

## Starting Divorce Proceedings

A. The Bill of Complaint. The first step in a divorce proceeding is the preparation and filing of a BILL OF COMPLAINT. The Bill of Complaint states the vital statistics of the marriage (called the jurisdictional facts) and states the conduct which forms the grounds for the divorce to be granted. It also covers certain technical matters and asks the court for anything you might want. If you and your spouse are ever “possibly” going to disagree on something (support, visitation, property division, attorneys’ fees, court costs), then you must ask the court for it in the Petition or the court cannot give it to you.

B. The Proper Place to Bring Your Suit. A Bill of Complaint for divorce can be brought in the Virginia city or county where the parties last lived as husband and wife or in the Virginia city or county where the Defendant now lives. If the Defendant has left Virginia, the suit can be brought in the Virginia city or county where the Plaintiff now lives.

C. Filing. There are some tactical advantages for the person who files first, although they are not critical enough to override other possible tactical decisions. The legal document that starts the proceeding is the Bill of Complaint. The person who files first is the Plaintiff or Complainant. The other person is the Defendant or Respondent, and that person must respond to the Bill of Complaint in a formal document known as an ANSWER. The Defendant may also want to complain that the Plaintiff was at fault or to ask for different relief to be granted. To do so the Defendant files a CROSS BILL. This is usually followed by Discovery, which can include written questions, known as Interrogatories and/or Request for Admissions, Request for Production of Documents, and/or face-to-face questions before a court reporter known as a Deposition. (Take note that attorney time and your fees are growing more quickly than you originally anticipated.)

If possible, talk to your spouse about divorce before you file. It is hard to keep open lines of communication if your spouse has been surprised by the Sheriff serving divorce papers on him or her.

D. Temporary Relief (Pendente Lite). “Pendente Lite” (pronounced Pen-den’-tay Light’-tay) is Latin for “pending the litigation”. There are things you may need for the court to order pending the final trial. The court, upon request, will set a hearing to determine the needs and the abilities of the parties and children and order support accordingly. This award is subject to rehearing at the final trial. The court in this hearing can order custody or specific visitation, issue injunctions, freeze property, grant exclusive possession of the former marital domicile and most any other things necessary to keep the situation under control on a temporary basis pending the final trial. More and more, courts are ordering the parties to mediation when children and contested custody or visitation is at issue (see mediation section).

E. Injunctions. Injunctions and Protective Orders are orders of the court that are issued to prevent harm pending further hearings. If you are afraid that your spouse will beat you, take your money out of the bank or run off with your children, then the court can enjoin or prohibit these things by issuing an injunction. In extreme cases the court will issue an injunction ex parte (without the other side present); in most cases, the court will require a hearing before

deciding on issuing the injunction. If you disobey an injunction, the court can hold you in contempt and can order jail. Even if the judge does not put you in jail, you can be made to pay the opposing party's attorneys' fees and the court will have a hard time trusting you later when you testify. Also, the court can refuse to hear anything you have to say if you are in contempt. The police will normally not get involved in problems between spouses that aren't violent, but if you show them an injunction, they will often run the other party off, and they have to act if you have a Protective Order.

A Protective Order is stronger than an Injunction, but you typically get this in Juvenile and Domestic Relations Court. You should not apply for a Protective Order unless you really need one.

Adapted from a similar work by Larry Rice and Louis W. Kershner and reprinted with the permission of the copyright holder, the American Bar Association, 1997.