

# Frequently Asked Questions & Common Mistakes in Self-Represented Divorces

**\*\*SUPERIOR COURT EMPLOYEES ARE NOT ALLOWED TO GIVE LEGAL ADVICE.\*\***

**PLEASE READ THE FOLLOWING DOCUMENT CAREFULLY**

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**NOTE:** It is *always* better to be represented by a lawyer with the expertise and training to protect your interests in any legal matter.

The following is simply a list of the *basic requirements* for filing a divorce in Georgia. **This list is in no way intended to be legal advice or a substitution for legal advice.** The documents listed are the minimum requirements for filing a divorce. Each case is different and often additional documents may be required. Please refer to the Official Code of Georgia to ensure that you have included all required documents.

Each document *must be completed correctly and thoroughly*. Fill out these forms to the best of your ability. **ALL HANDWRITTEN DOCUMENTS MUST BE LEGIBLE.** *Incomplete forms, as well as forms that are improperly filled out, **WILL** delay the grant of your divorce.*

**Neither the Court nor any courthouse staff is permitted to provide any assistance to you in completing these documents.** If you feel that you need further assistance in completing your divorce, you are strongly encouraged to obtain legal counsel.

## Definitions

### What does “affidavit” mean?

- An affidavit is a written statement voluntarily made by an affiant under an oath or affirmation which is administered by a person who is authorized to do so by law.
- A person commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue or point in question.
- ALL AFFIDAVITS MUST BE NOTARIZED.

### What does “jurisdiction” mean?

- Jurisdiction is the official power of a Court to make legal decisions and judgments over a case.

### What does “pro se” mean?

- "Pro se"- Latin for self or "in one's own behalf."
- People or parties representing themselves in court without the assistance of an attorney are known as pro se litigants.

### What does “Plaintiff” and “Defendant” mean?

- The Plaintiff is the person that brings or files the lawsuit against another in a court of law. Therefore, the *person that initiates the divorce proceeding* by filing divorce paperwork with the clerk *is the Plaintiff*.
- The Defendant is the person or persons sued in a court of law.

### What is “service of process” or “to have the Defendant served?”

- Service of process is the procedure by which a party to a lawsuit gives an appropriate notice of initial legal action to another party in an effort to exercise jurisdiction over said party so as to force that person to respond to the proceeding before the court, body, or other tribunal.

### What is the difference between legal custody and physical custody?

- Legal custody refers to parents' authority to make the important decisions about their children's lives, such as:
  - o medical and other health care, including the choice of doctors and whether the kids will get vaccinations or go to therapy
  - o schooling and other educational resources like tutoring and special education
  - o religious activities and instruction, and
  - o whether they'll take part in extracurricular activities like team sports, school band, or music lessons.
- Physical custody refers to where the children live most of the time.

### What is the difference between an uncontested and a contested divorce?

- In an uncontested divorce the spouses *agree* on the separation of their assets and dissolution of their marriage.
- In a contested divorce, the parties *may not agree on some or all terms of divorce*, or even whether they want a divorce.

## Requirements for Filing for Divorce in Georgia

### Uncontested Divorces WITHOUT Minor Children

1. Complaint for Divorce
2. Verification
3. Consent to Trial
4. Defendant's Acknowledgement of Service and Summons **OR** Defendant's Acknowledgement of Service Affidavit of Waiver of Venue and Personal Service
5. Settlement Agreement
6. Final Judgment and Decree

### Contested Divorces WITHOUT Minor Children

1. Complaint for Divorce
2. Verification
3. Domestic Relations Financial Affidavit of Plaintiff
4. Final Judgment and Decree

### Uncontested Divorces WITH Minor Children

1. Complaint for Divorce
2. Verification
3. Consent to Trial
4. Defendant's Acknowledgement of Service and Summons **OR** Defendant's Acknowledgement of Service Affidavit of Waiver of Venue and Personal Service
5. Settlement Agreement
6. Domestic Relations Financial Affidavit of Plaintiff
7. Domestic Relations Financial Affidavit of Defendant
8. Final Judgment and Decree
9. Income Deduction Order
10. Parenting Plan
11. Child Support Addendum and Order
12. Child Support Worksheet

### Contested Divorces WITH Minor Children

1. Complaint for Divorce
2. Verification
3. Domestic Relations Financial Affidavit of Plaintiff
4. Mandatory Seminar Notice
5. Final Judgment and Decree
6. Income Deduction Order
7. Parenting Plan (proposed – final will be determined by the Judge)
8. Child Support Addendum and Order (proposed – final will be determined by the Judge)

### Residency

- At least one spouse must be a resident of Georgia for the past 6 months.

## Jurisdiction

- For a court to make a ruling on a case it must have jurisdiction over the parties to the case. The Plaintiff has consented to jurisdiction of the court by filing a lawsuit within that court system, however, the court does not have automatic jurisdiction over a Defendant.
- For a court to have jurisdiction over the Defendant, the Defendant must (1) reside in the county where the lawsuit was filed **OR** (2) fill out and sign an Affidavit of Waiver of Venue and Personal Jurisdiction (included in the uncontested divorce packets).

## Waiting Period

- GA courts require a 30-day waiting period after filing for divorce in order to allow the couple to possibly reconcile. **Parties cannot “waive” the waiting period.**
- In a contested divorce, there will be a period of 45 days AFTER service BEFORE a hearing can be scheduled.

## Service

- The Defendant MUST BE SERVED FOR A HEARING TO BE SCHEDULED BY THE COURT.
- **It is the Plaintiff's duty to ensure the Defendant is served. DIVORCES WILL NOT PROCEED WITHOUT PROPER SERVICE.**

## Service of Process through Personal Service

- In the state of Georgia, personal service can be made by anyone who is not a party to the action and over the age of 18.
  - o Personal service must be made to the Defendant DIRECTLY, by handing them the summons and service documentation.
- The Court recommends that Plaintiff's reach out to the Sheriff's Office to ensure that personal service is done quickly and the correct paperwork is filed to avoid prolonging the divorce process.
- Service through the Sheriff's Office can be made by calling said office, filing out the appropriate paperwork, and paying any associated fees.
  - o **It is the Plaintiff's duty to ensure they are giving the Defendant's correct address to the Sheriff's Office. An incorrect address will not be served and the divorce will not proceed as a result.**

## Service By Publication

- If you are unable to find the Defendant to serve them, you can file a Motion for Service by Publication. **Motions for Service by Publication MUST be approved by a Judge.**
- Service by publication only be used AFTER you have completed a diligent search for the Defendant including:
  - o checking social media accounts for Defendant's whereabouts,
  - o contacting friends for Defendant's location,
  - o contacting family members for Defendant's location,
  - o exhausting all possible forms of communication between Plaintiff and Defendant, etc.
- For a Motion for Service by Publication to be granted the Plaintiff must also submit an affidavit attesting to all of the methods they used to search for the Defendant.
  - o Lying or over-exaggerating on an affidavit is perjury and **will subject the Plaintiff to legal penalties.**

## Common Mistakes in Self-Represented Divorces

### Child Support Addendum

- Amount of child support paid must be derived from child support worksheet

### Child Support Worksheet

- The Georgia Child Support Calculator can be accessed here:  
<https://csconlinecalc.georgiacourts.gov/frontend/web/index.php>
- Gross income and net income must match across other financial documents
- Parties MAY NOT agree to disclaim child support as child support is FOR THE CHILD.

### Complaint

- Ensure the date of separation is AFTER the date of marriage.

### Financial Affidavits

- Ensure all numbers match across your documents! Gross income listed on the financial affidavit should be the same as gross income on the child support worksheets.

### Service

- The Defendant MUST be served before the case can proceed, if there is no service in your case then the divorce will be at a standstill.
- Ensure you have the CORRECT ADDRESS for the Defendant, it is not the Court's responsibility or the Sheriff's Department to find the Defendant's address, IT IS YOUR RESPONSIBILITY.

### Settlement Agreement

- Make sure any numeric figures match across your documents! For example, if the child support amount on the child support worksheet is \$505, child support should be listed as \$505 on the settlement agreement.

### Parenting Plan

- Visitation **cannot** be left blank or to be "decided in future."
  - o When defining each vacation period "as defined by the school system where the children are enrolled" is an acceptable answer.
- Visitation must have a start and end time, for example: *5:30 PM Saturday to 5:30 PM Monday*.
- If you elect "joint" decision-making under "D. Major Decisions" disagreements MUST be resolved by one of the parties. In other words, **one of the parents must be the final tie-breaker**, this is usually the custodial parent but is left to the discretion of the parties.

## Filing for Divorce in the Southwestern Judicial Circuit

How do I obtain a pro se divorce in the Southwestern Circuit?

1. Download and completely fill out the correct divorce packet located here:  
<http://www.southwesterncircuit.com/forms.html>
  - a. **Ensure ALL NECESSARY PORTIONS ARE COMPLETE, INCOMPLETE FORMS WILL RESULT IN YOUR DIVORCE BEING DELAYED.**
2. Bring said packet to the Clerk of Superior Courts in the county **which the Defendant resides in.**
3. If the divorce is contested:
  - a. AND you know where the Defendant lives, after filing the case with the Clerk and receiving a case number, call the Sheriff's Department in said county and request that they serve the defendant.
  - b. BUT you do not know where the Defendant lives, you can file a Motion for Service by Publication with the accompanying Affidavit.
4. If the divorce is uncontested after filing the case with the Clerk and receiving a case number, call the Sheriff's Department in said county and request that they serve the defendant.
5. Wait for a Case Management Order to be filed which will give you further instructions.