

# **INSTRUCTIONS FOR COMPLETING THE SELF-REPRESENTED LITIGANT SIMPLE DIVORCE PACKET**

## **PLAINTIFF**

**WARNING:** You are strongly encouraged to seek the advice of an attorney before filing any legal matter. This packet is designed to provide information and forms to people who are representing themselves in court. If you proceed without an attorney, it may negatively affect your legal rights. If you are unsure whether to proceed, or have questions about these forms or your legal rights, consult an attorney. Please note that clerks of court, court staff and judges cannot give you legal advice.

**DISCLAIMER:** The information in this packet is not legal advice and cannot replace the advice of competent legal counsel licensed in your state. Divorce laws vary from state to state and the information contained in this packet is specific to South Carolina. Please note that the information contained in this packet is subject to change and make sure that you have the most current version of this packet before filing.

**\*\*Information on page 4 of this packet has been amended as of February 2016 to include reference to the revised Certificate of Exemption\*\***

### **PART 1: COMPLETING YOUR PAPERWORK**

The following instructions will help you file for a simple divorce in South Carolina *pro se*, or without an attorney. *Pro se* is a Latin term meaning “in person” or “on one’s own behalf.” As the courts see more people representing themselves in court, you may also hear the term self-represented litigant instead of *pro se*. While the self-represented litigant may not incur the attorney expense, the self-represented litigant does not have the expert guidance that an attorney can provide.

Getting a divorce is not an easy process, and divorce should not be taken lightly. If you are not sure whether you want to divorce, do not file these forms. You may want to consider an alternative such as mediation. When you are sure you want to file for a divorce, a filing fee (\$150) will be collected by the Clerk of Court at the time of filing. Additionally, Clerk of Court offices may charge their standard copy fee for the forms in this packet if you request the forms from their offices.

The self-represented simple divorce packet is designed for people who meet **all** of the following:

- ✓ Are filing on the ground of One (1) Year Continuous Separation without co-habitation
- ✓ Have no marital property or marital debt **OR** have reached an agreement on how to divide the marital property or marital debt
- ✓ Have no children **AND** none are expected **OR**
- ✓ Have minor children and have reached an agreement as to custody, visitation, and child support that meets the minimum requirements as set by the South Carolina Child Support Guidelines.

**If you and your spouse have been living in separate dwellings for less than one (1) year or cannot agree on the issues regarding minor children, marital property, and marital debt, then obtaining a divorce on your own is not recommended. You need to hire an attorney.**

If you do not know an attorney who can assist you, you may call the South Carolina Bar's Lawyer Referral Service at 1-800-868-2284 and ask for a Family Law attorney in your county. Members of the South Carolina Bar's Lawyer Referral Service have been in practice for more than 3 years, are in good standing, have provided proof of malpractice insurance, and have agreed to provide a 30 minute consultation for no more than \$50. If you believe you qualify for South Carolina Legal Services (SCLS), you may contact their Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592. Please note that to qualify for SCLS, your income must not be more than 125% of the Federal Poverty Guidelines.

If you and your spouse have been living in separate dwellings for more than one (1) year without co-habitation and can agree on all of the issues involving minor children, property, and debt, the next step is to study **all** of the forms listed below. The name of each form can be found in the upper right hand corner and the form number in the bottom left hand corner.

The following eighteen (18) forms are included in this packet:

- ✓ Family Court Coversheet (SCCA 467)
- ✓ Certificate of Exemption (SCRFCFORM02)
- ✓ Summons for Divorce (SCCA 400.01 SRL-DIV)
- ✓ Complaint for Divorce (SCCA 400.02 SRL-DIV)
- ✓ Financial Declaration Form (SCCA 430)
- ✓ Motion and Affidavit to proceed *In Forma Pauperis* (SCCA 405F)
- ✓ Acceptance of Service (SCCA 400.03 SRL-DIV)
- ✓ Affidavit of Service by Mailing (SCCA 400.04 SRL-DIV)
- ✓ Affidavit of Default for Divorce (SCCA 400.07 SRL-DIV)
- ✓ Request for Hearing (SCCA 400.08 SRL-DIV)
- ✓ Affidavit of Service by Mailing (Notice of Hearing) (SCCA 400.09 SRL-DIV)
- ✓ Final Order of Divorce (SCCA 400.10 SRL-DIV)
- ✓ Report of Divorce and Annulment of Marriage (DHEC 0682)
- ✓ Defendant's Answer (SCCA 400.05 SRL-DIV)
- ✓ Affidavit of Service by Mailing (Answer) (SCCA 400.06 SRL-DIV)
- ✓ Sample Script for Questioning the Witness in a Simple Divorce Action (SCCA 400 SRL-DIV)
- ✓ Sample Script for Plaintiff's Testimony (SCCA 400.11 SRL-DIV)
- ✓ Judgment in a Family Court Case (SCRCP Form 4F)

Some of the information on each form will be the same, such as your name and address, but each form has a different purpose and requires different information. It is important that you make copies of all divorce paperwork. Keep the paperwork in a safe place and bring it to court with you. If any necessary information is missing, you risk your case being dismissed or rescheduled. If your case is dismissed, you will have to begin again by filing your information with the Clerk of Court a second time and paying the filing fee (\$150).

To begin, print the first five forms listed above: (1) the Family Court Cover Sheet (SCCA 467); (2) Certificate of Exemption (SCRFCFORM02); (3) Summons for Divorce (SCCA 400.01 SRL-DIV); (4) the Complaint for Divorce (SCCA 400.02 SRL-DIV); and (5) the Financial

Declaration Form (SCCA 430). On all five (5) forms print your name in the space labeled “Plaintiff.” Next, print your spouse’s name where it is labeled “Defendant.” This section of all legal forms is called the caption. This caption should be completed on all forms filed with the court.

On the Family Court Cover Sheet (SCCA 467), print your contact information in the appropriate spaces below the caption, which includes your name, address, and a reliable telephone number. Please check the box next to “divorce” to indicate the action you are filing. Sign and date the Cover Sheet at the bottom of the page, and set this page aside.

The next form is the Certificate of Exemption (SCRFCFORM02). Most Plaintiffs will find that the first option, "An agreement has been reached among all parties on every issue" or the last option, "All contested issues have been previously subjected to an ADR conference meeting the requirements of the ARD Rule (Proof of ADR must be attached)" will apply. If you are not sure, proceeding on your own may not be the best option for you, and you may want to hire an attorney. Sign and date the Certificate of Exemption and set this page aside.

The next three forms – Summons for Divorce, Complaint for Divorce, and Financial Declaration Form – will become the official court record that will establish your case once you file them. It is important to complete each form accurately and truthfully. Complete these forms to the best of your ability.

The Complaint for Divorce asks questions about where you live and how long you or your spouse have lived in South Carolina. You cannot file for divorce in South Carolina unless either you or your spouse have resided in South Carolina for a certain period of time, either: (1) you have lived in South Carolina for at least one year prior to the start of this action; (2) you are a resident of another state, but your spouse has lived in South Carolina for at least one year prior to the start of this action; or (3) you and your spouse both live in South Carolina and you have lived in South Carolina for at least three (months prior to the start of this action. Please check the box on the Complaint that best describes your residency.

The Financial Declaration Form asks questions about the finances of both you and your spouse. Fill out the sections of the form that apply to you. If applicable, attach a copy of your most recent pay stub. You must take the Financial Declaration Form to a notary public before you sign it. **Do not sign this form until you are in front of a notary. The notary must witness your signature on the Financial Declaration Form.**

The next step, which officially begins the divorce process, is to file the papers with the appropriate Clerk of Court, Family Court Division, and to pay the filing fee (\$150). If you, the Plaintiff, are a resident of South Carolina, you can choose one of the three following courthouses in which to file your case:

- a) in the county where you and your spouse last shared a residence, OR
- b) in the county where your spouse lives at the time of filing, OR
- c) in the county where you live, if your spouse is a non-resident of the State of South Carolina.

If you, the Plaintiff, are not a resident of South Carolina, the action **must** be filed in the county where the Defendant lives. Physical locations of all South Carolina Family Courts can be found in the telephone book or online at <http://www.sccourts.org>. Only bring cash, a cashier's check, or money order for the filing fee (\$150); **do not bring a personal check.**

If you feel you are unable to pay the filing fee because you do not meet the federal poverty guidelines, you may submit the form titled "Motion and Affidavit to Proceed In Forma Pauperis" **with a copy of your signed and notarized Financial Declaration attached to the Motion to the Clerk of Court. By filling out and signing this form and having it notarized,** you are swearing under oath that you do not have the funds available to pay the filing fee (\$150). The judge will review your motion. If the motion is denied, you must pay the filing fee (\$150) and other fees by the date set by the court. If the fee is not paid on or before that date, your case will be dismissed, and you will have to begin the process again by re-filing your information.

After you determine which Family Court is the correct county in which to file, make two copies of the entire packet and take your originals and copies to the Clerk of Court in that county. The Clerk of Court will: (1) assign your case a docket number; (2) record the docket number on the upper right hand corner of all of the forms; (3) keep the originals; and (4) return two copies of the forms to you. It is important that you print the docket number that has been issued for your case on all future forms you file with the court.

## **PART 2: SERVICE OF PROCESS**

After you receive copies of the documents from the Clerk of Court, you will need to serve one copy of the Family Court Cover Sheet, Certificate of Exemption, Summons for Divorce, Complaint for Divorce, and the Financial Declaration Form on your spouse or spouse's attorney. This is called Service of Process and can be done in one of four ways:

### **1) U.S. MAIL**

You **must** send these documents Certified Mail, Restricted Delivery, Return Receipt Requested. When you get the return receipt card (green card) back from the U.S. Post Office, check it to make sure your spouse signed the card. **If someone other than your spouse signed the return receipt card (green card), re-send all the documents again by certified mail.**

If you receive the return receipt card (green card) and it was signed by your spouse, record the docket number you received from the Clerk of Court and the words "Summons and Complaint" across the top of the return receipt (green card) and then make a copy of the card for your file. Next, complete and sign the Affidavit of Mailing form before a notary. **Do not sign this form until you are in front of a notary. The notary must witness your signature on the Affidavit of Mailing.** Attach the return receipt card (green card) to the notarized Affidavit of Mailing and take it to the Clerk of Court's office for filing.

If you do not get the return receipt card (green card) back, you may have to call your local Sheriff's office to serve the papers on your spouse. There may be a charge for this service by the Sheriff's office. If your Motion to Proceed *In Forma Pauperis* was granted, provide a copy to the Sheriff's office.

## **2) PERSONAL SERVICE**

If your spouse is willing to accept service, provide your spouse with an Acceptance of Service form. After your spouse completes the form, take it to the Clerk of Court's office for filing. Ask the Clerk of Court to make a copy of the form for you at the time of filing.

## **3) SHERIFF'S OFFICE**

Contact the Sheriff's office in the county where the Defendant lives or works to serve the papers. When the Sheriff serves the papers, ask the office to complete the bottom half of the Affidavit of Service form before a notary, have the form notarized, and return the form to you. File the notarized Affidavit of Service with the Clerk of Court.

## **4) PRIVATE PROCESS SERVER**

Private process servers are listed in the telephone book. There will be a fee for this service. Using a calendar, count thirty-five (35) days after your spouse received the forms (not counting the day your spouse was served) and mark that day on a calendar. On that day, if you have not received an Answer from your spouse, complete the Affidavit of Default for Divorce (SCCA 400.07 SRL-DIV) and the Request for Hearing (SCCA 400.08 SRL-DIV). On the Affidavit of Default for Divorce, print the month, day, and year the Summons and Complaint was delivered. Check whether the forms were served by personal service, certified mail, or acceptance of service. **Do not sign this form until you are in front of a notary. The notary must witness your signature on the Affidavit of Default for Divorce.**

## **5) SERVICE BY COMMERCIAL DELIVERY SERVICE**

You may use a commercial delivery company like UPS or FedEx to serve the summons and complaint. The company must be one approved by the Internal Revenue Service.

You may check to be sure the company is approved at the IRS website:  
[http://www.irs.gov/uac/Private-Delivery-Services-\(PDS\)](http://www.irs.gov/uac/Private-Delivery-Services-(PDS)).

The delivery company will give you a delivery record showing the date, time and place of delivery, the name of the person served and an original signature or electronic image of the signature of the person served. If someone other than the defendant signs for the documents, you will not be able to proceed if the defendant does not appear. If delivery is refused or returned undelivered, you must try another method.

You must provide an affidavit showing the documents served with the delivery record attached. This affidavit and delivery record must be filed with the clerk of court.

Next, complete the Request for Hearing (SCCA 400.08 SRL-DIV). Print your name in the space marked "Plaintiff." Print your address, telephone number, and email address where requested. Print any comments or issues that you would like to bring to the Court's attention and sign your name at the bottom of the form where it says "Plaintiff." Take the original **Affidavit of Default for Divorce, Request for Hearing**, and the **Return Receipt (Green Card)** to the Court and file them with the Clerk of Court. Ask the Clerk of Court to make a copy of these forms for you.

If you received an Answer from your spouse within 35 days, and that Answer indicates that your spouse **agrees** with every paragraph in your Complaint, complete a Request for Hearing form and file it with the Clerk of Court. Ask the Clerk of Court to make a copy of this form for you.

If you received an Answer from your spouse that indicates he/she **does not agree** with every paragraph in your Complaint, then your divorce is contested and you need to hire an attorney.

### **PART 3: THE HEARING**

The Clerk of Court will inform you of your hearing date by mailing you a Notice of Hearing. After you receive the Notice of Hearing from the Court, you **must** provide a copy to your spouse or spouse's attorney at least 10 days before the hearing. The Notice of Hearing needs to be sent to your spouse or spouse's attorney by certified mail, return receipt requested.



You will then need to complete the Affidavit of Service by Mailing (Notice of Hearing) (SCCA 400.09 SRL-DIV) before a notary. This form indicates when you mailed the Notice of Hearing. **Do not sign this form until you are in front of a notary. The notary must witness your signature on the Affidavit of Service by Mailing (Notice of Hearing).**

If the envelope used to mail the Notice of Hearing to your spouse is returned from the U.S. Post Office, take the returned envelope to the hearing. It is only necessary to show that the Notice of Hearing was mailed. You do not have to show that your spouse actually received the notice.

To prepare for the hearing, complete the Final Order of Divorce and the Report of Divorce or Annulment of Marriage (DHEC Form 0682). On the Final Order of Divorce, print the date assigned for your hearing, the name of the judge assigned to your case, and, if you know it, the name of your spouse's attorney. Complete the Report of Divorce or Annulment of Marriage (DHEC Form 0682). In addition, ask someone who has personal knowledge that you have lived separate and apart from your spouse for one (1) year to testify under oath in Court on the day of your hearing. Ask more than one person to testify on your behalf in case there are last-minute problems.

On the day of your hearing, you and your witness should arrive at the courthouse at least thirty (30) minutes prior to your scheduled time. Make sure to take the copies of your documents with you to court. **Dress appropriately and turn off your cell phones.** Appropriate dress includes suits, jackets, dresses, or dress slacks. Males should tuck their shirts into their pants. Casual clothing such as sweat clothes, tank tops, shorts, and similar summer beach wear is not appropriate for the courtroom. Remove hats when entering the courtroom, unless they are required for a medical condition. Most courts do not allow children into the courtroom so make arrangements for a responsible adult to watch your children while you are in court.

When it is time for your hearing, the Bailiff will call your name. At that time, enter the courtroom, sit, and wait for the judge to ask you if you are ready. When the judge asks if you are ready, please stand if you are able to and say: "May it please the Court, my name is \_\_\_\_\_, and I am ready to proceed in this divorce action." The judge will tell you to

proceed or wait. When the judge is ready, tell the judge that you will be the first witness in this hearing. You will take the witness stand and take an oath to tell the truth. Make sure you tell the judge everything outlined in the Complaint. If necessary, you can look at your Complaint to remind you of all the details you need to cover to prove your case. This packet also includes a Sample Script for Plaintiff's Testimony that you may use. **It is very important to tell the judge everything in your Complaint, since leaving out any detail may keep you from getting a divorce.**

The judge may interrupt you from time to time to ask you a question. Listen carefully and answer the questions the judge asks you. When you are finished testifying, you will call your witness to the stand and ask questions that will help prove your case. You may use the "Sample Script for Questioning the Witness in a Simple Divorce Action" form included in this packet.

If the judge grants the divorce, hand the judge the Final Order of Divorce and the completed Report of Divorce or Annulment (DHEC Form 0682).

The judge may ask that you also complete SCRC Form 4F – Judgment in a Family Court Case. If the judge asks you to complete the Form 4F, be sure the form is filled out completely by following the steps listed below:

- 1) Be sure the correct information is entered in the caption field at the top of the form, including names of the plaintiff and defendant, judicial circuit, and docket number.
- 2) In the "submitted by" box, enter your name and check the box named "Self-Represented Litigant."
- 3) In the "Decision by Court section" check the box which reads "This action came to trial, hearing or was resolved by consent and an order was rendered."
- 4) In the "Order Information" section, check the box "Final order" to indicate that this is a final order from the court.
- 5) If there is no property involved in this simple divorce action, place "N/A" in one of the boxes in the section named "Information for the Public Index/Transcript of Judgment." If you have reached an agreement on property that requires information to be enrolled in the public index, complete the "Information for the Public

Index/Transcript of Judgment" section to list information about the property referenced in the order.

The judge will sign the Final Order of Divorce and the Form 4-F. Make sure the Final Order of Divorce and the Judgment in a Family Court Case forms are filed with the Clerk of Court. Make sure you get a certified copy of each form. The Clerk of Court will provide your spouse or your spouse's attorney with a copy of the Final Order of Divorce.

**NOTE: You are not divorced until the Final Order for Divorce has been signed by the judge and filed with the Clerk of Court. You are divorced when you receive a clocked copy of the Final Order of Divorce from the Clerk of Court.**

### **Plaintiff Simple Divorce Checklist**

- Complete the first five forms in this packet -- Family Court Cover Sheet, Certificate of Exemption, Summons for Divorce, Complaint for Divorce, and the Financial Declaration Form.
- File the five forms with the Clerk of Court in the appropriate county.
- Serve copies of the five forms on your spouse or spouse's attorney in one of four ways: (1) U.S. Mail; (2) Personal Service; (3) Sheriff's office; or (4) Process server.
- Count thirty-five (35) days from the day your spouse was served.
  - o If you do not receive an Answer, file the Affidavit of Default for Divorce, Request for Hearing, and the Return Receipt (Green Card) with the appropriate Clerk of Court.
  - o If you received an Answer and your spouse agrees with every paragraph in your Complaint, then file a Request for Hearing with the Clerk of Court.
  - o If you received an Answer and your spouse does not agree with every paragraph in your Complaint, then your divorce is contested and you should hire an attorney.
- Once you receive the Notice of Hearing from the Clerk of Court, mail a copy of this Notice to your spouse or spouse's attorney (at least ten days before the hearing date). File the Affidavit of Mailing with the Clerk of Court.
- To prepare for your divorce hearing, complete the Final Order of Divorce and the Report of Divorce or Annulment of Marriage (DHEC Form), and ask someone who can testify that you have lived apart from your spouse for at least a year to serve as your witness.
- On the day of your hearing, you and your witness should arrive at least 30 minutes early and be sure to dress appropriately, turn off your cell phones, and remove your hats. Unless the judge specifically requests that you bring your children, it is best if you do not bring your child/children to the Court hearing.
- At the hearing you and your witness will testify.
- The judge will allow your spouse to present his/her case, and you will have an opportunity to ask your spouse questions.
- At the end of the hearing the judge will sign the Final Order for Divorce and the Form 4F.
- Be sure that the signed Final Order for Divorce and Form 4F is filed with the Clerk of Court's office and you receive a clocked copy for your files.