

DURHAM FAMILY COURT'S

PRO SE ABSOLUTE DIVORCE PACKET

IMPORTANT

This information packet is designed to assist individuals who are NOT represented by an attorney (“Pro Se”) to file a complaint for an absolute divorce and to represent themselves in a hearing before a Judge for an absolute divorce. (You cannot start the process to get an absolute divorce until you and your spouse have been separated for at least one year and one day.)

BEWARE if you obtain an absolute divorce without first properly filing for, or obtaining any legal rights you may have for SPOUSAL SUPPORT (lawsuits known as *POST-SEPARATION SUPPORT AND ALIMONY*), or for the DIVISION OF MARITAL PROPERTY, including MARITAL DEBT (a lawsuit known as *EQUITABLE DISTRIBUTION*), YOU WILL LOSE THESE RIGHTS. Therefore it is very important that if you have any questions about whether you are entitled to property (or division of marital debt) from the marriage and/or spousal support, YOU MUST TALK TO AN ATTORNEY.

NO ONE EXCEPT AN ATTORNEY,
CAN ADVISE YOU ABOUT YOUR LEGAL RIGHTS

Because laws can change at any time, the forms and information in this Pro Se Divorce Packet may become outdated. **If you choose to represent yourself, you are responsible for knowing and following all up-to-date laws, rules, and procedures necessary to represent yourself.** You are encouraged to review and research North Carolina General Statutes and Rules of Civil Procedure referenced in the instructions to make certain that your forms and actions are accurate and appropriate for your situation.

The Durham Family Court Staff, Clerk of Court, or anyone else contributing to the production or dissemination of these forms, instructions, or guidelines WILL NOT BE LIABLE for any indirect or consequential damages resulting from your use of the forms or information provided to you in this Pro Se Absolute Divorce Packet. All persons using this Pro Se Packet are doing so voluntarily, knowingly, and independent of any legal advice from the Durham Family Court.

USE OF THESE FORMS IS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED. IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE FROM AN ATTORNEY PRIOR TO USING THIS PRO SE ABSOLUTE DIVORCE PACKET.

This Pro Se Absolute Divorce Packet is provided for individuals who wish to file for and obtain a court order for an absolute divorce. "Pro Se" is another way of saying that a person is acting as his/her own attorney and is not represented by a lawyer. Recognizing that the legal system can be very complicated and confusing, this Pro Se Absolute Divorce Packet (hereinafter "pro se packet") is provided to assist pro se individuals by providing information and sample forms to be used to obtain an absolute divorce.

IMPORTANT

Although Durham Family Court Case Managers cannot give legal advice, they can assist you by providing access to the directory of local attorneys and community resources that may be helpful in answering your legal and personal questions regarding a separation and divorce.

FREE WORKSHOP

Legal Aid of North Carolina provides a workshop for anyone who needs help completing this pro se absolute divorce packet—absolutely free—on the

3rd Tuesday of each month

6:00 P.M.

201 W. Main Street (4th Floor, Suite 400)

Durham, NC

919.688.6396.

Please download all of the Pro Se Absolute Divorce Packet information, including the forms, and bring them with you to the workshop. Legal Aid WILL NOT provide you with copies of these materials at the workshop.

As a *pro se litigant* (acting as one's own attorney), you are responsible to make certain that the information and instructions in this pro se packet are appropriate for your situation. Therefore, you should review and research applicable laws, rules of civil procedure, and cases that apply to your situation. If you are not able to do this, you should talk to an attorney.

IMPORTANT

Some of the legal terms in this packet are written in italics followed by the definitions in parentheses. The definitions and explanations given in this packet are intended to help you understand legal terminology sometimes used in Court. However, this packet is **NOT** intended as legal advice for your situation.

On the front of this packet you will find notification of a free workshop that Legal Aid of North Carolina provides to pro se litigants who want assistance with their pro se packet. If at any point you become confused, or you need the assistance of an attorney, you may locate an attorney who practices family law by (1) looking in the yellow pages of the telephone book under family law attorneys, (2) looking in the legal directory located in the Durham Family Court Case Managers' office, or (3) calling the North Carolina State Bar Lawyer Referral at 1-800-662-7660. If you cannot afford an attorney, you may be eligible for assistance from Legal Aid of North Carolina at (919) 688-6396 or 1-800-331-7594.

Separation or divorce is as much an emotional experience as it is a legal process. There are many feelings and day-to-day problems to handle when your marriage ends - especially if you have children. This means that just as you must handle the legal issues around separation and divorce, you will also find that the emotional issues can have a big impact on you and your children. Upon request, the Durham Family Court staff can provide you with referrals to community resources for you and your family.

GETTING STARTED

An absolute divorce (also called dissolution of marriage) is a proceeding to end a legally valid marriage. After you get an absolute divorce, you will be single and can marry again. **(The process to obtain your absolute divorce as described in this pro se packet will usually take at least 45 days to complete—it could take even longer as there are many factors that could delay the process.)** If you are sure that you want to represent yourself in obtaining an absolute divorce, you can use this packet and follow the steps outlined below. **If you have trouble filling out your forms, you should contact a family law attorney for help or Legal Aid of North Carolina for their free workshop on completing the pro se divorce packet.**

STEP 1 Understand Your Obligations and Goals as a Pro Se Litigant

- A. You are responsible for knowing the law and following all state and local rules of the court. You can find this information in a law library or on the internet. Please read the law for yourself: NC General Statute Chapter 50-6
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50.html
- B. The court is a very traditional and polite place, it is important that you conduct yourself accordingly. In court, please
 - a. dress professionally;
 - b. be respectful of everyone in court including the other party, the Judge, and court staff;
 - c. be on time for court;
 - d. be prepared with all documents that you need for court;
 - e. do not ask for legal advice from court staff or the Judge;
 - f. know that a Judge is **not allowed** to talk to you about your case outside of a court hearing, so please, do **NOT** ask to speak to the judge outside of court.
- C. Make certain that all court documents are complete and accurate.
- D. Your goal as the *Plaintiff* is to draft and file a *complaint* for an absolute divorce, *serve* the *Defendant* with the *civil summons* and the complaint, and then go to court yourself, give *testimony* to the Judge, and the judge will decide whether or not to grant the absolute divorce.
 - *Plaintiff*: one who files the complaint
 - *Complaint*: another word for “lawsuit”
 - *Serve*: making certain that the court documents are made available to the other party
 - *Civil Summons*: a document that says that a lawsuit has been filed
 - *Testimony*: telling the judge the appropriate facts

STEP 2 You will need the following Court Documents

- A. Complaint for Absolute Divorce
<http://www.nccourts.org/County/Durham/Documents/complaint.doc>
- B. Civil Summons (AOC-CV-100) www.nccourts.org/Forms/Documents/204.pdf
- C. Domestic Civil Action Cover Sheet (form AOC-CV-750)
www.nccourts.org/Forms/Documents/303.pdf
- D. Durham Family Court Cover Sheet
www.nccourts.org/Courts/CRS/Policies/Local Rules/Documents/662.doc
- E. Affidavit of Service by Mail (**optional**)
<http://www.nccourts.org/County/Durham/Documents/affidavitofservice.doc>
- F. Calendar Request and Notice of Hearing (Form 3)
www.nccourts.org/Courts/CRS/Policies/Local Rules/Documents/661.doc
- G. Judgment of Divorce
<http://www.nccourts.org/County/Durham/Documents/ADjudgment.doc>
- H. Certificate of Absolute Divorce (DHHS 2089 / Vital Records) (You will get this form from the courtroom clerk on the day you come to court for your divorce hearing.)

STEP 3

Drafting your Complaint for Absolute Divorce

- A. You may hand write or type the information in the blanks in the Complaint, but it is preferred that you **TYPE the appropriate information directly into the complaint**. You may need to adjust the margins once you save the document on your computer. ***One-inch margins should produce the correct formatting.***
- B. Moving from the top of the **COMPLAINT FORM** to the bottom, complete as follows:
- a. Leave a space (or leave the spaces blank) for the file number. The Clerk will give your documents a file number when you file your complaint.
 - b. Type your full name on the line above the word Plaintiff
 - c. Type your spouse's full name (your husband or wife) in the line above the word Defendant.
 - d. Question 1: Type in your county and state of residence.
 - e. Question 2: Type in the Defendant's county and state of residence.
 - f. Question 3: In order to file a divorce complaint in North Carolina, either you, **OR** the Defendant, must be a resident of North Carolina for **at least 6 months** prior (before) to the date you file the divorce complaint with the court. (If you, or your spouse, are not a citizen of the United States, you need to seek legal advice **from an attorney** about whether you may obtain a valid absolute divorce in North Carolina.)
 - g. Question 4: Type in the date of marriage and the date of **separation** (the date you and your spouse started living separate and apart from each other).
 - h. Question 5: make certain that this statement is true for you or for your spouse so that you can testify that at the time of the separation, you or your spouse intended for the separation to be permanent. (Change wording if it was the Defendant that intended for the separation to be permanent.)
 - i. Question 6: make certain that you can testify that this statement is true.
 - j. Question 7: you must state whether there was a child or any children born while you and your spouse were married, or a child born to you and your spouse prior to the date you got married, and if so, then you must type the child(ren)'s full name(s) and give the dates of birth for each child. **IF THE CHILDREN ARE NOW 18 OR OLDER, YOU DO NOT NEED TO PUT THEIR INFORMATION IN THE COMPLAINT.**
 - k. Question 8: make certain that you understand the meaning of this paragraph. **PLEASE re-read the important information on page 1 of the introduction. (Marital property/debt can include property such as a retirement or military pension earned during the marriage, debt or money owed that was spent during the marriage for a marital purpose, property with a title [car, mobile home] or deed [house] that was acquired during the marriage.)**
 - l. Question 9: If you and your spouse have signed an Agreement which resolved property or other issues and you want to incorporate that Agreement in your divorce judgment, a copy of that Agreement **MUST** be attached to your Complaint. There are legal consequences to the choice of whether or not to incorporate an Agreement so if you do not understand this choice, **TALK TO AN ATTORNEY** before you make your decision.
 - m. Question 10: If, after the date of the divorce, you wish to **STOP** using your married name and **START** using your *maiden* name (name prior to marriage), you may check this box and type the name you want to start using after the divorce. (**YOU MAY NOT ask the court for the other party to resume the use of her maiden**

name.)

- n. Type in the day, month, and year, and sign your full name. You also must give your complete address. Also provide your telephone number if you have one.

(NOTE: If you want to keep your address confidential, contact the Attorney General's office regarding their Address Confidentiality Program at 919-716-6785.)

- o. The *Verification* is a statement that you sign before a Notary Public – a person who is authorized by the state to notarize documents. (Durham Family Court usually has a Notary Public available. Bring picture identification.) Make certain that you can testify that the document you are signing is true. Do not sign the verification until you are with a Notary Public.

Print out **THREE COPIES** of your divorce complaint, or bring the original and two copies with you. Durham Family Court cannot make copies for you. A notary can notarize your signature on ALL THREE COPIES of the complaint.

STEP 4

Completing the Civil Summons (AOC-CV-100)

- A. You will need **FOUR TOTAL COPIES** of the Civil Summons (three should be **yellow** and the other one needs to be **white**).
- B. From top to bottom, complete as follows:
- Write in **Durham** for the County
 - Put an “x” in the box beside District;
 - Print clearly and neatly your full name and address;
 - Print the Defendant's full name in the box entitled “Name of the Defendant(s);
 - Print the Defendant's full name and address in the box entitled “Name and Address of Defendant 1”.
- C. The clerk will complete the remainder of the form.

STEP 5

Completing the Domestic Civil Action Cover Sheet (AOC-CV-750) (www.nccourts.org/Forms/Documents/303.pdf)

- A. Type or write your full name and address on the line under “Name & Address of Plaintiff 1”.
- B. Type or write the Defendant's full name on the line under “Name of Defendant 1”.
- C. Place an “x” in the box for Summons Submitted (because you will be giving the clerk a civil summons for the Defendant).
- D. Type or write your name and address in the box on the right side of the document that says “Name and Address of Attorney or Party, If Not Represented”
- E. Place an “x” in the box “No” since you are not requesting a jury hearing.
- F. Place an “x” in the box beside “Complaint (COMP)” and on the right side of the document place an “x” in the box beside “Divorce (DIVR)”.
- G. Date the cover sheet and sign it on the date that you file it with the clerk.

STEP 6

Completing the AFFIDAVIT OF JUDICIAL ASSIGNMENT AND FAMILY COURT COVER SHEET (Form 2)

<http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/662..doc>

Only complete the top portion of this FORM 2. Answer the questions about whether another lawsuit has already been filed with the court for you or your spouse.

STEP 7

Filing your Absolute Divorce Complaint

- A. You cannot sign the verification on your complaint for absolute divorce (and therefore cannot file it) until the **DAY AFTER** a year has passed from the date of the separation (*you must be separated for one year plus one day*).
- B. You need to bring all of the documents explained above to the **FAMILY COURT OFFICE** (located on the sixth (6th) floor of the **DURHAM COUNTY COURTHOUSE**, 510 South Dillard Street) **first** before you file them with the Civil Clerk's Office.
- C. Below is an outline of the documents you need:
 - a. Completed Domestic Civil Action Cover Sheet (**ONE COPY**);
 - b. Completed Form 2 Affidavit of Judicial Assignment and Family Court Cover Sheet (**ONE COPY**);
 - c. Completed Complaint for Absolute Divorce (**ONE ORIGINAL AND TWO COPIES OR THREE ORIGINALS**);
 - d. Completed Civil Summons (**THREE YELLOW AND ONE WHITE**);
 - e. **\$225.00** for the filing fee for **ABSOLUTE DIVORCE** OR **\$235.00** if including **RESUMPTION OF MAIDEN NAME** (The Clerk accepts cash, money orders and certified checks. You may be qualified to have this filing fee waived because of your income. The Clerk of Court can assist you in completing the necessary paperwork so that the Clerk can decide whether you are entitled to have this fee waived). *NOTE: Filing fees are regulated by the NC General Assembly and are subject to change without notice.*
 - f. **\$30.00** to pay to the Sheriff **only if** you are using the Sheriff to serve the Complaint and Civil Summons on the Defendant. *Note: The Sheriff's Department will not take personal checks.*

STEP 8

Serving the Complaint and Civil Summons on the Defendant

- A. Remember "serving" the defendant is a legal term. You must serve the defendant in an appropriate manner and have **proof** that the complaint and civil summons were delivered to the Defendant.
- B. One option is to have the Sheriff in the county where the defendant lives or works serve the Defendant for you. To do this, pay a \$30.00 fee to the Sheriff of the North Carolina county where the Defendant lives or works and they will deliver the papers for you. The clerk will tell you which documents to take to the Sheriff's office.
- C. Another option is to serve the Defendant by **Certified Mail, Return Receipt Requested** mail. You will need to mail the appropriate documents to the Defendant's mailing address by **Certified Mail, Return Receipt Requested**. Once the green receipt is returned to you, you **must complete** the Affidavit of Proof of Service by Mail and bring it to the FAMILY COURT OFFICE (see Step 9). (Defendants who are in jail or in correctional facilities can

be served at the correctional facility.)

- D. The Defendant may also sign a sworn statement before a Notary Public that he/she received the complaint and civil summons. This type of statement is not included in the Pro Se packet and it is up to the Defendant to properly complete and file with the court. (Plaintiff cannot prepare these types of statements for the Defendant.)

STEP 9 (Optional)

Completing your Affidavit of Proof of Service by Mail

- A. If you served the Defendant by *Certified Mail, Return Receipt Requested*, the green return receipt card will be mailed back to you.
- B. Once you get the receipt back, you need to complete the Affidavit of Proof of Service by Mail form and take this Affidavit and the green card to the FAMILY COURT OFFICE.
- Type or write in the file number and names of Plaintiff and Defendant;
 - Print your full name in the first blank after the word "I";
 - Print Defendant's complete address in Question #2;
 - Print the date the certified documents were served in Question #3;
 - Date and Sign this Affidavit only **in the presence of a Notary Public**;
 - Staple the green return receipt to the Affidavit; and
 - Take the Affidavit to the Family Court case manager in the COURTHOUSE.

STEP 10

Getting a Court Date

- A. Durham Family Court Case Managers give dates for the divorce hearing. However, it is your responsibility to get the date from the Case Manager at the appropriate time.
- B. If you had the Defendant served by the sheriff, you can call the Family Court offices to see whether the sheriff has returned the Civil Summons back to the Court and whether it has been entered into VCAP by the Clerks office. If this information is in the system, the Family Court Case Manager can give you a date for court.
- C. If you had the Defendant served by Certified Mail, bring the green card and the Affidavit of Service to the Family Court Offices and the Family Court Case Manager can give you a date for court.
- D. **ONCE YOU GET A COURT DATE, you must complete and mail the Calendar Request and Notice of Hearing to the Defendant – see step 11. If you fail to do this, the judge may deny your divorce.**
- E. Unless the Defendant waives his/her time to answer the complaint, your court date cannot be less than 31 days from the date the Defendant was served. (The Defendant has 30 days to prepare and file an Answer and possible **counterclaims** (the Defendant's claims against you)).

STEP 11 Filing & Mailing Your Calendar Request and Notice of Hearing (Form 3)

- A. After the Durham Family Court case manager gives you a court date for the hearing on your divorce (either by phone or in person), **it is your responsibility** to complete the Calendar Request and Notice of Hearing and FILE IT WITH THE COURT. (Form 3)
www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/661.doc
- B. You only need to mail FORM 3 to the Defendant in regular mail, not certified mail.
- C. To complete this form you need to:
- Print your file number, Plaintiff's name and Defendant's name in the appropriate

- spaces.
- b. Put an “x” in the space beside “Trial/Hearing” and on the line beside where it asks you to describe the issues or matters for consideration by the Court, write or type in “Absolute Divorce.”
 - c. Put an “x” in the space “is not required” because a responsive pleading is not required to this Calendar Request and Notice of Hearing.
 - d. Complete the information as to when and where the hearing for the absolute divorce is scheduled (the Family Court case manager will give you this information).
 - e. Complete the Certificate of Service by putting an “x” in the appropriate box as to how you served this Calendar Request and Notice of Hearing on the Defendant.
 - f. Date and sign the bottom of Form 3. Your signature is proof to the COURT/JUDGE that you have made this form available to the Defendant **AND** that you have given a copy to the Family Court Case Manager for FILING WITH THE CLERK.

STEP 12

Completing your Judgment for Absolute Divorce

- A. Type or print the file number, full name of Plaintiff, and full name of Defendant.
- B. Paragraphs 1, 2 and 3 should be the same as in the Divorce complaint stating the residency of the two parties.
- C. Question 4 - type the date that the Defendant was served and mark the appropriate box as to how the defendant was served.
- D. Question 5 - print your date of marriage and date of separation.
- E. Make certain that Questions # 6 & 7 are true statements.
- F. Question 8 - only gets completed if you have asked in your complaint (*or the Defendant has asked in an Answer*) to start using a maiden/former name after the divorce.
- G. Question 9 - only gets completed if there are children who are currently 18 or younger just like typed in the divorce compliant.
- H. Do not fill out any portion of the judgment after the words “Ordered, Adjudged and Decreed”. Those provisions will be completed by the judge when your divorce is heard and decided.
- I. After the Judge signs the Divorce Judgment, it is your responsibility to mail a copy of the Divorce Judgment to the Defendant. The ***Certificate of Service*** is your signed statement to the court that you have done this. Note: You only need to mail it by regular mail, not certified mail. We suggest that you bring a stamped envelope to court with the Defendant’s address on it so that you can mail a copy of the Divorce Judgment on the same day the divorce judgment is granted and therefore you can date your certificate of service the same day as the hearing. (If you mail the judgment on a later date, you are responsible for completing a certificate of service and filing it with the court stating the date that you mailed the judgment for absolute divorce.)

STEP 13 Completing your Certificate of Absolute Divorce or Annulment (Form DHHS2089)

- A. On the day of your divorce hearing, you will receive this form from the clerk in the courtroom.
- B. Complete the following blanks:
 - a. Print the file number and county where divorce was granted.
 - b. On line one, put an “x” in the box as to whether you, as the Plaintiff, are the Husband or the Wife. Then print (in black ink) your first name, middle name, and last name. On line 2a, print the state and county where you live.
 - c. On line three, put an “x” in the box as to whether the Defendant is the Husband or Wife. Print the Defendant’s first, middle and last name. On line 4a, print the Defendant’s state and county where he/she lives.
 - d. Under “Marriage”, print the date of the marriage, the place of the marriage (county and state), number of minor children (children age 17 and younger) and the date of separation.
 - e. The Clerk will complete the remainder of the form.

STEP 14 On the Day of the Hearing for Your Absolute Divorce

- A. Plan to arrive at least 15 minutes prior to the time you are to appear for your hearing.
- B. You will need to bring **THE COMPLETED COPIES** of the Divorce Judgment.
- C. Sit on the benches behind where the lawyers are sitting and wait for your case to be called. (The Judge will call the case by the Plaintiff’s last name versus the Defendant’s last name. (An example is “Smith versus Smith.”))
- D. When your case is called, the clerk will *swear you in* (ask you to swear that the testimony you are about to give is the truth) and you will then sit in the witness box.
- E. Be prepared to testify to the information you wrote in your divorce complaint. (Take a copy of your divorce complaint with you so that you can refer to it.)
- F. The Judge will determine whether you are entitled to an absolute divorce.
- G. If the divorce is granted, go back to your seat and wait for the Clerk to complete your paperwork. The clerk will give you a copy of the Divorce Judgment for your records and a copy of the Judgment to mail to the Defendant.
- H. Make certain that you have completed the Certificate of Service on the Divorce Judgment and that you do, indeed, serve the Defendant with a copy of the Divorce Judgment.
- I. Keep a copy of the Divorce Judgment in a safe place.