

CONTESTED DIVORCE:

Advice for Persons Who Want to Represent Themselves

Read this booklet before completing any forms!

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INTRODUCTION

The Purpose of This Booklet

This booklet is written to assist both persons whose divorce will be contested. A separate publication describes how an uncontested case works.

Should You Hire a Lawyer?

You are not required to have a lawyer to dissolve your marriage. The decision to proceed with or without a lawyer is up to you. Many people find that the paperwork required is complex. If you decide not to use a lawyer, your spouse may still use a lawyer and you may be at a disadvantage if you proceed without a lawyer. **If you do not have a lawyer you will be expected to know all the laws and court rules that apply to your case as if you were a lawyer.**

The court may make decisions that could have a significant impact on you, such as requiring you to pay money to your spouse, garnishing your wages, or limiting when you can see your child. Free legal advice may be available to you through a volunteer program organized by the bar association in your county. If you are the victim of domestic violence, there may be an additional program to help you obtain free legal advice.

To find out more about hiring a lawyer or obtaining free legal assistance, consult:

- your **local** bar association
- the **Tennessee Bar Association** at www.tba.org/LawBytes/findalawyer.html
- the **Tennessee Alliance for Legal Services** at www.tals.org

You may be able to hire a lawyer for a **portion** of a case – such as a hearing before a judge or a review of papers you propose to file – under rules of the Tennessee Supreme Court.

JUDGES AND CLERKS MAY NOT GIVE YOU LEGAL ADVICE OR ASSIST YOU WITH YOUR PAPERWORK.

Rules of Court

While it is possible, it is difficult to litigate even a simple case without consideration of the rules of court. The most important are the Rules of Civil Procedure, the Rules of Evidence, and the rules of your local court. To access them via the Internet, go to <http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/rulesindex.htm>.

GETTING STARTED

General Information

This booklet is designed for situations where the husband and wife cannot agree on a marital dissolution agreement. It is then necessary to cite one of a number of specific reasons for the divorce. These include “inappropriate marital conduct,” the one most often used.

The judge decides how to divide your property and debts and whether to order alimony if it is requested. The judge must also establish a parenting plan and child support for any child who is dependent on you and your spouse.

Choosing the Court

Cases can usually be filed in either CIRCUIT or CHANCERY courts. (In a few counties, there are other courts in which you may file.) There is no legal advantage in filing in one type of court or another.

Starting the Case

A divorce case is started by filing a **Complaint for Divorce** with the clerk of the court and by serving it with a **Summons** on the other spouse. (Forms for filing with the court are in bold.) The spouse filing the Complaint is the plaintiff. The Complaint asks the court to dissolve the marriage. The Complaint also tells the court what the plaintiff would like the court to do concerning the parties' children, property, and debts.

Filing Fees

There is a filing fee for filing the Complaint, unless the court decides the plaintiff is unable to pay the fee. The amount of the fee is usually about \$250, depending on the county and what kind of legal process must be served. The cost is about \$20 greater if process is served in another county or by the Secretary of State.

If the plaintiff believes he or she qualifies for financial relief, he or she should file an **Affidavit of Indigency**. The court will decide whether to defer – *but not forgive* – the filing fee. At the conclusion of the case, the judge will decide who must pay the court costs.

If the court decides the fee must be paid when the case begins, the plaintiff must also file a Cash Bond (an advance payment of an amount, usually \$500, that is refundable if court costs are not imposed on the plaintiff) or a Surety Bond (where an insurer guarantees payment of court costs on a form it prepares). If the plaintiff has an attorney, a Cost Bond may be filed, and by signing this document the attorney guarantees payment of court costs.

The Answer by the Defendant

The spouse responding to the Complaint is called the defendant. The defendant usually has 30 days in which to file a written **Answer** with the clerk of the court. The time period begins when he or she is served the Summons and Complaint in person, served by newspaper publication because the defendant cannot be found, or served by mail or the Secretary of State because he or she lives out of state.

The defendant must also make arrangements to have copies of the written Answer served on the plaintiff (or the plaintiff's lawyer) within the same time period. If the defendant does not file or serve an Answer within the required time period, the court may enter a default judgment against the defendant.

How Long Does It Take?

In contested cases, it usually takes several months to complete the case, sometimes more than a year, depending upon the court's schedule and the actions taken by the parties.

What is Mediation and How Does It Affect My Case?

Mediation is a method of resolving disputes between the parties by using a third person to help the parties reach an agreement. The court has a list of qualified mediators who you and your spouse may use to help you reach an agreement, including a Parenting Plan if you have children, when you and your spouse cannot agree by yourselves. Mediation is usually a requirement before you can go to trial. A separate informational handbook is available.

Are the Papers that are Filed Available to the Public? Yes.

Note to Persons Receiving Families First

If you receive assistance from the State of Tennessee on behalf of a child, you have assigned your right to child support to the State, and you need to notify your local Child Support Office of your filing for divorce. It might intervene so as to protect the State's interest and to make sure that payments are made consistently with the State guidelines for child support.

The Forms for Divorce

We offer legal forms that you may use in divorce cases. We strongly urge non-lawyers to use these forms to represent themselves. These are the instructions to help you fill out the forms.

Be sure to make extra copies of all the documents you file with the court and serve on your spouse. When you file documents at the court clerk's office, be sure to stamp a copy of the document you retain with the clerk's office stamp "Received (date)" to prove you actually filed the document. Keep an organized file of all court papers, especially proof of service of process of all documents, and letters concerning your case.

These instructions are for cases where there is a dependent child. But we do not discuss parenting plans, the subject of a separate booklet. They can also be used if you and your spouse don't have a child.

Note: make an extra copy of the forms before you start so that, if you make a mistake and need to start over, you won't have to get another form.

Forms Needed in a Contested Case

If you are the *plaintiff*, you should have the following forms to start your case:

- **Civil Case Cover Sheet**
- **Summons**, whether the legal papers are to be served by a deputy sheriff or instead by someone on your behalf. We recommend service by a deputy sheriff.
- **Complaint for Divorce**
- **Divorce Certificate (Form PH1682** from the Department of Health but usually available at the court clerk's office where your case is filed)
- **Affidavit of Indigency** if you cannot afford the filing fee
- **Statutory Injunction against Both Parties**
- **Temporary Parenting Plan** if there is a dependent child from the marriage

If you are the *defendant* and you want to present your side of the case, you will need the following forms:

- **Civil Case Cover Sheet**
- **Answer**
- **Temporary Parenting Plan** if there is a dependent child from the marriage

If you are the plaintiff or defendant and want *preliminary rulings* by the court that will last until the Final Decree is entered, use these forms:

- **Motion for Injunction** to protect you, your child, or your property
- **Motion for Temporary Relief** of a financial nature
- **Financial Declarations** to support your need for financial relief
- **Affidavit in Support of Motion** so that you may obtain certain kinds of relief you seek by filing a motion
- **Injunction** to be entered by the court to prohibit or compel an action by your spouse
- **Temporary Order** if you request temporary relief

Use these forms in *preparation* for the trial:

- **Discovery Requests** so that you may obtain information and documents
- **Subpoena** for each witness
- **Witness and Exhibit Lists** to be furnished to your spouse

- **Financial Declarations** to support your need for financial relief

To complete the divorce, either the plaintiff or defendant may use these forms:

- **Permanent Parenting Plan** if there is a dependent child from the marriage
- Parenting Class Certificate (no form required) showing you attended the required classes
- **Notice Regarding Insurance Coverage** to be filled out by the spouse with health insurance to inform the other spouse about its termination
- **Wage Assignment Order** if the Permanent Parenting Plan provides for this form of payment of child support, as it often does
- **Title IV-D Information** that is needed if a parent of child is receiving assistance from the State of Tennessee
- **Final Decree**

The Heading in Each Form

It is easy to overlook this portion of each form. You must fill in the county in which the court sits and the court you have selected. (*Reminder:* There is no legal advantage in being in Circuit Court instead of Chancery or another court.) The clerk will assign the case number, so leave this portion of the form blank in the Complaint, but fill it in the other forms. In some counties, there are multiple “divisions” or “parts” because there is more than one judge in the same court. The clerk will complete this part in the Complaint, if it is necessary, and you must complete it thereafter in other forms.

Filing the Forms

Clerks deserve your respect and can make your life easier by pointing out, for example, if you have overlooked a document. Also, if you file documents in person, as usually is desirable, try to avoid busy times like the last 45 minutes of the day.

The Complaint

The Complaint asks the court to dissolve your marriage and gives the court general information about your marriage. The Complaint also tells the court how you would like to have your property and debts divided and what you would like the court to do concerning your child.

Most of the Complaint is self-explanatory, and this discussion concentrates on what may not be clear. The words in CAPITAL LETTERS are the titles of sections of the document or the pertinent parts of a section.

NAME OF WIFE. A statute requires that a wife’s *maiden* name be included in this part of the Complaint. Her *married* name can be used in all other places of the forms, such as the heading.

ADDRESSES. If you do not want your address (or that of a child) to be given because you are a victim of domestic violence, you can put in a post office box number if you have one.

If you think this may not prevent your spouse from finding out where you live, ask a domestic violence agency for assistance.

DATE AND PLACE OF THE MARRIAGE. The county and state are preferable. Use the city if you don't know the county. If married outside the United States, list the city (or province) and country.

SEPARATION. Indicate the date as nearly as is possible.

CHILDREN. Children of other marriages are not to be listed. A child of this marriage should be listed if he or she is under 18. A child 18 or over may be dependent if the child is physically or mentally disabled. If so, he or she should also be listed.

PREGNANCY. If the wife is pregnant, you must later advise the court whether the husband is the father of the child and whether paternity is contested.

COURT ORDERS CONCERNING A CHILD. The court must be sure that it can lawfully make a decision affecting a child. Ask for legal assistance if there is any doubt about how to complete this portion of the Complaint. Include information, for example, about juvenile proceedings involving custody or child support. Court orders in other states must be disclosed, as well as those of Tennessee courts.

ORDERS OF PROTECTION. If one is in effect, it may already contain directions about alimony or child support, and the judge or chancellor needs to know this.

THE COURT. This section enables the judge or chancellor to determine whether he or she has the power to grant the divorce *and* to give the relief that is requested. Generally you or your spouse must live in Tennessee for six months before you are allowed to file for divorce. However, if grounds for divorce arose during the time you were a resident of Tennessee, you do not have to wait six months before filing. The court also wants to know what county you or your spouse lived in at the time of the separation or live in now.

GROUND FOR DIVORCE. You may state one or more grounds for the divorce.

PROPERTY. State whether you would like the court to divide assets. You may need legal assistance in dividing property. Mistakes are common, especially with real estate and pensions. It is often better to ask the court to review your proposed division if you do not have a lawyer. See the discussion below regarding "marital property" and "separate property." *Tip:* be sure you have a copy of all titles to vehicles and boats.

DEBTS. State whether you would like the court to divide your debts. Legal advice can be important here too. It is often better to ask the court to review your proposed division if you do not have a lawyer.

ALIMONY. You may need legal assistance in reaching a decision about whether to ask for alimony.

INJUNCTIONS. First, state whether an injunction is needed because of the Defendant's behavior. Then, state whether a Statutory Injunction against Both Spouses will be in effect because of Tennessee law applying unless irreconcilable differences are the only ground for the divorce.

OTHER MATTERS. This is the place for statements about matters not specifically covered anywhere else. One example might be a claim that one spouse has against the other arising out of an automobile accident.

Relief Requested

This section summarizes your requests. You must indicate what you are asking the court to do. If you do not ask, you will not receive.

Signature and Verification

Once the preceding parts are completed, sign and date the Complaint. You must also complete and sign the verification at the end of the Complaint before a notary public. You can usually find a notary public at a bank near you.

The Civil Case Cover Sheet

It lists the information required by Tennessee courts. We will discuss here the portions of the form that may need explanation. The words in CAPITAL LETTERS are the titles of sections of the document.

ORIGIN. The plaintiff will usually specify that the case is an "original proceeding" but it might be a "case reopened" if the case was dismissed earlier.

TYPE OF ACTION. Answer either "divorce with minor children" or "divorce without minor children."

AFFIDAVIT TO PROCEED IN FORMA PAUPERIS OR COST BOND. Specify whether you will file an **Affidavit of Indigency** (if you cannot pay court costs), a Cost Bond (if you have an attorney who will furnish it), a Cash Bond (if you will leave a cash deposit), or a Surety Bond (if an insurance company will guarantee payment of costs).

JURY DEMAND. Leave blank.

RELATED CASES. Generally not applicable. However, an Order of Protection may be pending or have been granted in another case. Proceedings in Juvenile or Family Court in your county (or involving a child custody dispute in another county or state) might be related because they affect the power of the court to decide the case. In case of doubt, list the other case.

TYPE OF SERVICE REQUIRED. The answer will usually be either the “local sheriff” or “other.” In the latter case, specify that you will use another adult to serve process.

The Divorce Certificate

Use **Form PH-1682** from the Tennessee Department of Health. (No substitutions for it are currently permitted, even if they have been created by scanning the government form.) It lists information required by Tennessee law. Answer all of the questions except those that cannot be completed until the case is over and the court clerk will answer them. These exceptions are Item 11c (unless there are no children) and Items 14a through 14h.

The Summons

The Summons gives your spouse written notice that you have started a divorce case. Print or type the name of the **CIRCUIT, CHANCERY OR OTHER COURT** where you are filing for divorce, along with the case number and the name of the county. Fill in the address of your spouse (the defendant) as well as your own (the plaintiff). Show that the Summons is to be served on your spouse at the address shown in the Complaint.

In the Summons, you may use either a home address or a work address for the defendant. If you know the defendant’s phone number or a time of day that the defendant will most likely be at that address, put that in the Summons as well. Any information you can give the Sheriff will be helpful in serving him or her.

About two weeks after the date the Complaint is filed, you should call the court clerk and ask if it has been served on the defendant. (You must give the clerk your case number!) If the deputy sheriff is successful in serving the Complaint on the defendant, he or she will fill in the back of the Summons with the date that it was served on the defendant. If the deputy is unable to locate the defendant and serve the Complaint, he or she will send the Summons back to the clerk and on the back of the Summons will indicate that the defendant is not to be found in that county.

If you know of a new address where the defendant might be found, you may send a new Summons to the clerk. Write on the top of the summons “**ALIAS**” which means that this is the second Summons issued in your case. Be sure and put the case number on the Summons!

The form calls for you to give your own address. Use the one you listed in the Complaint. If you are a victim of domestic violence and do not want your spouse to know your address, you can put in a post office box number if you have one. If you think this may not prevent your spouse from finding out where you live, ask a domestic violence agency for assistance.

Private Service of Process

A copy of the Summons and the Complaint must be personally delivered to your spouse. There are many ways to serve legal papers and, for this reason, you may want to consult our separate booklet on this subject. Service by a deputy sheriff is not required though we do

recommend it. One of the other methods is delivery by a person who is 18 years of age or older. We will discuss this alternative here.

You may not serve the Summons and Complaint on your spouse yourself. The person serving your papers should leave the papers with your spouse. If your spouse is not at home when the papers are delivered, the papers may also be served by leaving them with any other responsible person who resides with your spouse.

Once your papers have been served, the person serving them must complete the **Return of Service** that is part of the Summons. To complete this form, that person should:

- Fill in the date, time and place of service.
- Sign and date the Return of Service and *have the form verified by personally appearing before a notary public or the court clerk.*

After finishing these steps, file the original Summons with the clerk of the court and keep a copy for your records.

Service by Publication

If your spouse cannot be found in order to serve him or her personally, you may serve him or her by publication. This type of service, which is essentially publishing notice of your Complaint in a newspaper, is only useful in obtaining the actual divorce. You must get personal service if you want to dispose of debts, set child support or alimony. More information on this type of service is found in a separate booklet.

THE ANSWER

If you are the defendant and wish to contest some or all of the matters stated in the Complaint, file your **Answer**. (Your proposed **Temporary Parenting Plan**, rather than the one proposed by your spouse, should also be filed at the same time as the Answer, though it is not required.) The Answer has several parts.

Admissions and Denials

You should deny any statement made in the Complaint that is untrue and state that you “lack information” to admit or deny that which you do not know.

Defenses

Defenses such as lack of jurisdiction by the court or adultery of the other spouse may be asserted. It is not necessary to assert a defense, and only rarely is this done.

Counterclaim

This is optional. Use it if you want to state another ground for the divorce, one not used by your spouse. If a counterclaim is filed, you must also file a Cash Bond that you provide, a Surety Bond furnished by an insurance company, an **Affidavit of Indigency**, or a Cost Bond signed by an attorney.

Requests for Relief

State as many requests as you have. If you do not ask, you may not receive.

Signature and Verification

Sign in the indicated place. No notary public is necessary *unless* you are filing a counterclaim. Then, you must verify what you say by having it notarized.

Certificate of Service

Its purpose is to assure the court that the plaintiff is notified of your response. Similar statements are required on motions and proposed orders that are filed with the court later in the case. It can be important to comply with the requirement that you notify your spouse what you are asking the court to do.

AFTER THE COMPLAINT IS FILED

Parent Education Class

Both parents must attend, within thirty 30 days of service of process, a parent education seminar sanctioned by the court of at least four hours duration. Each parent must furnish the court with a certificate of attendance. The fee for the class is usually about \$45, payable directly to the host of the seminar. If you cannot afford the fee, your fee may be waived or reduced if the court so orders. You must contact a seminar host for scheduling your class. It is not necessary that you attend the same class with your spouse. To find a list of court-approved hosts for parenting classes, contact the court clerk. It is possible, though not desirable, to obtain a divorce without attending a parent education class.

Injunctions and Temporary Relief

You may request temporary relief commencing the day you file your Complaint up until the time a Final Decree is entered. You may file either or both of two types of request: a **Motion for an Injunction** or a **Motion for Temporary Relief**.

A request for an injunction asks protection for you, your child or your property.

Requests for temporary relief involve, but are not limited to:

- Alimony.
- A Temporary Parenting Plan, including child support.
- Use and possession of a house, car or other property.
- Allocation and responsibility for debts.
- Appointment of a guardian to represent the interest of a child or children.

The relief provided in any **Injunction** or **Temporary Order** is not final. They do not determine what the Final Decree will say about any matter that is going to be decided at a later hearing. They may be revoked, modified, or terminated by the court upon a motion by either spouse. They terminate when a Final Decree is entered or the matter is dismissed.

When you seek an Injunction or Temporary Order, you must:

- Set forth your requests in writing. (*Note:* If you have stated in the Complaint that the behavior of the Defendant merits an injunction, you may proceed on an emergency basis without filing a separate motion.)
- Obtain a hearing date from the clerk of the court. (*Exception:* emergency relief may be sought from a judge or chancellor in his or her office when the Complaint is actually filed -- or soon thereafter.)
- File the motion with the clerk of the court.
- Furnish a copy of the motions to your spouse in advance of the hearing. (This not necessary if you are requesting an injunction on an emergency basis.)
- Call the clerk of the court to confirm the date of the hearing. (*Important:* check the court's local rules for any deadlines for the filing of a reply by your spouse.)
- Attend the hearing.
- Give the court the form for the order that you request.

You generally will need one or more of the following forms:

- **Motion for Temporary Relief**
- **Motion for an Injunction**
- **Affidavit in Support of Motion** if you seek injunctive relief
- **Financial Declarations** if you request alimony or child support
- **Temporary Parenting Plan** if you seek temporary relief and have a dependent child
- **Injunction** if you seek injunctive relief
- **Temporary Order** if you request temporary relief

Step 1-- Fill in the Forms:

Fill out the Motion. Check the boxes that apply or provide the information that is necessary for any box that you check. If you have requests that are not stated on a form, use the check box for "Other" and write in your request.

Complete the Financial Declarations. These are needed if any temporary financial relief from the other spouse is being requested (spousal support, child support, attorney fees, or litigation costs).

Complete a Proposed Temporary Parenting Plan. From this document, the court decides what time the child will spend with each parent and who will make major decisions for the child. The judge will look at any problems that will justify limits on a parent's time with the child, at which parent is taking more responsibility for the daily needs of the child, at what arrangements will be the least disruptive for the child, and at other relevant matters.

Obtain but Do Not Complete the Injunction. The judge or chancellor usually will complete these documents for you before signing them.

Step 2 -- File Your Papers:

File all original documents (except the original of the proposed Injunction) with the clerk of the court. Be sure to allow sufficient time to permit notice to your spouse, so he or she receives appropriate prior notice according to court rules in your county.

Step 3 -- Make Sure the Other Spouse Is Served with the Papers:

If the Motions are being filed with the Summons and Complaint, serve all documents at the same time. *Remember:* You may not serve the papers on the other party yourself.

If you are requesting an Injunction or Temporary Order after your Complaint has been served, deliver or mail your papers to your spouse prior to the date of the hearing. Check the local rules in your county for the number of days of notice that must be given in your case.

Step 4 -- Go to the Hearing

Have in your possession the Injunction in its proposed form. Be prepared to state your case to the judge. Your spouse will have an opportunity to state his or her response. (If you are asking an injunction because of an emergency, you can appear before the judge alone. Your spouse will have a chance to overturn the judge's decision at a later time if you are initially successful.)

At the end of the hearing, if the judge asks you to do so, complete the Injunction so it states what the judge ordered. Have your spouse and the judge sign it and initial any changes. Make copies for yourself and your spouse and have the clerk stamp the copies with the date of filing. Be sure to retain a copy of the order for your records.

THE TRIAL

Step 1: Get a Date.

File a **Motion** to set the case for a hearing. Read the local rules of the court to determine when the motion will be heard by the judge or chancellor. On that date, the court will set a later date for the hearing itself. Tell the judge or chancellor that you and your spouse have not reached agreement. The court will need to make sure there is ample time for your case to be heard. (*Note:* Instead of filing a motion, you may be able to set the date of the hearing by telephone calls between you, your spouse or the spouse's attorney, and the clerk of the court. Check with the clerk to see if this is possible.)

Step 2: Prepare for the Trial.

Look up the court's local rules about when subpoenas must be served on witnesses and when you must furnish to your spouse your list of witnesses and exhibits and your financial declarations. (Ten days before the hearing is a common period.) Then use the forms for **Discovery Requests, Subpoenas, the List of Witnesses and Exhibits, and your Financial Declarations**. Make sure that subpoenas, the list of witnesses and exhibits, and your financial declarations are filed with the clerk's office as well as served upon the witnesses and given to your spouse. (*Note:* Discovery requests, the responses to them, and depositions are generally not required to be filed by the court. Indeed, filing of them is usually prohibited. Depositions are not discussed in this booklet except to say that they involved testimony prior to trial rather than before a judge.) Hire a court reporter if you think there may be a dispute about what the court orders or an appeal to a higher court. The court does not hire or pay for the reporter.

If you are very sure your witness will show up, you may only have to tell them the date of the trial. If you are not sure that they will show up or if you do not want the trial to go on unless the witness is there to testify, you may want to have your witnesses subpoenaed.

A subpoena is a court order telling a person to come to court on a certain day and testify. A subpoenaed witness who does not come to court can be punished by the court.

You get subpoenas from the court clerk. There is a fee for the subpoena and it must be paid before the subpoena is issued. You may be able to avoid paying this fee if your Affidavit of Indigency is approved. The subpoena will be delivered to the witness by a deputy sheriff or a private process server.

Get everything ready before you go to your trial. Gather all the papers supporting your side of the case. Decide who you want to call as a witness and what you will ask them. Remember if you don't understand what you want to say, neither will the judge.

Step 3: Prepare the Documents.

On the scheduled date, go to the hearing at the county courthouse with the completed paperwork and your witnesses. You should have the following proposed documents with you or they should be in the court's file:

- **Permanent Parenting Plan** if there are one or more dependent children.
- Certificate stating that you have completed the parenting class.

- **Wage Assignment Order** if you are seeking this method of payment for child support or spousal support.
- **Qualified Domestic Relations Order** if one spouse is seeking benefits from the other's pension. *Remember:* You may need a lawyer's advice on this matter. It is not discussed in this booklet.
- **Final Decree of Divorce for Contested Case**
- **Title IV-D Information** that is needed if a parent is receiving assistance for a child from the State of Tennessee

Step 4: Wait Your Turn.

At the court hearing, let the courtroom clerk know that you are ready. The clerk will call your name when the judge or chancellor is ready to hear your case. There usually are several cases scheduled at the same time, some of which may be compromised at the last moment. While you will have to wait if there are cases ahead of you, the clerk may be able to tell you and the witnesses approximately how long it will be.

Step 5: Present Your Case.

The judge or an official of the court will have you, your spouse, and all of the witnesses raise your right hands and swear an oath to tell the truth. Usually, the witnesses will then be excused so that they cannot hear anyone else testify. If you have hired a court reporter, he or she should be in place and ready to transcribe.

The plaintiff has the right to call the first witness, and this will usually be the plaintiff herself or himself. But it can be someone else, even the other spouse. The plaintiff's other witnesses are next, followed by the defendant and his or her witnesses.

The person calling a witness has the right to question him or her, and then the other side has the right to cross-examine.

It is important that the hearing cover at least the following points:

- The date of the marriage.
- The reason that the divorce may be granted. (Example: inappropriate marital conduct.) It is usually not necessary to elaborate upon the misconduct of the other spouse to obtain the divorce. Misconduct may have additional bearing on parenting and financial issues, however.
- There is no reason why the court cannot decide the case. In other words, all legal papers have been properly served; the case is in the right court; and both spouses and children are present in person or otherwise properly before the court.
- The names, ages, and circumstances of the children from this marriage.
- The proposed amount of child support was determined from the state schedule. If you – or more likely, your spouse -- propose to deviate from the schedule, both of you must furnish written financial information to the court so it may decide whether to permit the deviation.

- Any proposed Permanent Parenting Plan is in the best interests of the children.
- The property and debts from the marriage are fairly divided.
- The terms of alimony are reasonable.
- The wife is not pregnant.
- A change of name is desired, or not.
- The attorney fees and court costs should be paid in the manner you want.
- The documents that you want the judge or chancellor to sign are in proposed form and available for the court to review.

Step 6: Obtain the Signature of the Judge or Chancellor.

When the judge or chancellor has reached a decision, he or she may be ready to sign the documents you have presented in Step 5 and which are described in Step 3. If not, the judge or chancellor will ask one of the two spouses to revise them, to present them to the other spouse for comment in light of the court's ruling, and to submit them to the court is what is proposed as the final form.

If you and your spouse cannot agree on how the documents should be signed by the judge, each of you may present separate versions of them. The judge will then decide which versions to sign or will prepare his or her own documents. (Local rules usually say more about how proposed orders are to be filed.)

THE FINAL DECREE

You are divorced when the judge signs the Final Decree of Divorce. (Sometimes the judge or chancellor will declare the divorce effective during the hearing and later sign a decree that is retroactive to the date of the hearing.) It is preferable, however, to wait an additional 30 days to remarry because the case may be appealed during this period.

Use the form for a **Final Decree in a Contested Case**. The CAPITAL LETTERS below indicate the section of the form that is being discussed.

DISSOLUTION OF THE MARRIAGE. Unless the divorce is being obtained by agreement, the grounds for divorce must be stated. Usually, it is preferable to say that the defendant engaged in inappropriate marital conduct or that the parties have stipulated the grounds for the divorce.

PROPERTY AWARDED TO THE HUSBAND AND WIFE. Be sure to use complete descriptions and, where possible, title numbers for property that is titled. The general rule is property (and debts) are divided *fairly* by a judge or chancellor. Sometimes, the division is *not equal* because of other considerations, such as a higher future earning power of one spouse, or because one spouse may have devoted time raising a child instead of pursuing a career. Judges must take into account the distinction between "marital property" and "separate property." Marital property is subject to division; separate property is not. Marital property includes:

- real or personal property acquired during the marriage by *either* or *both* spouses.
- income from separate property during the marriage, or an *increase in its value* during the marriage, if each spouse substantially contributed to the preservation and appreciation of the property. This can involve, for examples, the increase in value of a home or investment.
- pension, stock option and other fringe benefits acquired during the marriage by *either spouse*.
- the amounts awarded to *either spouse* in legal proceedings for wages lost during marriage, medical bills paid with marital property, and damage to marital property. A workers' compensation award is one example.

Separate property is anything else, chiefly property owned before marriage and that which is acquired through gift or inheritance.

DEBTS TO BE PAID BY THE HUSBAND AND WIFE. Indicate how the judge ruled that the debts are to be divided. Bear in mind that, as far as a creditor is concerned, both of you may still be liable. That means the **HOLD HARMLESS PROVISION** is important. It says that each spouse will agree to repay the other for a debt that he or she was supposed to pay (but did not) under the preceding parts of this document.

ALIMONY. Alimony may be awarded for rehabilitative purposes or for other reasons. It may or may not terminate with remarriage or death. It may or may not be dischargeable in bankruptcy. It may or may not be deductible for tax purposes. The answers depend upon the wording in the Complaint and what the judge ruled.

PENSION PLAN AND ACCOUNT. This provision is important, and you probably should consult a lawyer about this subject. Federal law requires court orders about pension plans to follow rules that state judges cannot alter.

PARENTING PLAN. Attach a copy of your Permanent Parenting Plan to the Decree or file it separately with the court, whichever practice is used in your county.

CHILD SUPPORT. The child support provisions are stated in a Permanent Parenting Plan. If a parent or child is receiving assistance from the State of Tennessee, it has the right to collect child support payments. Thus, **Title IV-D Information**. Also, if payments are overdue, even in a case where the State is not involved, the arrearage should be stated in the Final Decree in order to facilitate collection.

NAME CHANGES. Fill in any changes in the name of the husband or wife.

ORDERS OF PROTECTION AND INJUNCTIONS. In some instances, a judge will enter an Order of Protection as a part of the divorce case and continue it in effect after the Final Decree is signed. (Usually, these are separate cases.) Occasionally, a judge will order or forbid something else, and the Final Decree will contain these directions in this part of the document.

FEEES AND COSTS. State separately who pays the attorney fees and court costs. Often, the judge or chancellor rules that the “non-prevailing” party should pay both sets of attorney fees as well as all court costs.

DO NOT fill in the DATE.

PRESENTED BY. Finish the form by signing it on the left side below the place for the signature of the judge or chancellor. The party ordered by the judge to prepare the Decree signs first, then the other party. If you or your spouse differ on the wording and want to submit a separate version of what the court ordered, you may do so. See the local rules of court about the procedure for doing so.

AFTER THE TRIAL

When you have completed the hearing, both spouses should obtain a certified copy of the **Final Decree**. (If you use these documents, you may also need certified copies of the **Marital Dissolution Agreement**, the **Permanent Parenting Plan**, the **Wage Assignment Order**, the **Qualified Domestic Relations Order**, and the **Title IV-D Information**.) The certified copies are used for various reasons, such as to show you have changed your name and need a new driver’s license, or to show a law enforcement officer if a question arises about the custody of your child. When you file the documents, include self-addressed and stamped envelopes for both you and your spouse so the clerk can send each of you signed copies. Finally, if you are receiving assistance from the State on behalf of a child, don’t forget to send copies of the Final Decree, Permanent Parenting Plan, Wage Assignment Order, and Title IV-D Information to the Child Support Office.

APPEALS

In the rare case when you want to appeal, you must first file a Notice of Appeal with the trial court clerk no later than 30 days after the judge or chancellor signs the Final Decree. Then consult the Tennessee Rules of Appellate Procedure at this Internet address: www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/appellateproindex.htm. Be sure that you have a copy of the transcription from the court reporter. Don’t forget: It is your responsibility to hire and pay a court reporter. The State does not furnish one.

This booklet does not discuss the process for appeals. You probably should consult a lawyer, if only for obtaining general guidance about what to do yourself. Judges and clerks may not give you legal advice or assist you with your paperwork for an appeal.

MODIFYING OR ENFORCING THE FINAL DECREE

If you later want to modify or enforce the Final Decree, you may be able to represent yourself but will need one or more of the following:

- **Enforcement Petition**
- **Child Support Petition**
- **Visitation Petition**
- **Order of Modification or Enforcement**
- **Order**

Adapted from a publication of the Northwest Justice Project.