

INSTRUCTIONS FOR SEPARATE MAINTENANCE PACKET
NO MINOR CHILDREN
Free to download; \$2.00 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. McConaughy. 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.

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

Please follow the instructions given beginning on page two (2) of this instruction packet.

- 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 exists.
- 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 in the space provided just before paragraph one (1).

Paragraph 1: Jurisdiction and Venue

Check box a) if the Defendant lives in the state of Georgia. 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 which the Defendant engaged in.

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 seeing temporary alimony which will last for a relatively short amount of time.

Check box b) if you are seeking alimony which is both temporary (for a relatively short amount of time) and permanent (will last until one spouse dies). 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

Check the box to indicate that there are no minor children born of the marriage AND the wife is not pregnant.

STEP 3: Verification

By completing the Verification form, 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.

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.** Fill in the Wife's name in the first blank, and the Husband's name in the second blank which is above paragraph 1.

Paragraph 1: Separation

Check the box to indicate your desire to live as separate people free from one another's interference.

Paragraph 2: Alimony

Check box a) if you want to include Alimony payments in your divorce settlement.

Check box b) if you do not want Alimony payments in your divorce settlement.

Paragraph 3: Division of Property

Choose box a) if you have no marital property.

Choose box b) if you have already divided up your marital property.

Choose box c) if you wish to divide up marital property. Be sure to include property of every type: real estate, cars, bank accounts, retirement accounts, investments, etc.

Marital property includes the real and personal property and assets acquired by the parties during the marriage. For a more detailed explanation of what marital property is, see McConaughey, Dan. 2006. *Division of Property in Georgia Divorce, Alimony & Child Custody*. Eagan, Minnesota: Thomson West. A copy of this book is available at the law library.

Paragraph 4: Division of Debts

Check box a) if you have no outstanding debts.

Check box b) if you have debts to divide. Place each creditor's name in the left column of the chart. In the middle column, insert the amount owed to each creditor. In the right column, write the name of the party who will be responsible for that debt.

Paragraph 5: Binding Agreement

Check this box to indicate that you have entered into this agreement of your own free will, and that there are no agreements in addition to this written agreement.

Paragraph 6: Agreement Enforceable with or without divorce

Check this box to show that you intend for this agreement to be enforceable while the divorce is pending, after the divorce is final, or even if you choose not to divorce. This paragraph also shows that you can get back together with your spouse if you can work things out.

Notarize the Agreement

Write down the date the Agreement was signed. If you signed at different times, you will use the date on which the last party signed.

Each of you must sign the document in the presence of a Notary Public. You can do it together, using the same Notary Public, or you can do it separately, using different Notaries Public.

STEP 5: Other Court 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 (Choose one of the following letters):
 - a. Acknowledgment of Service (page 8 of the forms packet) and Rule Nisi (page 11 of the forms packet).
 - b. Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction (page 9 of the forms packet) AND Rule Nisi (page 11 of the forms packet).
 - c. Certificate of Service AND Rule Nisi with Temporary Restraining Order (pages 10-11 of the forms packet).
2. Lis Pendens Notice (page 12 of the forms packet). You need this notice if you own real property such as a house or land.
3. Final Order (pages 16-17 of the forms packet)

STEP 6: Produce the Necessary 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. 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.
2. 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.
3. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
4. 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.
5. 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.
6. 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.
7. 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.
8. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
9. 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 a \$75.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Separate Maintenance 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 if you do not have a settlement agreement.

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

If the Defendant does not answer your Complaint for Divorce, the final judgment may be awarded any time 46 days after service, unless the time for response has been extended by court order.

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 if 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 Decree of Separate Maintenance.

Good luck!