

## INSTRUCTIONS FOR SEPARATE MAINTENANCE PACKET

**Free to Download; \$2.75 for paper copy**

In Georgia, you may file for separate maintenance if you have a valid marriage and you are living in a bona fide state of separation. **There can be no pending action for divorce—if there is, your complaint for separate maintenance will be dismissed.** You can either hire an attorney who will prepare your case and represent you in court, or you can use the sample forms included in this packet and represent yourself in court.

There are some procedural differences between a divorce and a suit for separate maintenance. First, there is no six month residency requirement. **Second, the defendant MUST be personally served. Unlike divorce cases, there can be no decree where a defendant is served by publication.** The proper venue (place to file) is in the county of the Defendant's residence, or (in the case of a nonresident defendant) the county where the defendant is found. For more information about suits for separate maintenance, see:

- Edward E. Bates, Jr. Georgia Domestic Relations Forms. Danvers, Massachusetts: LexisNexis. 2007.
- Dan E. McConaughey. Separation of Parties to Marriage (Chapter 2) in Georgia Divorce, Alimony & Child Custody. Eagan, MN: Thomson West. 2007.

In an uncontested suit for separate maintenance, the parties work out an agreement regarding issues such as child support, alimony, child custody, property division, and the like. The parties do not ask the judge to settle arguments between them, but rather work things out by themselves. In an uncontested case, the judge is only asked to approve the decisions which you have made together with your spouse.

A contested suit for separate maintenance is one in which the parties cannot work out an agreement regarding issues such as child custody, child support, visitation, alimony, property division, division of debts and the like. The parties ask the judge to settle arguments between them, and each will have to present evidence at a trial. This process can be quite complicated. You will probably need additional documents in order to conduct discovery, which is a formal process of gathering evidence for use at trial. Discovery can include depositions, interrogatories, requests for production of documents, and other procedures. The law library has form books which contain discovery documents you might need. Because discovery is a highly individualized process, it is not possible to include those documents in this packet.

### YOU MAY NEED AN ATTORNEY IF:

- The case becomes contested and your spouse has a lawyer.
- You cannot find your spouse to serve him or her with your papers.
- You think you will have difficulty getting information and documents from your spouse regarding income, retirement funds, etc.
- You think you might lose custody of your children.

**Even if it is a friendly separation, you should talk to a lawyer before you sign any settlement papers or file anything in court.**

- STEP 1: Complete the Domestic Relations Filing Information and Final Disposition forms.
- STEP 2: Complete the Complaint for Separate Maintenance.
- STEP 3: Complete the Verification form.
- STEP 4: Complete the Settlement Agreement, if possible.
- STEP 5: Attach other necessary documents (see details later).
- STEP 6: Produce the required financial documents.
- STEP 7: Pay the filing fee.
- STEP 8: File the forms.
- STEP 9: Prepare your case for trial, if no Settlement Agreement.
- STEP 10: Receive the Final Judgment.

### **DETAILED INSTRUCTIONS:**

#### **STEP 1: Complete the Domestic Relations Filing Information and Final Disposition Forms**

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

##### The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says  Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a Complaint for Separate Maintenance, you will check " Separate Maintenance."
- e. In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

##### The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the judge.
- b. Leave the second line, "Docket #," blank. The clerk will assign this number.

- c. Write your name where it says “Reporting party.”
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner’s Attorney, you will check the box which says  Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

**STEP 2: Complete the Complaint for Separate Maintenance.**

Fill in your full name as the Plaintiff and your spouse’s full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name and the Defendant’s names in the space provided just before paragraph one (1).

Paragraph 1: Subject Matter Jurisdiction

**If you do not know where your spouse is, the court will not be able to get jurisdiction over him or her. You cannot serve your spouse by publication and get a decree of Separate Maintenance**

Check box a) if the Defendant lives in the state of Georgia and will be served by the sheriff. Fill in the name of his or her county of residence, and the address at which s/he may be served with papers.

Check box b) if you are not a resident of the state of Georgia, but s/he may be found and served in the state. Fill in the name of the county, and the address where he or she may be served.

Check box c) if the Defendant is not a resident of Georgia and cannot be personally served within the state, AND s/he owns property in the state. Fill in the name of the county where the property is located, as well as the official legal description of the property (the legal description is on the deed. If you do not have a copy of the deed, you can look it up in the Clerk of Court of the county where the property is located.

Check box d) if the Defendant will sign an Acknowledgement of Service.

Check box e) if the Defendant will submit himself or herself to the jurisdiction of the court. In this case, the Defendant will sign the Acknowledgment of Service, Affidavit of Waiver of Venue and Personal Jurisdiction.

Paragraph 2: Date of Marriage

Check box a) if you and your spouse have a marriage certificate. Insert the date you were married in the space provided.

Check box b) if you and your spouse are common law married. Insert the date you and your spouse entered into your marriage in the space provided. You were common law married if the following statements are true:

1. You and your spouse were able to enter into a contract at the time you established a common law marriage. You were over age sixteen and mentally competent.

2. You and your spouse actually entered into a contract of marriage meaning that you and your spouse agreed that you were married.
3. You and your spouse have had sexual intercourse.
4. All of the above were done before January 1, 1997.

Paragraph 3: Date of Separation

Insert in the space provided the date you and your spouse separated. It is not essential that the husband or wife leave the marital homeplace; separation can occur when one spouse moves into another room with the intent and purpose of suspending conjugal rights. The suspended conjugal rights include the company, cooperation, assistance, aid and intimacy of the other spouse in every conjugal way. See Hosford v. Hosford, 58 Ga.App 188, 199, 198 S.E. 289 (1938); Blasingame v. Blasingame, 249 Ga. 791, 294 S.E. 34 (1982).

Paragraph 4: Reason for Separation

Check box a) if the parties separated by a mutual agreement.

Check box b) if the separation occurred due to misconduct by the Defendant. Write a brief description of the wrongful acts of the Defendant.

Paragraph 5: No pending action for divorce

Check paragraph five to indicate that there is no pending action for divorce. **If there is a pending action for divorce, any suit for separate maintenance will be dismissed.**

Paragraph 6: Settlement Agreement

Check paragraph a) if you and your spouse will sign the Settlement Agreement which is included in this packet.

Check paragraph b) if you and your spouse are unable to settle your disputes and need the Judge to resolve them for you.

Paragraph 7: Marital Property

Check box a) if you and your spouse do not have any marital property.

Check box b) if you and your spouse have already divided your marital property to your mutual satisfaction.

Check box c) if you and your spouse have marital property which needs to be divided up by the Court. Check off the various items of property which you own, and give additional information if necessary.

Paragraph 8: Joint Debts

Check box a) if you and your spouse do not have any joint debts.

Check box b) if you and your spouse have joint debts. Insert in the spaces provided information about these debts. Indicate which person should pay for each debt.

Paragraph 9: Alimony

Check box a) if you are seeking temporary alimony which will last until the divorce is final.

Check box b) if you are seeking alimony which is both temporary (will last until the final decree) and permanent (will last until the spouse dies or you remarry). If you engaged in adultery, desertion, cruel treatment, or other fault grounds for divorce, you will not be able to get alimony.

Paragraph 10: Children born of the marriage

List each child's name and date of birth.

Paragraph 11: Children's Past Living Arrangements

Insert in the space provided the addresses of where the children lived, the dates they lived at each place, and the names of who they lived with.

Paragraph 12: Other Custody Actions

Check box a) if there has never been any other custody action concerning your child(ren).

Check box b) if there has ever been or is presently another custody action concerning your child(ren). Insert in the space provided the location of the custody action, the type of action, when it began, and what happened at that action.

Paragraph 13: Other Parties with a Custody Claim

Check box a) if no one other than you or your spouse has a court order stating what legal rights they have to your child(ren). This means that there is no court order granting anyone else custody or guardianship of your child.

Check box b) if someone other than you or your spouse has any legal rights to your child(ren). Insert in the space provided the name of the person or agency, and what legal rights that person or agency has to your children.

Paragraph 14: Child Custody

Check box a) if you want for you and your spouse to share legal custody of the children, but you want one spouse to have primary physical custody.

Check box b) if you want one party to have legal custody and the other party to have physical custody.

Check box c) if you want one party to have both legal and physical custody.

Paragraph 15: Visitation

Check box a) if you want to write up your own visitation schedule in the blank provided.

Check box b) if you want to use the attached visitation schedule.

### Paragraph 16: Child Support Amount

Please go to <http://www.georgiacourts.org/csc/> and complete the Child Support Worksheet. You may complete it by using the Excel worksheet, or you may print out the Excel worksheet as a PDF file and complete it by hand using a calculator. If you need additional help, the law library has several examples of completed worksheets which may help you understand how to complete your own worksheet. If you are still unable to complete the worksheet, you will need to hire a family law attorney to help you.

### Paragraph 17: Child Support Method of Payment

Choose paragraph a) if you want the child support to come directly to the custodial parent.

Choose paragraph b) if you want the child support to go to the custodial parent through Georgia's Child Support Enforcement Agency.

### Paragraph 18: Health Insurance

This paragraph allows you to designate which party will cover the minor children under a health insurance policy, and to divide up any medical expenses which are not covered by health insurance.

### Prayer for Relief

In the prayer for relief, you need to check the box beside every thing you want.

### **STEP 3: Complete the Verification**

By completing the Verification form (page 12), you are swearing that everything you said in your complaint is true. Insert your name as Plaintiff and your spouse's name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee

### **STEP 4: Complete the Settlement Agreement, if possible.**

Even if you cannot sign a Settlement Agreement when you first file the case, you may sign one at any time before the Final Order is issued.

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

Introductory paragraph: insert the names of the husband and wife.

### Paragraph 1: Separation

Check the box beside paragraph one to indicate your intentions to live apart from one another.

### Paragraph 2: Non-interference with parental relationships

Check the box beside paragraph two to show that you intend to encourage a positive relationship between the child(ren) and the other party.

### Paragraph 3: Legal and Physical Custody

Legal custody means the authority to make decisions about the children. Physical custody means the physical care of the children—who are the children living with. There are three ways to divide up custody:

Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.

Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about a decision, one parent will be the “tie-breaker.”

Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

Check box a) if you intend for one parent to have sole legal and physical custody.

Check box b) if you intend for the parents to share legal custody, but for one parent to have sole physical custody. In the blanks provided, explain any details of your arrangement for primary physical custody. If you want for one party to have secondary physical custody, check the box and explain the details of your arrangement.

Check box c) if you intend for the parents to share both legal and physical custody. In the blanks provided, explain the details of your arrangement for sharing physical custody. If you want to have a tie-breaker in the event of a disagreement, check the boxes to indicate who the tie-breaker will be. If you want to limit the tie-breaker provision only to certain issues, write down what those issues are.

### Paragraph 4: Visitation

Choose a) if you want to draft your own visitation schedule. Write the schedule down in the blanks provided. You may attach additional pages if necessary.

Choose b) if you want to use the visitation schedule included in this packet.

### Paragraph 5: Child Support Amount

Check the boxes to indicate which parent is making the payments and which parent is receiving the payments. In the blank provided, insert the amount of child support **which you came up with after filling out the Child Support Worksheet**. You can find the

worksheet at <http://www.georgiacourts.org/csc/>. You can find training materials for further help at <http://www.georgiacourts.org/csc/training.html>. In the blank provided, insert the date on which the first child support payment should be received. Check the boxes to show how often the payments should be made. In the blank provided, explain how the child support will be reduced as each child reaches the age of majority. For example, if the non-custodial parent must pay \$400 per month for two children, for a total of \$800 per month, you might say, "When Susie is no longer eligible for child support, the amount will be reduced to \$400 per month for the support of Johnny as long as Johnny is still eligible for child support."

#### Paragraph 6: Child Support Method of Payment

Check the box beside a) if you intend to have the non-custodial parent send payments directly to the custodial parent. This provision allows for an income deduction order in the event that payments are late three or more times in any twelve month period.

Check the box beside b) if you intend for child support to be paid through Georgia Child Support Enforcement via an income deduction order.

#### Paragraph 7: Health Insurance

Check the box beside this paragraph. Check the box beside the party who will be responsible for maintaining health insurance for the benefit of the minor child(ren). In the blanks provided, specify how the costs not covered by the insurance policy will be divided up. Check the boxes to indicate both who should provide health insurance cards and who should cooperate in submitting claims under the policy.

#### Paragraph 8: Alimony

Check a) if you agree to have alimony payments for the support of one of the parties. Check the boxes to show who is making payments to whom. In the blank provided, indicate the amount. Check the box beside week/month to indicate how often the payments should be made. In the blank provided, indicate the date on which the first payment should be made.

#### Paragraph 9: Division of Property

Choose box a) if you have no marital property to divide.

Choose paragraph b) if you have already divided up your marital property to your mutual satisfaction.

Choose box c) if you have items of property to be divided. In the blanks provided, list what those items are.

#### Paragraph 10: Division of Debts

Check box a) if you have no joint debts which should be divided.

Check box b) if you have joint debts which need to be divided. In the chart provided, list the name of the creditor, the amount owed, and who will be responsible for the debt.

Paragraph 11: Name Restoration

Check the box beside this paragraph if a party wishes to be restored to a former surname or to a maiden name.

Paragraph 12: Binding Agreement

Check the box beside this paragraph to show that this agreement was entered voluntarily without any external pressure.

Paragraph 13: Entire Understanding

Check the box beside this paragraph to show that there are no agreements other than those listed in this document.

Paragraph 14: Enforceability

Check the box beside this paragraph to show that you agree to be bound by this agreement whether you maintain a separate maintenance or go on to get a divorce.

**STEP 5: Attach other necessary documents.**

In addition to the Complaint for Separate Maintenance and the Verification, you will need to attach the following forms to your complaint (they are in the packet):

1. Service/Venue Forms:
  - a. Certificate of Service AND Rule Nisi with Temporary Restraining Order (pages 15-16 of the forms packet).
  - b. Acknowledgment of Service and Summons (page 13 of the forms packet) and Rule Nisi with Temporary Restraining Order (page 16 of the forms packet).
  - c. Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction (page 14 of the forms packet) AND Rule Nisi with Temporary Restraining Order (page 16 of the forms packet).
2. Lis Pendens Notice (page 17 of the forms packet). You need this notice if you own real property such as a house or land.
3. Final Order (pages 39-43 of the forms packet)
4. Income Deduction order AND Income Deduction Order Notice (pages 44-45 of the forms packet).

**STEP 6: Produce the required financial documents.**

Along with the divorce packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.

2. Domestic Relations Financial Affidavits (pages 25-38).
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.
7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

#### **STEP 7: Fees**

Unless you are able to have your filing fee waived, there is an \$80.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit.

#### **STEP 8: File your forms**

You should make two copies of all of your documents. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to your spouse. If you need more information about how to have the other party served, please see the excellent article at <http://www.fultoncourt.org/family/service.php>.

#### **STEP 9: Prepare your case for trial**

In most civil cases, **pretrial discovery** is conducted. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows

each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

**Interrogatories** are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the court.

**Depositions** are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be "impeached," or discredited by referring back to the deposition testimony.

**Requests for Production of Documents** are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party's tax returns, bank statements, or other important documents.

**Physical and Mental Examinations** may be used only with the court's permission, when a party's physical or mental condition is an issue in the trial, and when the requesting party can show "good cause," i.e., the information is extremely important and cannot be otherwise obtained.

**Requests for Admissions** are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

*Forms for all of the above discovery tools are available at the law library upon request.*

For more information about trial preparation, see the following informative websites:

<http://www.fultoncourt.org/family/trialprep.php>

<http://www.fultoncourt.org/family/self-representation.php>

<http://www.georgiacourts.org/aoc/selfhelp/>

### **STEP 10: Receive the final judgment**

Your case is not final until the judge signs the final order. Each party will receive a copy of the signed final order.

If the Defendant does not answer your Complaint for Separate Maintenance, you may receive a default judgment, unless the time for response has been extended by court order.

If the Defendant was served by publication, the final judgment may be granted any time suitable to the judge 61 or more days after the date of first publication.

If your case goes to trial, the entire process can take anywhere from several months to several years, depending on how hard you two fight. Even though you have filed a contested case, you can still sign a settlement agreement at any time before the judge issues a final order. Settling out of court greatly speeds up the process of getting a divorce.

Good luck!

