

# INSTRUCTIONS FOR FILING A PETITION FOR LEGITIMATION AND CUSTODY/VISITATION

## GENERAL COMMENTS

This is the form packet for a biological father of a child born out of wedlock to file on his own a petition for legitimation in Clayton County and to seek custody or visitation in the same petition. This form packet cannot be used by the mother or any other person other than the father. If you do not want to seek custody or visitation during your legitimation case, you should not use this form packet. Instead, use the shorter and simpler version called *Petition for Legitimation*.

**Please read these instructions and each form very carefully.** Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your legitimation case in jeopardy.

## INTRODUCTION

In the State of Georgia, one way that a father may establish legal rights to a child born out of wedlock is to file a petition for legitimation in the Superior Court. There are two options available to you for filing a legitimation case: (1) you can hire an attorney who will prepare your paperwork and represent you in court, or (2) you can use the forms included in this packet and represent yourself in court. After a court grants your legitimation and issues a *Final Order for Legitimation*, you will have legal rights to your child. It is advisable to speak with an attorney before filing any action with the court. This legitimation is no exception to that rule. There are often more issues involved in a legitimation than you might realize if you fail to get legal advice. However, you may want to review the forms and instructions in this packet before you talk to an attorney, so that you will be able to make the best use of your time with the attorney.

Legitimation can be a very complicated process. If documents are not completed, signed, notarized and filed as required by law, the legitimation pleadings are not in compliance with the law; a judge cannot grant your request for legitimation, and may dismiss your case. If you want a court to grant your legitimation, **you must follow the law and you must complete each and every paragraph that applies to your case (but not any paragraphs that do not apply to your case)**. Please read and complete the seven (7) steps listed below in order to complete, file and serve your petition for legitimation.

State law, **OCGA § 15-19-51** prohibits court personnel (including staff attorneys or law clerks, calendar clerks, clerk's office staff, and sheriff's department staff) from giving legal advice or answering legal questions.

## YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents the Respondent.
- There has been family violence between you, your children, or the Respondent.
- You want an arrangement for custody or visitation that does not exactly fit these forms.
- You are unable to locate the Respondent to have him/her served with this action.
- Your child's mother was married at the time your child was conceived or born.
- Another man's name is listed as the father on the child's birth certificate.

***Whether your case is contested or uncontested, you should speak with an attorney before signing a settlement agreement or filing any other documents with the court.***

## **FORMS YOU WILL NEED TO START YOUR Legitimation:**

If this legitimation action **may be contested** (you do not have a signed Consent to Legitimation), you must file the following documents with the *Petition*. All of these forms are included in this packet or are available from the court's website, except the *Sheriff's Entry of Service*. You can get the *Sheriff's Entry of Service* from the Superior Court Clerk's office on the 1st floor of the Clayton County Courthouse (where you will be filing your case).

- (a) *Domestic Relations Case Filing Information Form*
- (b) *Petition for Legitimation*
- (c) *Verification*
- (d) *Summons*
- (e) *Domestic Relations Financial Affidavit*
- (f) *Child Support Worksheets and Schedules*
- (g) *Parenting Plan*
- (h) *Sheriff's Entry of Service*

**OR**

*Acknowledgment of Service*

**OR**

Publication paperwork, as follows:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication and*
- (3) *Order of Publication*
- (i) *Rule Nisi* (only if you want a hearing on temporary issues)
- (j) *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis* (only if you are indigent and cannot afford to pay the filing & service fees)

If this action is **uncontested** (you have a signed Consent to Legitimation), you must file the following documents with the *Petition*. All of these forms are included in this packet or are available from the court's website.

- (a) *Domestic Relations Case Filing Information Form*
- (b) *Petition for Legitimation*
- (c) *Verification*
- (d) *Summons*
- (e) *Domestic Relations Financial Affidavit*
- (f) *Child Support Worksheets and Schedules*
- (g) *Parenting Plan*
- (h) *Acknowledgment of Service and Consent to Jurisdiction and Venue* (original signed by Respondent and notary public)

**OR**

*Acknowledgment of Service* (original signed by Respondent and notary public)

- (i) *Rule Nisi* (only if you want a hearing on temporary issues, which is unlikely if you have a signed *Settlement Agreement*)
- (j) *Affidavit of Indigence and Eligibility to Proceed In Forma Pauperis* (only if you are indigent and cannot afford to pay the filing & service fees)
- (k) *Consent to Legitimation* (original signed by Respondent and notary public)

## FORMS YOU WILL NEED AT THE FINAL HEARING TO FINISH YOUR LEGITIMATION:

You will need the following forms when you go to the final hearing in your legitimation. This form is included in this packet, or is available on the court's website.

- (a) *Final Order of Legitimation*
- (b) *Child Support Addendum*
- (c) *Permanent Parenting Plan Order*
- (d) *Domestic Relations Final Disposition Information Form*

## THE FOLLOWING ARE DETAILED INSTRUCTIONS ON HOW TO COMPLETE AND FILE THIS *PETITION FOR LEGITIMATION AND CUSTODY/VISITATION*, AS WELL AS SOME OF THE RELATED DOCUMENTS.

(Read these instructions carefully and more than once, if necessary.)

### **Step 1: Completing the Petition for Legitimation and Custody/Visitation**

#### **Caption (Heading):**

Fill in your full name as the Petitioner, and the Respondent's full name as the Respondent. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your Petition in the Clerk's office.** After completing the heading, write your full name again in the space provided just before Paragraph 1.

#### **Paragraph 1: Identify the Respondent \* CHECK ONLY ONE BOX \***

- (a) Check box "a" if **the Respondent is the mother of your child**. Use this option if the mother is living and no one else has been granted guardianship or custody of the child.
- (b) Check box "b" if **the Respondent is the legal guardian of your child**.
- (c) Check box "c" if the Respondent is the legal custodian of your child.

#### **Paragraph 2: Jurisdiction and Venue \* CHECK ONLY ONE BOX \***

**Note:** The issue of venue in a legitimation action is very complicated. It is also very important, since the legitimation may be defective if venue is not addressed properly. Read these instructions *very carefully*. If your situation does not seem to fit any of the choices exactly, you should talk to an attorney. You may not be able to file your case in Clayton County, or you may need to make particular changes to this form.

- (a) Check box "a" if the Respondent **currently resides in Clayton County**.
- (b) Check box "b" if the Respondent is not a resident of Clayton County, but **resides in Georgia** and has **acknowledged** service of process **and consented** to the jurisdiction and venue of this Court. (You will also need to file the original signed and notarized *Acknowledgment of Service* when you file this *Petition*.) You must currently live in Clayton County to check this box.
- (c) Check box "c" if you live in Clayton County, the Respondent **does not live in Georgia** and your child resides in some other county in Georgia.
- (d) Check box "d" if you do not live in Clayton County, the Respondent **does not live in Georgia**, but your child resides in Clayton County, Georgia.
- (e) Check box "e" if you reside in Clayton County, your child resides in Georgia, but you **do not know where the Respondent lives**. You must prove to the Court that you have tried to locate the Respondent and cannot find her. **You must also file the original signed and notarized "Affidavit of Diligent Search" with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.**
- (f) Check box "f" if you do not live in Clayton County, your child resides in Clayton County, but you **do not know where the Respondent lives**. You must prove to the Court that you have tried to locate the Respondent and cannot find her. **You must also file the original signed and**

***notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.***

**Note:** In situations (e) and (f), you will have to serve the Respondent by publication. (See Paragraph 3-c, below.) That means you will not be able to get certain kinds of relief as part of the legitimation, such as child support. However, if the Respondent later acknowledges service, gets served by the sheriff, or files an *Answer* to the legitimation, then your case may not be limited by the restrictions that apply to publication cases.

***Paragraph 3: Service of Process \* CHECK ONLY ONE BOX \****

**Note:** To find out more information about Service of Process, read **Step 6** of these instructions.

(a) Check box “a” if you want the Sheriff’s Department to serve the Respondent with this *Petition* and the other court papers. You must fill in the address where the Respondent should be served, and circle whether this is a home or work address. If the Respondent lives outside of Clayton County and you want the Sheriff’s Department to serve him or her, *you must inform the Clerk’s office (when you file the case) that the other party must be served by “second original.” The clerk will then stamp the service copy of your papers as a “second original.”*

(b) Check box “b” if the Respondent has acknowledged service of process. If you check this box, you must also file the original signed and notarized *Acknowledgment of Service*.

(c) Check box “c” if you do not know where the Respondent lives and you are serving her by publication. Write the Respondent’s last known address on the lines provided. *You must also file the original signed and notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.*

***Paragraph 4: Minor Children***

On the space provided, write the number of minor children that you have together with Respondent. In the additional spaces, list the name of each child, the sex, year of birth and the parent (or other adult) with whom the child lives now. If you have more than five (5) minor children together, you should list the information for the additional children on a separate piece of paper and attach that paper to this *Petition* (between pages 2 & 3).

***Paragraph 5: Children’s Current Residence***

In the spaces provided, you must give the Court the address and county where the children live now, and the names of the adults living with them. On the last space, tell the court how long they have been at that address. **However, if the children live in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. Do not even fill in the name of the county.

***Paragraph 6: Children’s Past Residences***

You must tell the Court where the children have lived within the past five (5) years. In the spaces provided, tell the Court the dates the children lived at each address, and then list the address next to the corresponding date. **However, if the children lived in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

***Paragraph 7: Adults With Whom the Children Have Lived***

In the spaces provided, list the name of each adult with whom the children have lived during the past 5 years, and then list that person’s current address. **However, if any person on the list is living in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

**Paragraph 8: Other Court Cases About Children \* CHECK ONLY ONE BOX \***

(a) Check box “a” if you have never participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with the children, in this state or any other state.

(b) Check box “b” if you have participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with these children, in this state or another state. In the spaces provided, list the court, the case number and the date of any order concerning custody or visitation.

**Paragraph 9: Other Cases That Could Affect Custody or Visitation in This Case \* CHECK ONLY ONE BOX \***

(a) Check box “a” if you do not have any information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other legitimations, contempt actions, family violence cases, termination of parental rights, divorces, and adoptions.

(b) Check box “b” if you do have information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other legitimations, contempt actions, family violence cases, termination of parental rights, divorces, and adoptions. In the spaces provided, you must tell the Court the name of the court involved, the case number and the type of case. If you need more space for this answer, use additional paper and attach it to this *Petition* between pages 5 and 6.

**Paragraph 10: Others Claiming Custody or Visitation \* CHECK ONLY ONE BOX \***

(a) Check box “a” if you do not know of any person (other than the Respondent) who has physical custody of the children or who claims to have custody or visitation rights to the children.

(b) Check box “b” if you do know of someone (other than the Respondent) who has physical custody of the children or claims to have custody or visitation rights to the children. In the spaces provided, list the name and present address of each person involved.

**Paragraph 12: Request for Children’s Name Change**

Complete this paragraph if you are requesting the Court to change any of your children’s names. In the spaces provided, list the current name of each child whose name is to be changed. Then on the same line, after the word “to”, list the new name you would like the child to have. If you have more than five (5) minor children whose names are to be changed, you should list the information for the additional children on a separate piece of paper and attach that paper to this *Petition* (between pages 4 & 5).

**Paragraph 13: Father’s Name on Children’s Birth Certificate**

Check this paragraph if your name is not already listed as father on each child’s birth certificate and you would like your name entered as the father on the child’s birth certificate.

**Paragraph 14: Child Custody \* CHECK ONLY ONE BOX \***

**Note:** There are many ways to arrange custody of children. This form *Petition* does not try to deal with all of them, but only the two most common ones. If you want the Court to order a different custody arrangement other than (a) or (b) below, you should talk to an attorney. If you want more information about what it means to have full custody or joint legal custody, you may want to read OCGA § 19-9-6 and also talk to an attorney. Under the law, the Court must order custody in a way that fits the “best interests of the children.”

- (a) Check box “a” if you believe it would be in the children’s best interest for the Court to grant full custody (also called “sole” custody) of the children to one person (rather than sharing joint custody). If you believe you should have full custody yourself, then write “Petitioner” in the space provided. If you believe the Respondent should have full custody, then write “Respondent” in the space provided. If you believe some other person (such as a grandparent or other relative) should have custody instead of either you or the Respondent, you may still be able to use this *Petition*, but you will need to get advice from an attorney about how to do it.
- (b) Check box “b” if you believe it would be in the children’s best interest for the Court to grant joint legal custody between you and the Respondent, with one person to have primary physical custody. If you believe you should have primary physical custody yourself, then write “Petitioner” in the space provided. If you believe the Respondent should have primary physical custody, then write “Respondent” in the space provided.
- (c) Check box “c” if you want some other custody arrangement. Talk to an attorney to figure out the best way to explain what you believe is best for the children on the lines provided here.

**Paragraph 15: Child Visitation \* CHECK ONLY ONE BOX \***

**Note:** There are many ways to arrange visitation for children. This form *Petition* does not try to deal with all of them, but only the two most common ones. If you want the Court to order a different visitation arrangement other than (a) or (b) below, you should talk to an attorney. As with custody, the law requires that the Court must order visitation in a way that fits the “best interests of the children.”

- (a) Check box “a” if you believe that one of you should have reasonable visitation with the children. If you believe the Respondent should have reasonable visitation, then write the word “Respondent” on the space provided. If you believe that you should have reasonable visitation, then write the word “Petitioner” on the space provided.
- (b) Check box “b” if you believe that the Respondent’s visitation should be restricted in some way, to protect the children. Examples include: not allowing the parent to drink alcohol when the children are with her or him, not allowing the parent to drive with the children, or requiring supervision of visitation by another person. On the lines provided, explain to the Court about the restrictions you believe are necessary, and the reasons for them.

**Paragraph 16: Child Support \* CHECK ONLY ONE BOX \***

**Note:** Unlike many areas of family law, there are specific guidelines that the Court must follow when setting child support. The guidelines are found in OCGA § 19-6-15. You should read the child support guidelines in OCGA § 19-6-15, which may be found on the Internet at: <https://services.georgia.gov/dhr/cspp/do/public/SupportCalc>

- (a) Check box “a” if you are asking the Court to order the Respondent to pay child support. In the first space provided, list the Respondent’s gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe the Respondent should pay each month, based on the Georgia child support guidelines. (See note above.) If you do not know the amount of the Respondent’s income, write the word “unknown” on all three spaces.
- (b) Check box “b” if you believe that you should pay child support to the Respondent. In the first space provided, list your gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe you should pay each month, based on the Georgia child support guidelines.  
(See note above.)
- (c) Check box “c” if the Court cannot decide this issue in this legitimation action, because the Court cannot get personal jurisdiction over the Respondent. Generally, this will be because you are serving by publication, or because the Respondent has never lived in the State of Georgia. (For more information on this, see the note about service by publication in the instructions above for Paragraph 2-f.)

**Paragraph 17: Health Insurance for Children \* CHECK ONLY ONE BOX \***

- (a) Check box “a” if you want the court to order the Respondent to maintain medical, dental and hospitalization insurance for the children.
- (b) Check box “b” if you already provide health insurance for the children, and you want the Respondent to be required to reimburse you for a share of the cost each month.
- (c) Check box “c” if you are not asking the Court to decide this issue.
- (d) Check box “d” if this issue cannot be decided by the Court in this legitimation action because the Court cannot get personal jurisdiction over the Respondent. (See the instructions above for Paragraph 16-c.)

**Paragraph 18: Other Medical Expenses for Children \* CHECK ONLY ONE BOX \***

- (a) Check box “a” if you want the Respondent to be responsible for all expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (b) Check box “b” if you believe that you and the Respondent should share the expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (c) Check box “c” if you are not asking the Court to decide this issue.
- (d) Check box “d” if this issue cannot be decided by the Court in this legitimation action because the Court cannot get personal jurisdiction over the Respondent. (See the instructions above for Paragraph 16-c.)

**Paragraph 19: Life Insurance to Support Children \* CHECK ONLY ONE BOX \***

- (a) Check box “a” if the children depend on the Respondent for support, and you believe the Respondent should maintain a life insurance policy on herself for the support of the minor children. In the space provided, write the amount of insurance you believe the Respondent should maintain for the children’s benefit.
- (b) Check box “b” if you are not asking the Court to decide this issue.
- (c) Check box “c” if this issue cannot be decided by the Court in this legitimation action because the Court cannot get personal jurisdiction over the Respondent. (See the instructions above for Paragraph 16-c.)

**Final Paragraph: Request for Relief \* CHECK ONLY THE BOXES THAT APPLY \***

- (a) Check box “a” if you want the Court to grant you an order legitimating your relationship with your children.
- (b) Check box “b” if want the Court to change the names of your children. Make sure you have completed paragraph 12.
- (c) Check box “c” if you want the Court to order that your name be entered as the father on the children’s birth certificates. Make sure you have completed paragraph 13.
- (d) Check box “d” if you want the Court to order custody and visitation according to Paragraphs 14 and 15.

Make sure you have completed those paragraphs.

- (e) Check box “e” if you want the Court to order child support, health insurance, medical expenses and life insurance according to Paragraphs 16, 17, 18 and 19. Make sure you have completed those paragraphs.
- (f) Check box “f” if the Respondent did not sign an *Acknowledgment of Service* and you need to have Respondent served according to the law.
- (g) Check box “g” if you want the Court to schedule a Rule Nisi (hearing on temporary issues). Complete a *Rule Nisi* form for the Court to complete and sign. See additional information about this in **Step 7** below.
- (h) Check box “h” if you want the Court to order you and Respondent to attend a mediation session to try to resolve this matter.

(i) Check box “i” as a “back-up” to allow for any other relief the Court finds appropriate in your case. (j) Check box “j” if you want the Consent to Legitimation signed by the Respondent to be incorporated in the *Final Order for Legitimation*. Make sure that the Respondent has signed the *Consent* in front of a notary public.

**To finish filling out this Petition form**, add the date on which you are signing it, sign your name in the space provided on the last page, write your address and a daytime telephone number where the Court staff could reach you if necessary. **However, if you are living in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER. To do so would violate OCGA § 19-13-23.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. **Also, if the Respondent does not know your address and it should be kept confidential because of family violence, do not write that address here.** Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Respondent.

#### **Step 2: Complete the Verification Form**

The Verification form must be filed with the *Petition for Legitimation and Custody/Visitation*. In the caption, insert your name as the Petitioner and the Respondent’s name as the Respondent. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the Clerk’s office.** Insert your name in the space underneath the word “Verification,” which is the title of this document. In the next space, insert the title of the document you are verifying as true, which is “*Petition for Legitimation and Custody/Visitation*.” Now, before you sign this *Verification*, remember that you will be swearing under oath that the information you have provided in the *Petition for Legitimation* is true. Therefore, you should re-read the *Petition* one more time, from start to finish, to make sure it is all true. Then, take the *Petition* and this *Verification* to a notary public. (See pages 2-3 above to find out the other forms you will need to have notarized.) **Sign your name in front of the notary public** in the space provided, and check the box to indicate that you are the Petitioner. The notary must complete the rest of the *Verification* form after you sign it under oath.

#### **Step 3: Complete Other Court Documents & Copying Your Papers**

In addition to the *Petition* and the *Verification*, you must complete and file several other forms together with the *Petition* to start your legitimation case. Like the *Petition* and the *Verification*, some of these forms must also be signed by you in front of a notary public. (The forms you will need are listed on pages 2-3 of these instructions.)

After you have finished filling out all the papers you need to start your case, and all have been signed (in front of a notary when required), **make two complete sets of copies** of all the papers you are going to file. Then, separate them into three packets: (1) all the originals (for the court), (2) one set of copies for the Respondent (called the “service copy”), and (3) one set of copies for you to keep for your records.

#### **Step 4: Fees**

The court **filing fee** for a divorce action is **\$205.00**. In addition, if the Clayton County Sheriff’s Department is going to serve this action, there is a **service fee** of **\$50.00**. You should take cash or two separate money orders or cashier’s checks for these amounts with you when you take your papers to file your case. **PERSONAL CHECKS ARE NOT ACCEPTED.**

If you have a very low income, and feel that you cannot afford to pay these fees, you can ask the Court to waive the fees. To do this, you should file the *Affidavit of Indigence and Eligibility to*



*Proceed in Forma Pauperis* forms with the other papers when you file your divorce action at the Clerk's office. (See list of forms on pages 2-3 above.) A judge must sign the *Order* approving your *Affidavit*, before the filing of your case will be completed by the Clerk's office staff. If the judge signs the order of approval, both the \$205.00 filing fee and the \$50.00 service fee are waived. If the judge does not approve your *Affidavit*, you must pay the fees before your case will proceed.

If you are serving the Defendant by publication (because you do not know where she or he can be found for service), there is a **publication fee** charged by the newspaper that publishes the notice. Even if the judge approves your *Affidavit of Indigence and Eligibility to Proceed in Forma Pauperis*, you may have to pay this fee to *The Clayton News Daily Post* newspaper. Note: If the judge approves your *Affidavit of Indigence and Eligibility to Proceed in Forma Pauperis*, the Clayton News Daily may waive the publication fee. Contact the newspaper for details:

Clayton News Daily  
138 Church Street  
Jonesboro, GA 30237  
Main Office: 770-478-5753  
Classifieds: 770-471-4742

### **Step 5: Filing Your Case in Court**

After you have completed, signed (in front of a notary, where applicable), copied and sorted all your paperwork (and you have your filing and service fees ready, unless you are filing a *Affidavit of Indigence and Eligibility to Proceed in Forma Pauperis*), you are ready to file your case.

Take all 3 sets of forms (with the Court's set on top), along with your cash or money orders, to the Clayton Superior Court Clerk's office. It is located on the 1<sup>st</sup> floor of the Clayton County Courthouse (9151 Tara Blvd, Jonesboro, GA 30236).

When it is your turn, give all 3 sets to the clerk. Tell the clerk if you and your spouse have ever had any cases between you in Clayton County Superior Court, so that the case can be assigned properly. If your paperwork is in order, the clerk will keep the originals for the Court's file. The clerk will write your case number on the top page of your set of copies, stamp them with the date & time stamp, and return them to you. The last number in the case number shows you which judge has been assigned to the case. *Keep these for your records.* Your divorce case has now been filed. But, do not rush out of the Clerk's office yet. Unless you filed an *Acknowledgment of Service*, you must also arrange for service. The second set of copies will be used for service.

### **Step 6: Arranging for Service**

Service is the required formal process of notifying the Defendant that the divorce action has been filed. There are basically **three ways** for service to be completed: (1) the Defendant signs an *Acknowledgment of Service*, (2) service by the sheriff's department or other approved process server, or (3) publication.

#### **Acknowledgment of Service**

This is the easiest and least expensive method, **but only if** the Defendant is cooperative and willing to sign an acknowledgment form in front of a notary public. You cannot sign the form for the Defendant and you cannot sign as the notary witnessing the Defendant's signature. Also, it

is not good enough for the Defendant to sign without the signature being witnessed by a notary public.

The forms available include two different acknowledgment forms. Either one is valid for service. They are:

(1) The *Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case* is appropriate if you and the Defendant have reached an agreement and will be signing a *Settlement Agreement*. The reason it is best is that it includes the consent to present the case in the same form with the acknowledgment, so it saves a step later.

(2) The plain *Acknowledgment of Service* form is appropriate if you and the Defendant have not reached a complete agreement yet, but the Defendant is willing to acknowledge service. This saves the Defendant the possible embarrassment or inconvenience of being served by the deputy sheriff, but does not give up the Defendant's right to file an *Answer* and have a trial if an agreement is not reached.

To use this method of service, you need to complete the appropriate form and have the Defendant sign it in front of a notary public. Then, you file it with your other papers, as explained in **Steps 3-6** above.

### **Service by the Sheriff (“Personal Service”)**

This is the usual way for service to be completed. It is sometimes called “Personal Service,” which means that the deputy sheriff or other court-approved process server hands the papers to the Defendant in person. The forms provided do not include the special motion and order required to have a special process server appointed. Therefore, if the Defendant will not sign an acknowledgment, and you know an address where the Defendant can be served, then you should make arrangements for the Sheriff's Department to serve the papers.

**If the Defendant can be served in Clayton County**, then the Clayton County Sheriff's Department can serve the papers. You may pay the service fee at the Clerk's office when you file the case, and leave the service copy of the papers with the clerk. The clerk will forward your payment and legal documents to the Sheriff's Department for service.

➤ Make sure the service copy includes the *Sheriff's Entry of Service* form. After the Clayton sheriff's department completes service, they will send the white and yellow copies to the Clerk's office, which will then send the yellow copy to you (if you have properly filled out the form).

**If the Defendant must be served in another county or state**, then the Clayton County Sheriff's Department cannot serve the papers. **You must arrange for service directly with the sheriff's department of the proper county.** You must find out the amount of the fee, and take or send it to the proper sheriff's department, along with the service copy of the papers.

➤ Make sure the service copy includes the *Sheriff's Entry of Service* form. After the sheriff's department completes service, they will send the white and yellow copies to you (if you have properly filled out the form). When you get the white and yellow copies, you must file them with the Clayton Superior Court Clerk's office; they will return the file-stamped yellow copy to you.

### **Service by Publication**

This is the method of last resort. If you can find the Defendant, you must use one of the other two methods of service. But, it is your only choice if you do not know where the Defendant lives or works, and you cannot find out that information. You must prove to the Court that you have tried to locate the Defendant and cannot find him or her.

If you have to serve the Defendant by publication, there are special limitations on your divorce case, because the Court will not have “personal jurisdiction” over the Defendant. You will not be able to get certain kinds of relief as part of the divorce, such as child support and alimony. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will not be limited by the restrictions that apply to publications cases.

To serve by publication, you must prepare and file three forms:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication* **and**
- (3) *Order of Publication*

In the *Affidavit of Diligent Search*, you will explain to the Court about the steps you took to try to find the Defendant. You must make reasonable efforts to find the Defendant before you fill out the *Affidavit* form.

If you know you must use service by publication when you prepare your *Complaint for Divorce*, then you should prepare the three listed forms at that time. However, if you have already filed your divorce case, and have tried to complete service by a different method, you can still request the Court’s permission to serve by publication.

After you file the forms, if the Court grants permission, the Judge will sign the *Order of Publication*. You must pay the cost of publication, unless the newspaper waives the fee. Then, the *Notice of Publication* will be published in the county’s official legal newspaper (*The Clayton News Daily*) four times (usually four weeks in a row). The *Notice* gives the Defendant 60 days to file an *Answer*, if she or he wants to contest the case. Meanwhile, the Court Clerk is required to mail the *Notice of Publication* to the Defendant’s last known address (which you have provided in the *Affidavit of Diligent Search*).

However, to be on the safe side, you should also mail a set of all the papers (the “service copy”) to the last known address. Make sure you put enough postage on it, and make sure you list a return address, so the post office can return it to you if they are not able to deliver it.

After it has been published all four times, you should receive an *Affidavit of Publication* from the newspaper, stating that publication is complete. **You must bring this *Affidavit of Publication* with you to your hearing.**

**You may later find out where the Defendant lives or works (before the case is over).** If this happens, then you should arrange for the Sheriff’s Department to serve the Defendant, or for the Defendant to acknowledge service.

## **Step 7: Hearings**

After you have filed your case, and the Defendant has been properly served, you are ready for the next step: either a temporary hearing (called a *Rule Nisi*) or the final hearing.

### **Temporary Hearing (*Rule Nisi*)**

A temporary hearing is not required. However, if your case will not be ready for a final hearing (because you do not have a signed agreement and do not expect to have one soon), there may be issues that need to be decided on a temporary basis before the final hearing. In that situation, you may ask the Court to schedule a *Rule Nisi* (temporary hearing). In a divorce

without minor children, temporary issues may include alimony, living arrangements, use of an automobile, and who is responsible for certain payments while the divorce is pending.

To schedule a *Rule Nisi* (temporary hearing), you should complete the *Rule Nisi* form. If you know you want a temporary hearing when you are getting ready to file your divorce case, you can copy, sort and file the *Rule Nisi* form with your other paperwork. (See **Steps 3-6** above.) After your case has been filed with the Clerk's office, you will have to send the *Rule Nisi* (original and at least one copy) to the staff of the Judge assigned to your case. The Judge's staff will schedule a date for the *Rule Nisi* and fill out that part of the *Rule Nisi* form, and the Judge or a designated staff person will sign the *Rule Nisi*. Then, you or the Judge's staff must file the *Rule Nisi* with the Court Clerk's office and send you a copy in the mail. You must mail or personally deliver a copy of the *Rule Nisi* to the Defendant. Then you must complete and file a *Certificate of Service* form, showing the Court that the Defendant was properly served. The *Rule Nisi* form (showing when and where the temporary hearing will take place) must be served on the Defendant at least fifteen (15) days before the hearing (18 days if service is by mail).

### **Final Hearing**

**If you have a signed *Consent***, then you may arrange to have the final hearing take place any time after the Respondent was personally served (or the *Acknowledgment of Service* was filed with the Clerk). Most of the judges and other court personnel call this type of hearing an "uncontested" hearing. The judges schedule them in different ways. You should check with the staff for the Judge assigned to your case, to find out how that particular Judge schedules these hearings.

If the Respondent signed the form called: *Acknowledgment of Service, Waiver of Venue and Consent to Present Case*, then you are not required to give the Respondent notice of the date and time of the final hearing.

If the Respondent signed the other *Acknowledgment of Service* form (which does not waive the right to notice of the hearing), then you should mail a notice to the Respondent, telling the date, time and place of the final hearing. Then, you should file a *Certificate of Service* with the Superior Court Clerk's office (showing that you mailed or delivered proper notice to the Respondent).

Some judges will even finalize a legitimation action without any final hearing. This is through a process called "Judgment on the Pleadings." A Motion for Judgment on the Pleadings is available on the Clayton County website. Contact the staff in your specific judge's office to find out if the judge will grant the legitimation on the pleadings.

**If you do not have a signed *Consent***, then your final hearing may take place any time **at least 30 days** after the Respondent was personally served (or the *Acknowledgment of Service* was filed with the Clerk). If service was by publication, the hearing may take place any time **after 61 days** from the date of the first publication. The judges schedule these final hearings in different ways too. You should check with the staff for the Judge assigned to your case, and make sure you make it clear to them that there is not a signed settlement agreement.

Sometimes, the Judge's staff mails notices of the hearing date to both parties. However, to be on the safe side, you should also mail a copy of the hearing notice to the Respondent. Then, you should file a *Certificate of Service* with the Superior Court Clerk's office (showing that you mailed or delivered proper notice to the Respondent).

**Before the hearing date, whether temporary or final, you must prepare your case to be presented to the Court.** You are your main witness. You must also gather your other evidence (such as documents and photographs), and you must arrange for any other witnesses that you want to have testify at the hearing. You must also prepare the proper documents to be provided to the Judge at (or soon after) the hearing.

- For a temporary hearing, you may use *Affidavits* from witnesses, so that they do not have to testify in person. However, there are special procedures for this. See *Uniform Superior Court Rule 24.5*.
- At the final hearing, *Affidavits* are not proper evidence. Your witnesses (if any) must testify in person at the hearing.
- You should complete the Parenting Plan form, which is available on the Clayton County website.
  - If you and the mother agree on a parenting plan, complete the form according to your agreed-upon arrangement. Then you both must sign it. You can present it to the judge in your final uncontested hearing. If your judge accepts a Motion for Judgment on the Pleadings, simply submit the Parenting Plan (signed by both parties) with your Motion.
  - If your case is **contested**, then you should complete the Parenting Plan that you propose. Submit that for the judge's consideration.

You should also talk to an attorney about the hearing, to learn more about how to present your case.