

## COMPLAINT – INSTRUCTIONS

These instructions are intended to assist you in preparing, filing and serving a Complaint in the Family Part-Dissolution (Divorce) Unit. However, they are not a substitute for obtaining competent legal counsel and in many cases it is appropriate to consult with an attorney. If you choose not to retain an attorney, or cannot afford one, you may use this kit as a guide. The forms in the kit are merely samples, set up to show you how to prepare the papers. You will have to retype them, submitting your own information. We do not give out blank forms. For more information, or for other forms, look in New Jersey Family Law Practice and the New Jersey Court Rules (see “R.” references below.)

### Grounds [NJSA 2A:34-2]

In the State of New Jersey you may obtain a divorce based on a number of different grounds (reasons) such as:

1. 18-month separation
2. Extreme cruelty (mental or physical)
3. Adultery
4. Desertion

Any one of the above grounds or others, as set forth in the statutes, is sufficient cause for filing a **Complaint for Divorce**, but the Complaint could also state more than one ground, if applicable to your case. This kit provides a sample Complaint based on an 18-month separation but language for other grounds is also available.

### Preparation and filing [R. 5:4-2]

Upon completion of the Complaint (in same manner as the sample,) it can be forwarded to the court for filing. You must include a filing fee. Please call Case Reception (or Family Intake) if uncertain as to the amount of the fee. The check must be made out to the Clerk of the Superior Court. Send the original and a copy of the Complaint (**Certification of Verification and Non-Collusion and Certification of Non-Military Service** attached) with a self-addressed, stamped envelope so that the Court can return to you a copy of the filed complaint.

### Service [R. 4:4]

1. Within New Jersey [R. 4:4-3]

Within ten (10) days of receiving a copy of the filed Complaint, make a copy of it and attach it to the **Summons** (including the list of attorney referral services and legal aid offices.) The primary method of service is to have the summons and complaint served by the sheriff of the county in which the defendant resides (or by a person specifically appointed by the court for that purpose.)

The original and two copies of the summons (with a copy of the filed complaint attached to one copy of the summons) should be sent to the sheriff with the appropriate fee (check [NJ Lawyer's Directory](#) or call the Sheriff and a self-addressed, stamped envelope. Once the Complaint is served, you will receive from the Sheriff's Office a **Proof of Service**. Keep this document in a safe place as you will be required to send it to the Court with a **Request to Enter Default** (see below) as proof that the defendant was properly served. Other methods of service including acknowledgement of service (see below) are set forth in the court rules.

2. Out of State [R. 4:4-5]

A copy of the summons and complaint should be mailed by registered or certified mail, return receipt requested and, simultaneously, by ordinary mail to the defendant's dwelling or place of employment (with instructions to deliver to addressee only.) If this is ineffective, then service may be made as it is in this state but as an authorized process server for that jurisdiction. When services if made out of state, the **Affidavit of Inquiry** (sworn statement that defendant cannot be served within the state) is required [R. 4:4-5]. See below.

3. Defendant's Whereabouts Are Unknown [R. 4:4-5 (c)]

If defendant cannot be located then service may be accomplished by publication of a notice in a newspaper published in or general circulation in the county in which the action is brought. Within seven (7) days after publication, a copy of the notice and the complaint should be mailed to the defendant's residence or place where he receives mail unless such place is unknown in which case an **Affidavit of Inquiry** [R. 4:4-5(c) (2)] must be filed. The affidavit must reflect specific procedures as set forth in the court rules.

4. Acknowledgment of Service [R. 4:4-6]

As an alternative to other methods, the defendant may sign an **Acknowledgement of Service of Summons and Complaint**. Defendant's signature must in turn be acknowledged by an authorized person (notary.)

Answer and Default [R. 5:4-3/R. 4:43-1]

The defendant has thirty-five (35) days to file an **Answer** (or an Appearance) to the Complaint you have served upon him/her. If an Answer is filed within the allotted time, the matter will be scheduled for a Management Conference to be followed by an Early Settlement Panel. If the case does not settle, it will proceed to trial.

If the defendant does not file an Answer within thirty-five (35) days, you are required to file a **Request to Enter Default**. Forward this document to the Court with the original Proof of Service. You may then proceed to get your **Judgement of Divorce** by appearing before a judge at any time after the Default is entered (filed) without the other party having to be present.

Note that if there is property to be divided, or support or other relief aside from the divorce is requested, an **Application For Equitable Distribution or Other Relief** (sample available) must

be filed with the Court and mailed (certified and regular) to the defendant at least twenty (20) days before the trial. (You must call the Court and ask for a trial date and indicate that you are preparing and sending to the defendant an Application for Equitable Distribution or Other Relief.) The Application for Equitable Distribution or Other Relief must include all the relief requested and any proposal regarding distribution of property (including a list of all the property subject to distribution, the value of each item and who will retain possession of the item,) debt or support.

Disputes with Regard to Child Custody, Support of Distribution of Assets [R. 5:5 to R. 5:8]

If an answer is filed and there are unresolved issues as to custody, support of spouse or children, or distribution of property, a **Case Information Statement** must be filed (form available) by both parties, providing all the financial information requested.

**REMEMBER TO KEEP A COPY OF ALL PAPERS.**