY OR UNKNOWN RESIDENCY:**
   You will use this form if the Respondent cannot be served in West Virginia because the address is not known, or if the Respondent lives out of state. You must sign this form in front of a Notary Public or Deputy Circuit Clerk.

3. **SERVICEMEMBERS CIVIL RELIEF ACT WAIVER:**
   The Servicemembers Civil Relief Act permits persons serving in the armed forces to delay court cases. A party serving in the armed forces who signs this form agrees to allow the divorce to proceed despite the Servicemembers Civil Relief Act.

4. **DIVORCE ANSWER PACKET:**
   This packet contains the forms and instructions the Respondent needs to handle the divorce without an attorney.

Now that you've reviewed the list of forms, you next need to determine the correct forms for your case, and the deadlines for serving and filing those forms. These things are explained in Step 1.

STEP 1. WHAT ARE THE CORRECT FORMS FOR YOUR CASE? WHAT ARE THE DEADLINES FOR FILING THE FORMS?

A. **EVERYONE** who files a divorce case MUST complete and file the following forms:

Petition for Divorce - Deadline: There is no deadline for filing the Petition, but when the Petition is filed, the Court's clock starts.

Petitioner's Civil Case Information Statement - Deadline: Must be filed with the Petition.

Vital Statistics Form - Deadline: Must be filed with the Petition.

Financial Statement - Deadline: Must be filed with the Petition and served on the other party, or parties, and filed in the Circuit Clerk's Office. AND, in cases involving minor children, and/or spousal support, the Financial Statement must be accompanied by the additional information explained in items B and C immediately below.

B. If MINOR CHILDREN are involved in the divorce, IN ADDITION to the forms in Group 1, you MUST also complete and file the following forms:

Application for Child Support Enforcement and Income Withholding Services - Deadline: Must be filed with the Petition.

Proposed Parenting Plan - Deadline: Before the first hearing.

AND

You MUST also file the following information with your Financial Statement:

1. A copy of your 3 most recent wage or salary stubs showing gross pay, deductions for taxes and other items, and net pay for a normal pay period, and for the year-to-date;

2. Copies of your and your spouse's complete income tax returns for the two years immediately preceding the date the Petition was filed, together with copies of the federal Form W-2 for those years; and a copy of the Form W-2 for the most recent year for which that form is available, even if a tax return has not yet been filed for that year;

3. For self-employed persons and business owners, a copy of a current financial statement showing gross income, expenses, and net income;

4. Copies of any invoices or receipts showing the cost of any extraordinary medical expenses for the party or the children, any child care expenses, and any expenses necessitated by the special needs of the children.

AND

You MUST also complete a Parent Education Class. Deadlines: You must pay the Parent Education Fee when you file your Petition, unless your fees have been waived. You should attempt to complete a Parent Education Class before your first hearing. If you do not, your case may be delayed.

C. If you are requesting SPOUSAL SUPPORT, (alimony), IN ADDITION to the Group 1 forms, you MUST also complete and file:

Application for Child Support Enforcement and Income Withholding Services - **Deadline:** Must be filed with the Petition.

AND

You MUST file WITH your Financial Statement the additional information listed in items B. 1 - 4 immediately above.

D. If you serve the Respondent by PUBLICATION, IN ADDITION to the required Group 1, 2, and 3 forms, you ALSO must complete and file an Affidavit of Non-residency.

Now that you've determined the forms required for your divorce, go to Step 2 to learn about how to fill out the Petition form, and other required forms.

STEP 2. HOW TO FILL OUT THE PETITION AND OTHER FORMS.

Before you begin, you may want to make several copies of each blank form. You can use the copies to practice on, and you'll have extra blank forms if you make an error completing a form.

Filling out the Petition form is a matter of checking the right boxes, and filling in blanks. The form is self-explanatory, but make certain you read everything carefully, and fully understand what you're doing when you check a box or fill in a blank. Items 20, 21, 22, and 23 on the Petition concern the grounds for divorce. Read the last section in this step for information about the grounds for divorce. Complete the Petition form down to the Verification. Don't complete and sign the Verification until you are before a Notary Public. Deputy Circuit Clerks can also notarize your Verification.

Next, take a look at the other forms you must fill out. If necessary, return to Step 1 and review the list of forms to make certain you fill out all of the required forms. Some forms have a set of instructions accompanying them; the Parenting Plan, for example. Other forms have instructions built into the form. Read the instructions and forms carefully, and make certain you understand what you're doing when you check a box or fill in a blank.

GROUNDS FOR DIVORCE

The Divorce Petition form included in this packet lists three common grounds for divorce. The most common ground is Irreconcilable Differences. This ground is Item 20 in the Divorce Petition. Item 20 does not require a check mark. In other words, when you file the form, Petition for Divorce, you are automatically claiming Irreconcilable Differences as a ground, unless you cross it out. The other two grounds listed in the form Petition, Items 21 and 22, must be checked to be claimed as grounds. The grounds of Irreconcilable Differences and One Year Separation are briefly explained in the next two paragraphs.

Irreconcilable Differences

To obtain a divorce on the ground of Irreconcilable Differences:

1. The Divorce Petition must claim Irreconcilable Differences as a ground. Irreconcilable Differences is automatically claimed by filing the form, Petition for Divorce, included with the Petitioner's Divorce Packet.
2. The Respondent must file an Answer To Divorce Petition, **and** the Answer must admit Irreconcilable Differences.
3. At least one of the parties to the divorce, you or the Respondent, must attend the final hearing.

One Year Separation

To obtain a divorce on the ground of One Year Separation:

1. You must check Item 21 on the Divorce Petition.
2. At least one witness must testify to the 1 year separation. (Neither you, nor the Respondent, count as this one witness.)
3. At least one of the parties to the divorce, you or the Respondent, must attend the final hearing.

After you've filled out the correct forms, the next step is to determine the county in which you need to file your forms. Step 3 explains this, and also provides information about the filing fee, and other fees and court costs.

STEP 3. FILE YOUR FORMS IN THE PROPER COUNTY. FEES AND COURT COSTS.

After you have completed the correct forms, you'll begin your divorce case by filing the forms in the Circuit Clerk's Office in the proper county. Here's how to determine the county in which to file your divorce.

If the Respondent lives in West Virginia:

1. You can file in the county in which the Respondent lives.

   OR

2. You can file in the county in which you and the Respondent last lived together.

If the Respondent's address is unknown, or the Respondent lives out of state:

1. You can file in the county in which you now live.

   OR

2. You can file in the county in which you and the Respondent last lived together.

After you have determined the county in which you will file, take your completed forms to the Circuit Clerk's Office in that county and give them to a Deputy Clerk for filing.

Important Note. The law prohibits the Circuit Clerk and Deputy Clerks from providing legal advice. This means they cannot assist you in completing your forms, or "check" your forms to see if you've completed them correctly.

Fees and Court Costs.

The law requires a person filing a court case to pay a filing fee, and certain other fees and costs which are used to help pay the cost of operating the court system. These fees and costs are not refundable if you change your mind about your divorce. Read the following information to learn more about the fees and costs you will have to pay, and to learn what to do if you cannot afford to pay these fees and costs.

The following fees are due at the time you file your divorce.

***** Fee for filing Divorce Petition - $135.
***** Fee if your Petition is served on the Respondent by the Sheriff's Department - $25.
***** Fee if your Petition is served on the Respondent by certified mail/restricted delivery - $20.

If you cannot afford to pay these fees and court costs, you should ask a Deputy Circuit Clerk for an affidavit to waive fees and court costs. You can fill out the affidavit in the Clerk's office. The affidavit requires you to list some basic information about your financial situation with supporting documentation. A Deputy Clerk will review your completed affidavit, and tell you if you meet the legal requirements to have your fees and costs waived. If you meet these requirements, you will not have to pay fees and costs. If you don't meet these requirements, you must pay fees and costs, but you can ask the Court to review your affidavit later. The Court will review your request for waiver of fees at a later hearing and will determine your eligibility even if the clerk has approved your waiver. Criminal charges can be filed against you if you provide false information on this affidavit.

After your divorce has been filed, the next step is having the divorce papers served on the Respondent. To learn how this is done, go to Step 4.

STEP 4. HOW TO HAVE DIVORCE PAPERS SERVED ON THE RESPONDENT.

Before any type of hearing, except an emergency hearing, can be held in your case, the Respondent must be served with a Summons, a copy of your Petition, and the other documents you filed with it. The Summons, your Petition, and the documents you filed with it are sometimes referred to as "the divorce papers," or "the papers." The serving of court papers is called "service of process," or just "service." **It is your responsibility to arrange for the Respondent to be properly served with the divorce papers.** The following paragraphs describe the methods by which the divorce papers can be served. Read this information carefully. **If the Respondent is not properly served, your case will not go forward**.

PERSONAL SERVICE BY THE SHERIFF'S DEPARTMENT. The divorce papers are delivered to the Respondent by the Sheriff's Department. This type of service is arranged through the Circuit Clerk's Office. You pay the fee of $25, and provide precise directions to the Respondent's residence or place of work. The better your directions, the more likely the Sheriff's Department is to find the Respondent. The Respondent has 20 days from the date the divorce papers are delivered to serve you with an Answer.

ACCEPTANCE OF SERVICE. To use this method of service, you must have the Respondent sign an Acceptance of Service form before a Notary Public when you give the Respondent the divorce papers; and you must promptly file that form in the Circuit Clerk's Office. From the date the form is signed, the Respondent has 20 days to serve you with an Answer.

PERSONAL SERVICE BY PRIVATE PROCESS SERVER. The law permits persons other than members of the Sheriff's Department to deliver the divorce papers to the Respondent, **but**, service cannot be made by a party to the case, **and** the person serving the papers must be 18 years of age or older. For this type of service to be valid, the person who serves the papers must complete an affidavit which states when and where the papers were served, **and** this affidavit must be filed in the Circuit Clerk's Office. The Respondent has 20 days from the date the divorce papers are delivered to serve you with an Answer.

SERVICE BY CERTIFIED MAIL. This type of service is arranged through the Circuit Clerk's Office. You pay a fee of $20 to the Circuit Clerk. The Circuit Clerk's Office mails the divorce papers to the Respondent by certified mail, with restricted delivery and return receipt requested. If the mailing is accepted, the Clerk's Office will receive the return receipt postcard with the signature of the person who accepted the mailing. If the mailing is returned undelivered, or if a person other than the Respondent accepts the mailing and signs the receipt, you don't have good service, and your case will not go forward. The Respondent has 20 days from the date the divorce papers were delivered to serve you with an Answer.

SERVICE BY PUBLICATION. In this type of service, a legal notice of your Divorce Petition is published in a newspaper in the county in which you filed your divorce. **Service by Publication can be used in only two situations.**

1. The Respondent's location/address is unknown.
   OR
2. The Respondent lives out of state, and will not sign the Return Receipt for Service by Certified Mail.

BUT, even if one of these situations applies to your case, you should know that, **if you use Service by Publication, the Court's ability to award child support and/or spousal support will be limited**.

AND, even if one of these situations applies to your case, **DO NOT use Service by Publication if the only ground you claim for divorce is irreconcilable differences**.

To attempt Service by Publication, follow these steps.

1. Complete the Affidavit of Non-Residency or Unknown Residency form, and take it to the Circuit Clerk's Office.
2. A Deputy Clerk will fill out an Order of Publication.
3. Immediately take the Order of Publication to a newspaper in the county in which you filed your divorce if the Respondent's location is unknown. If the Respondent lives out-of-state and will not sign the Return for Service by Certified Mail, then take the Order of Publication to a newspaper in the county of the last known address of the Respondent. You will be required to pay the newspaper for the publication cost, unless your fees and costs have been waived. The Notice will be published once a week for two weeks in a row. If fees and costs have been waived, the Circuit Clerk will send your Order of Publication to the proper newspaper for publication.

4. After the Notice of Divorce has been published twice, the newspaper will complete an Affidavit of Publication to confirm the publication has taken place. In some counties, the newspaper mails this Affidavit to the Circuit Clerk's Office. In some counties, the newspaper mails this Affidavit to the Petitioner. If the newspaper mails you the Affidavit, you must immediately file it in the Circuit Clerk's Office. Without the Affidavit of Publication in your file, you have no proof of service, and your divorce will not go forward. A copy of the Notice of Divorce from the newspaper is not good proof of service.
5. The Respondent has 30 days from the date of the Notice's first publication to Answer.

Now that you've gotten your case underway by having the Respondent served with the divorce papers, move on to Step 5 to learn about the Respondent's Answer to your Divorce Petition.

STEP 5. THE RESPONDENT'S ANSWER.

The Answer is the Respondent's written reply to your Petition. As you learned in Step 4, the Respondent will have 20 or 30 days to serve you with an Answer, depending on the method by which the divorce papers were served.

If the Respondent doesn't have a lawyer, he or she should obtain a Divorce Answer Packet from a Circuit Clerk's Office, or you can get one and pass it along. These forms are also available online at www.courtswv.gov.

Important reminder about the Respondent's answer and "no-fault" divorces.

To obtain a "no-fault" divorce on the ground of irreconcilable differences, the Respondent must file an Answer admitting irreconcilable differences, and certain other requirements must be met. Return to Step 1 for more information about the requirements for obtaining a "no-fault" divorce.

Next, proceed to Step 6, and learn how the hearings and conferences in your case will be conducted.

STEP 6. CONFERENCES & HEARINGS: WHAT TO EXPECT.

In Step 6, we'll discuss how the conferences and hearings in your case will be conducted. In Step 7, you'll learn what you need to do to prepare for your first conference or hearing. Conferences are conducted by the Family Court's Case Coordinator or the Family Court Judge. Hearings are conducted by the Family Court Judge. Conferences and hearings are set by the family court office.

In Family Court, all hearings and conferences are set by Scheduling Orders. **It is very important that you attend all hearings, show up on time, and come prepared**. You risk hurting your case if you fail to attend hearings, show up late, or come unprepared. Find out where the hearings will be held and allow plenty of time to get there on time.

If you receive a Scheduling Order notifying you of a hearing or conference, and you will not be able to attend, you must send the Family Court a written request to reschedule. This is called a Motion for Continuance. You must state the reason you cannot attend the originally scheduled hearing. The Family Court must receive your motion to continue not less than 7 business days before the date of the hearing you want rescheduled, and you must serve this motion on the Respondent.

Family Court hearings are not open to the public. Only the parties, attorneys for parties, and witnesses are allowed to attend hearings. All hearings are recorded with video and audio equipment. Everyone who testifies must swear or affirm to tell the truth. Everyone is expected to behave in a courteous and dignified manner. Courts will not tolerate improper conduct. The Rules of Court prohibit photographs, videotaping, and sound recording in the courtroom, and in all public areas associated with the courtroom.

Some Family Court Judges question the parties and their witnesses. Others want the attorneys and the self-represented parties to present evidence and question witnesses. If you are representing yourself, you will be expected to present your evidence and question witnesses. Ask a member of the Family Court staff how the judge will conduct your hearing.

Not all hearings produce an immediate decision. Sometimes, the issues in dispute just aren't ready for a decision. For instance, the judge may decide more evidence is needed on an issue. Sometimes, the judge will want to think things over before making a decision. Sometimes, the judge will announce a decision at the conclusion of a hearing. Whatever the circumstances, once made, all decisions are written down in the form of Orders, and filed in the Circuit Clerk's Office. If there's an attorney in the case, the Family Court Judge may ask the attorney to draft an Order which will be sent to the judge and the other party for review. If neither party has an attorney, the Family Court Judge will prepare the Orders.

Now that you've learned some things about the way hearings are conducted, move to Step 7, and learn what you need to do to prepare for the first hearing or conference in your case.

STEP 7. PREPARING FOR THE FIRST HEARING OR CONFERENCE.

In Step 7, we'll discuss what will happen at the first hearing or conference in your case, and what you need to do to prepare. To begin, review the following list of important reminders of things that must be done before the first hearing or conference.

THINGS YOU NEED TO DO BEFORE THE FIRST HEARING OR CONFERENCE.

Parent Education: If minor children are involved in the divorce, both parents must complete an approved Parent Education Class, and file a Class Completion Certificate in the Circuit Clerk's Office. You need to schedule and attempt to complete a Parent Education Class before the first conference/hearing. If you do not, your case may be delayed.

Proposed Parenting Plan: If minor children are involved in the divorce, before the first hearing/conference, you and the other parent need to file a Joint Proposed Parenting Plan together, **or** each of you need to file Individual Proposed Parenting Plans.

Witness Subpoenas: If you think you will need witnesses to testify at a hearing, you need to make **certain** those witnesses will attend. If you are not certain a witness will show up, you need to obtain a subpoena. To arrange for a subpoena, go to the Circuit Clerk's Office. You should do this at least 10 days before the hearing. To obtain witness subpoenas, you need to provide the Deputy Clerk with the names and addresses of the witnesses, and pay a Clerk's Fee of .50 cents per subpoena, and a service fee of $25 per subpoena, unless your fees have been waived.

THE FIRST CONFERENCE OR HEARING: WHAT TO EXPECT.

If a party makes a written motion for temporary relief, the first hearing may be a hearing on temporary relief. Temporary relief hearings deal with matters such as allocation of custodial responsibility, allocation of time spent with the children, child support, medical support, spousal support, and possession of the marital residence.

The first conference or hearing will be held after the Respondent has been served with your Petition, and the time for the Respondent to serve you with an Answer has ended.

This first hearing is called a case management conference/hearing. You will receive a Scheduling Order telling you the date, time, and place, and whether the proceeding will be a conference conducted by the Case Coordinator, or a hearing conducted by the Family Court Judge. The Scheduling Order will tell you if you need to complete and file any additional forms, file any additional information, or take care of any other matters before you come to the hearing.

One of the purposes of the case management conference/hearing is to determine what issues are disputed in your case, and how many hearings and how much time your case will require. If your case has no disputed issues, the first hearing may be the only hearing necessary, and the Court may suggest making the first hearing the final hearing. This can only be done if there is a good reason to do it, all necessary papers have been filed, and you and the Respondent agree to it.

In cases involving minor children, the most important subject discussed at the first conference/hearing will be the development of a Parenting Plan. Read the Parenting Plan Instructions to learn the things you need to know about Parenting Plans.

HOW TO PREPARE FOR HEARINGS.

As the Petitioner, you will be required to prove the grounds for divorce you claimed in your Petition. The other issues that will be the subject of hearings in your case depend on the nature of your case and the particular issues in dispute between you and the Respondent. Issues frequently in dispute in divorce cases include, but are not limited to, allocation of custodial responsibility, child support, division and possession of marital property, spousal support, and the division of marital assets and debts. To prepare for a hearing, the first thing you need to do is make sure you understand what issues will be addressed at that hearing. The second thing you need to do is decide how you can prove your case on these issues. You can prove your case by your testimony, by documents, or by the testimony of witnesses. The Respondent will be given the same opportunities to testify and present evidence. Make a plan for how you will present your case. It's best to write things down. List the things you want to prove, and for each thing you want to prove, list how you will prove it; by witness testimony, or a document, for example.

As you have learned, in some cases the first hearing may be the only hearing necessary. In other cases, a number of hearings may be required before the case reaches a final hearing. What happens after the final hearing is discussed in Step 8.

STEP 8. WHAT HAPPENS AFTER THE FINAL HEARING?

The final hearing will result in a Final Order concluding the case and settling all issues in dispute. Both parties will receive copies of the Final Order. **You are NOT legally divorced until a Final Order has been signed by the Family Court Judge!**

Any party may file a Motion for Reconsideration of a Final Order for one of the five types of reasons specified in Chapter 51, Article 2A, Section 10 of the West Virginia Code. A Motion for Reconsideration can be filed only for one of these reasons. A Motion for Reconsideration is made to the Family Court, and must be filed with the Circuit Clerk within a reasonable time after the Final Order was entered, or within one year, depending on the reason for which the motion is filed.

Any party may appeal a Final Order of Family Court to the Circuit Court. An appeal to the Circuit Court is made by filing a Petition for Appeal from Family Court Final Order with the Circuit Clerk. A Petition for Appeal must be filed within 30 days after the date the Final Order was entered. The Circuit Court may refuse to consider a Petition for Appeal. The other parties have a right to file a Reply to a Petition for Appeal, and file a Cross Petition; and the party filing the Petition for Appeal has a right to file a Reply to a Cross Petition. If the Circuit Court does not rule on the petition within the time required, all parties will receive a notice the appeal will be automatically transferred to the West Virginia Supreme Court of Appeals unless all parties file written objections to the transfer. If an appeal is transferred to the Supreme Court, the parties are not required to file any additional papers.

If the Circuit Court refuses to consider a Petition for Appeal, or if a party disagrees with the Circuit Court's ruling on a Petition for Appeal, an appeal may be made to the Supreme Court of Appeals.

Under some circumstances, a Final Order of Family Court may be appealed directly to the Supreme Court of Appeals. This may be done if all parties, together or separately, file a Notice of Intent to Appeal Family Court Final Order and Waiver of Right to Appeal to Circuit Court. Filing this Notice requires a waiver of the right to file a Petition for Appeal to the Circuit Court. The Notice must be filed within 14 days after the date the Final Order was entered.

A party filing an appeal to the Circuit Court or Supreme Court may make a Motion for a Stay. A Motion for a Stay asks that the terms of a Final Order not be carried out until the appeal has been resolved. A Motion for a Stay is made in the Family Court. If the Family Court denies the motion, the motion may be made in the Circuit Court. The payment of spousal support and child support cannot be stayed. The payment of past due child support may be stayed.

Forms and instructions for appeals to the Circuit Court and Supreme Court are available in Family Court and Circuit Clerk offices. These forms are also available online at www.courtswv.gov.

DEFINITIONS OF LEGAL TERMS

Affidavit

A written statement of facts sworn to before a Notary Public.

Alimony

Money paid by a divorced person for the support of the ex-spouse. Alimony is now called "spousal support." Alimony is not the same as child support.

Allocation of Custodial Responsibility

The allocation of custodial responsibility determines how the parents will share custody of the children after the divorce. Formerly referred to as "child custody."

Answer

The Respondent's written response to the Petition for Divorce.

Application For Child Support Enforcement And Income Withholding Services

In cases involving minor children, both parents must fill out this form to request or decline child support enforcement and income withholding services from the Bureau For Child Support Enforcement.

Bureau For Child Support Enforcement (BCSE)

The state agency that enforces parents' child support obligations and helps collect child support payments.

Case Coordinator

The Family Court staff person who keeps track of cases, and holds conferences with the parties.

Child Support

The money paid by a divorced parent to help pay the expenses of raising the children. The Family Court Judge sets the amount of support by using West Virginia's child support formula.

Circuit Clerk

The court official who keeps all court files and documents. All papers filed in a court case are filed in the Circuit Clerk's Office. Most service of process is arranged through the Circuit Clerk's Office.

Circuit Court

The court of general jurisdiction for a county, or for several counties grouped together as a circuit.

Divorce

The termination of a marriage by a Court based on proof provided by the parties.

Family Court

The Court that handles divorces, paternity cases, and other types of family cases.

Financial Statements

Forms that provide the Court with financial information about the income, assets, and liabilities of the parties.

Grounds

The reasons for a divorce. Two common grounds for divorce in West Virginia are irreconcilable differences and one year separation.

Irreconcilable Differences

One of the grounds for a divorce. Irreconcilable differences means the parties cannot get along with each other, and don't think they ever will.

Mediation

A way of settling Parenting Plan disagreements. A neutral third party, the Mediator, helps the parties agree on a Parenting Plan.

Mediator

A person trained to help persons settle disagreements.

Notary Public

An individual certified to witness and authenticate the signing of legal documents.

Order

A written document recording a Court decision.

Parent Education Class

A class designed to help divorcing parents understand the negative effects of divorce and child custody disputes on children, and to teach parents ways to lessen those negative effects. Parent Education Classes are taught by specially trained persons approved by the Courts.

Parenting Plan

A document which states in detail how divorcing parents will share the responsibilities for raising their children after the parents no longer live together.

Party

In a divorce, the Petitioner is one party, and the Respondent is the other party.

Petition for Divorce

The Petition for Divorce is filed by the party who begins the divorce case, the Petitioner. The Petition states the grounds for divorce, and states what actions the Petitioner wants the Court to take on matters such as the allocation of custodial responsibility for children, child support, spousal support, and the division of marital property.

Petitioner

The person who begins the divorce by filing a Petition for Divorce.

Petitioner's Civil Case Information Statement

A form filed in the Circuit Clerk's Office by the Petitioner at the beginning of the case to provide the Court with information about the case. It is filed with the Petition For Divorce.

Premediation Screening

In divorce cases involving minor children, a process in which a trained Premediation Screener meets separately with both parties to determine if a Mediator can help the parties agree on a Joint Parenting Plan.

Relief

What a party to a court case requests from the Court. For example, spousal support would be one type of relief a party might request.

Respondent

The person on the other side of the divorce case from the Petitioner.

Respondent's Civil Case Information Statement

A form filed in the Circuit Clerk's Office by the Respondent to provide the Court with information about the case. It is filed with the Answer To Divorce Petition.

Self-Represented Party

A person who acts as her/his own attorney in a court case. Persons who represent themselves are also referred to as *pro se* litigants, pronounced "pro say."

Separation

In divorce cases, a situation in which Petitioner and Respondent live in separate households and no longer have marital relations.

Service

The delivery, by authorized methods, of a court document.

Servicemembers Civil Relief Act Waiver

This form waives the federal protection to active duty Servicemembers under the Servicemembers Civil Relief Act found at 50 U.S.C. App. § 501 *et seq.*

Shared Parenting

The sharing by divorced parents of their responsibilities for raising their children.

Spousal Support

Money paid by a divorced person to the ex-spouse. Formerly called "alimony."

Spouse

A term used to mean an individual who is legally married; i.e.: the Petitioner or Respondent in a divorce action.

Summons

The court document that notifies the Respondent of the filing of the Petitioner's case, and states the amount of time the Respondent has to serve an Answer.

The End