

COUNTER-COMPLAINT FOR ABSOLUTE DIVORCE INSTRUCTIONS FOR COMPLETING FORM CC-DR-094

Prior to completing Form CC-DR-094 Counter-Complaint for Absolute Divorce review the **General Instructions (Form CC-DRIN)** in addition to this Instruction form.

These Instructions are meant to assist you and are for informational purposes only and not intended as legal advice.

WHO SHOULD USE THIS FORM?

You should use Form CC-DR-094 Counter-Complaint for Absolute Divorce *if ALL* of the following are true:

- You have been served with your spouse's Complaint for Absolute Divorce and intend to file your Answer;
- At least one of the grounds for divorce described in Paragraph 15 has been met;
- You are requesting that the court grant you, instead of your spouse, a complete dissolution (ending) of your marriage; and
- You are not hiring a lawyer (also called an attorney or counsel) to file the case for you.

DO I NEED A LAWYER?

The answer is probably YES if:

- The case is contested and your spouse has a lawyer.
- You do not have an address for or cannot locate your spouse in order to serve him or her with your papers.
- You have, or your spouse has a house, a pension/retirement account, or a large amount of property or income. Even if you are mutually consenting to divorce, it is advisable to speak with a lawyer before signing settlement agreements or filing papers with the court.
- There is a dispute about who should have custody of the child(ren).
- The court may need information in your case that you cannot get.
- You want an annulment instead of an absolute divorce.
- You want a divorce after a long-term marriage (approximately 10 or more years) and/or you want alimony.

You may speak with or hire a lawyer at any time during the course of your case.

THERE ARE EIGHT (8) STEPS IN ORDER TO COMPLETE THE CASE YOURSELF:

□ STEP 1 - COMPLETE FORM CC-DR-094 COMPLAINT FOR ABSOLUTE DIVORCE

Case caption: Fill in the complete names, addresses and telephone numbers for yourself (as Counter-Plaintiff) and your spouse (as Counter-Defendant). **However, if you are requesting that your address and/or that of the child(ren) remain confidential because of concerns for safety or domestic violence issues, do not include your address or contact information** rather contact the clerk's office regarding your contact information. You will need to provide an address where the opposing party (other side) will be able to serve you with papers. Be sure to include your complete case number as it appears in the Writ of Summons you were served with your spouse's Complaint for Absolute Divorce. Fill in your name on the first line of the Counter-Complaint.

Paragraph 1: Fill in the month, day and year that you and your spouse became married; fill in the city or county, and state where your marriage took place and check the box which describes whether you were married in a civil (court or justice of the peace) or religious (church or by clergy) ceremony.

Paragraph 2: Check the statement that applies about Maryland residence for the purpose of this divorce, and fill in month and year that person's residence in Maryland began.

Paragraph 3: Check all boxes that apply about where the grounds for divorce (Paragraph 15) occurred.

Paragraph 4: Check the only box that applies to your case about children. If you and your spouse have no children together **you may skip to Paragraph 12**. If you and your spouse have any children, fill in their complete names and dates of birth in the lines provided.

Paragraph 5: If you and your spouse have children and there are any other cases in any court (in Maryland or any other state) that involve any one or all of the children, including any domestic violence case, provide the completed case information in the lines provided, including the name of the court where the case was filed, the case number, the kind of case, the year filed and the result or current status of the case.

Paragraph 6: List all cases that you have been a party or witness to, or otherwise involved in, concerning the custody, guardianship or visitation (child access) of any one or all of the children, including the state where the case was filed, the name of the court, the case number and the date that any child custody or guardianship determination was made, **and attach a copy of the most recent court order for any case listed**.

Paragraph 7: Fill in the complete name and address of any people who are NOT a party (Plaintiff or Defendant) in this case, who may have physical custody of, or who may claim rights of legal or physical custody, or visitation with, the child(ren).

Paragraph 8: Fill in the complete address(es) where the child(ren) presently live(s), and the complete name(s) of the person(s) they live with at this time.

Paragraph 9: Fill in the appropriate box about whether the child(ren) has/have lived in this state for six (6) months. Fill in dates, places (towns or states) where the child(ren) has/have lived, and complete names and current addresses for each person the child(ren) lived with during the last five (5) years.

Paragraph 10: Check the appropriate statements about the legal (decision-making) and physical custody of, and visitation (child access or parenting time) with the child(ren) that you are asking the court to consider.

Paragraph 11: Check the statement that applies in your case about child support and/or health insurance; if there is already a separate child support case in the Office of Child Support Enforcement or the court, fill in the case number information for that case. **If child support is an issue in your case you MUST file a financial statement with your Counter-Complaint**. If child support is the only financial issue in your case, complete and file **Form CC-DR-030 Financial Statement (Child Support Guidelines)**. If you also have property, alimony or other financial issues complete and file Form CC-DR-031 General Financial Statement.

Paragraph 12: Check the appropriate statement about alimony and fill in a brief explanation. If you are requesting alimony you must **file a Form CC-DR-031 General Financial Form** with your Complaint.

Note: If you do not request alimony, or waive a claim to alimony in this divorce case, a future claim for alimony may not be made after an absolute divorce is granted.

Paragraph 13: Check the appropriate statement about marital property and debts that applies in your case.

Note: *If you and your spouse do not have an agreement about division of property but do not request property division at the time of a final divorce hearing, the court may be prohibited from addressing property issues after the divorce is granted.*

Paragraph 14: If you would like to take back a name you used before this marriage, fill in the complete name you want to take back. You may request to be restored to a former name as long as it is not for any fraudulent reason, or to avoid or hide from creditors.

Note: If you do not request to be restored to your former name at the time of divorce, you may do so by a separate request no longer than 18 months after the date the clerk enters a decree (judgment) of absolute divorce.

Paragraph 15: Grounds for Divorce - read each ground carefully and check any that apply to your case (you may check more than one). **The ground you choose must have already accrued before filing this Complaint**, for example, if you check Twelve (12) Month Separation you must have already been separated for 12 months *before* filing for divorce using this ground.

Note: About the Mutual Consent ground: If you and your spouse have children together you may not use the Mutual Consent ground for divorce. If you are filing for divorce using this ground you must have a written agreement with your spouse that resolves all property and alimony issues, you MUST attach a copy of your agreement signed by both parties to the Complaint AND both parties MUST attend the final divorce hearing. IF YOU DO NOT PROVIDE A SIGNED AGREEMENT OR IF EITHER SPOUSE FAILS TO ATTEND THE FINAL DIVORCE HEARING A DIVORCE CANNOT BE GRANTED.

Final Paragraph "FOR THESE REASONS": Check off ALL requests you are asking the court to grant based on the statements made in your numbered paragraphs. These are your "requests for relief."

Affidavit: Complete the Affidavit. This is your sworn statement that all the statements and information contained in your paper are true and correct.

Certificate of Service: Complete the Certificate of Service and mail copies of the papers to the other side (opposing party) or his/her lawyer, using the correct postage.

STEP 2 - COMPLETE ALL OTHER REQUIRED FORMS:

- **Civil-Domestic Case Information Report (Form CC/DCM 001)** - This form assists the court in understanding the issues in your case and the anticipated time for case scheduling.
- **Form CC-DR-050 Answer to Complaint/Petition/Motion** - This form is your response to your spouse's Complaint and must be filed prior to or with your Counter-Complaint.
- **Form CC-DR-030 Financial Statement (Child Support Guidelines)** - This is a "short form financial statement" that **MUST** be completed and filed with your Complaint if you are asking to establish child support.
- **Form CC-DR-031 Financial Statement (General)** - This is a "long form financial statement" that **MUST** be completed and filed with your Complaint if you are requesting alimony or a monetary award in property division. If you have property, alimony **AND** child support claims you may file this form (you do not need to also file the short form above).
- **Form CC-DR-033 Joint Statement of Parties Concerning Marital and Non-Marital Property**- This form must be completed and filed **no less than 10 days before** your final hearing date. (*See below Step 8 Pre-Hearing Matters*)
- **Your signed and dated settlement agreement** - If you filed for divorce based on the ground of **Mutual Consent**, you **MUST** attach a copy of your agreement to the Counter-Complaint.

- **Division of Vital Statistics, Report of Absolute Divorce or Annulment of Marriage** - This Maryland Department of Health form tracks divorce statistics in Maryland. You must complete this form and submit it to the court at the end of your hearing. The clerk's office or the courtroom clerk can give you a blank form. **Your divorce decree will not be mailed to you unless this form is filed.**

□ **STEP 3 - Filing Your Forms.**

Take or mail the completed and signed forms to the civil clerk of the circuit court where your spouse's Complaint for Absolute Divorce was filed. If you dispute that your spouse filed the initial Complaint in the correct court, you should speak with a lawyer before filing your Answer or Counter-Complaint. **You should make at least two (2) copies of all forms before filing**, one (1) for mailed service of process to the other side (opposing party), and one (1) for your records.

There is no filing fee for filing a Counter-Complaint.

□ **STEP 4- SERVICE OF PROCESS:**

You must mail a complete copy of your papers to the other side. (*See General Instructions, Form CC-DRIN, "What is Service of Process?"*)

□ **STEP 5 - REQUEST FOR HEARING OR PROCEEDING:**

Most courts will automatically schedule the appropriate proceeding, conference or hearing once an Answer, Counter-Complaint or Order of Default is docketed by the clerk, however, this varies from court to court. You should contact the Clerk of the Court to determine if you are required to file a **Request for Hearing (Form CC-DR-059)**. (*See General Instructions Form CC-DRIN, "What Happens Next?"*)

□ **STEP 6 - PRE-HEARING MATTERS:**

Once your case is scheduled for a final hearing or trial date, prepare for the following issues if they are part of your case:

- **Marital and Non-Marital Property:** If you are requesting the court to divide property and debt, or to grant a monetary award for value of property, both you and your spouse must complete the **Joint Statement of Parties Concerning Marital and Non-Marital Property (Form CC-DR-033)**. This form provides required information to the court about what each side believes is marital or non-marital property. This form must be filed with the clerk's office **no later than 10 days prior to your final trial date**. Even if your spouse does not cooperate in completing a joint form, you must file your completed form.
- **Child Support:** If you have children, complete the **Child Support Guidelines Worksheet (Worksheet A-Primary Physical Custody, Form CC-DR-034, OR Worksheet B-Shared Physical Custody, Form CC-DR-035)**. A Child Support Calculator is available through the People's Law Library of Maryland website (www.peoples-law.org) (*See Child Support Instructions, Form CC-DRIN-010*)

□ **STEP 7 - HEARING:**

At your hearing or trial, you have an opportunity to testify. Witnesses who have first-hand knowledge about your case may also testify. You may also present any evidence that may be accepted by the court under the **Rules of Evidence**. The other side will also have an opportunity to present his/her side of the case and offer testimony, witnesses, and evidence. Both sides will have the opportunity to cross-examine (ask questions) the other side's witnesses about their testimony. Arrive to the courthouse before your scheduled hearing time and be prepared with the original and additional copies of your evidence for the court and the opposing party. **The court is not required to make copies for you.** (See *General Instructions Form CC-DRIN, "What Happens in Court?"*)

Note: As a general rule, children under 18 should not be witnesses in a divorce or custody trial. However, if you have been ordered by the court to bring your child(ren) to court, you must do so. If you believe your child(ren)'s testimony is absolutely necessary you should speak with a lawyer about how best to present this to the court. If a parent must be in court, and needs child care, some courthouses provide this service. Please check the website of the specific courthouse.

Note: The courts are no longer prohibited from entering a Judgment of Absolute Divorce without corroborating testimony of a witness. Although you are no longer required to provide a corroborating witness, you **must still prove your eligibility and ground for divorce to the court.** A corroborating witness may still be useful in your case, particularly if there are contested (disputed) issues in your case.

□ **STEP 8 - JUDGMENT OF ABSOLUTE DIVORCE:**

You will not be officially absolutely divorced on the day of the final hearing. Although the magistrate or judge may recommend or grant your absolute divorce, you are not legally divorced until a final Judgment of Absolute Divorce is signed by a judge. You will receive the certified Judgment of Absolute Divorce from the Clerk of the Court (unless outstanding court costs have not been paid), depending on the following:

- **Magistrate's hearing** - If the hearing was before a magistrate, the Magistrate's Report and Recommendations will be reviewed by a judge (10 days after the report is issued). A judgment will be signed unless either side files a Notice of Exceptions disputing the magistrate's recommendations. If no exceptions are filed, the clerk's office will mail the Judgment of Absolute Divorce usually within two (2) to three (3) weeks of the hearing date.
- **Judge's hearing** - If the hearing was before a judge you will receive your Judgment once the judge's chambers has completed it and forwarded it to the clerk for docketing and mailing. If a lawyer was involved in the case, the judge will likely instruct him or her to prepare and send a Judgment to the court for the judge's review and signature.

(See *General Instructions, Form CC-DRIN, "What Happens After Court?"* for additional information on what you may expect after your hearing is completed.)