



WEST VIRGINIA
DIVORCE
(without children)
LAW OUTLINE

2016



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1. Jurisdiction and Venue

a. W. Va. Code §48-5-105 and 106

i. Jurisdiction:

1. Divorce actions are filed in the County Circuit Clerk's Office and heard in the County Family Court.
2. A divorce can be filed in West Virginia as long as at least one of the following are met:
 - a. The petitioner has lived in West Virginia for the past 12 months; regardless of where the parties were married.
 - b. If the parties were married in West Virginia and at least one party currently lives in West Virginia; regardless of how long the party has lived in West Virginia.

ii. Venue:

1. The divorce can be filed in any of the following counties:
 - a. The county where both parties last cohabitated;
 - b. The county where the respondent currently resides;
 - c. If the respondent lives out of state, petitioner can file in their current county of residence.

2. Petition

- a. The divorce petition, and all other divorce pleadings, must be verified under oath and comply with **W. Va. Code §48-5-402** and the components in the West Virginia Supreme Court Petition for Divorce form.
 - i. This form can be found on the West Virginia Judiciary's website, or as a Law Help form.
- b. Elements of the Divorce Petition:
 - i. The Header should state:
 1. IN THE FAMILY COURT OF [BLANK] COUNTY, WEST VIRGINIA.

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2. The case citation should be formatted as:
 - a. IN RE: The marriage of [Petitioner's first, middle, last name] and [Respondent's first, middle, last name].
 - i. If a party does not have a middle name, the initials NMN (for no middle name) can be included in the case citation.
3. A space for the Civil Actions Number is needed and it is optional to include a space for the name of the judge assigned to the case.
 - ii. A statement of whether or not the petitioner is currently a party to a domestic violence proceeding.
 - iii. A jurisdictional statement informing the court that West Virginia has subject matter jurisdiction over the case pursuant to **W. V. Code §48-5-105**.
 - iv. A statement of venue as to why the venue is proper in the county in which the petition was filed in accordance with **W. Va. Code §48-5-106**.
 - v. A statement as to the county in which the petitioner resides.
 1. Specification as to either:
 - a. the county in West Virginia in which the respondent resides, or
 - b. that the respondent lives at an address unknown to the petitioner, or
 - c. that the respondent does not reside in West Virginia along with the respondent's last known address.
 2. If the petitioner does not know the respondent's address, an Affidavit of Unknown Residency will need to be filed and notice may need to be published.
 - vi. The county, state, and date of the party's marriage.

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- vii. The county, state, and date in which the parties last cohabitated along with a statement that the separation of the parties has been continuous and uninterrupted since that date.
 - 1. There is no statute that requires the parties to separate before a divorce petition can be filed. If the parties have not yet separated, this can be stated in the petition.
- viii. A statement indicating whether either party is or is not any of the following:
 - 1. Under the age of 18
 - 2. Currently serving on active duty with the military services of the United States
 - 3. Legally incompetent
 - 4. Currently incarcerated
- ix. A statement as to whether or not the Petitioner is requesting spousal support (or alimony).
- x. Indicate whether the parties have accumulated marital property and/or debts during the course of the marriage that the court will need to divide.
- xi. Whether petitioner wishes to resume using a previous name, such as a maiden last name, and state the name in which petitioner would like to resume using.
 - 1. Additional Documents required for a name change:
 - a. Birth Certificate
 - b. Photo ID
- xii. Grounds for divorce.
 - 1. Petitioner should state any and all grounds for which they are seeking a divorce.
 - a. Irreconcilable differences should always be listed as a ground, and is defaulted on the West Virginia Supreme Court's Petition for Divorce form.

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- xiii. Relief sought in the petition.
 - 1. The petition must list the relief that petitioner is seeking. This should include any of the following that apply:
 - a. Order that respondent pay spousal support;
 - b. That the court make a fair and equitable division of the marital property;
 - c. Whether the exclusive use and possession of the marital home be awarded to the petitioner or respondent, and the address of the marital home;
 - d. Whether the exclusive use and possession of any motor vehicles be awarded to petitioner or respondent, and a description of the vehicle;
 - e. Whether exclusive use and possession of furniture, furnishings, and appliances within the marital home be awarded to petitioner or respondent;
 - f. A description and estimated value of any other property or debt and who should be given ownership or responsibility;
 - g. A statement prohibiting the respondent from conveying or otherwise disposing of any marital property prior to the time the court divides the property;
 - h. If the petitioner wishes to change their name; a statement granting the petitioner the right to resume using the name, and specify the name the petitioner would like to resume using;
 - i. A statement prohibiting respondent from annoying, abusing, threatening, or interfering with the personal liberty and safety of the petitioner;
 - j. A description of any other relief that petitioner is seeking.

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- xiv. Verification of the pleading.
 - 1. Petitioner must sign the pleading in the presence of a notary with a statement affirming the truth of the information and the notary's information.
- xv. If an attorney is preparing the petition and is not using the West Virginia Supreme Court's form, the attorney should also sign the pleading and include their state bar ID number and contact information.

3. Grounds for Divorce

- a. Irreconcilable differences
 - i. **W. Va. Code §48-5-201**
 - ii. This is a no-fault ground for divorce where the judge will not make finding that one party is at fault.
 - iii. A divorce can only be granted under irreconcilable differences if the respondent files an answer and admits that irreconcilable differences exist.
 - iv. If both parties agree to irreconcilable differences, judges will tend to grant the divorce under this ground as the default even if there is evidence of a fault based ground for the divorce. An attorney may have to strongly advocate for a judge to find fault and grant the divorce on a fault based ground, if so desired.
- b. Voluntary Separation
 - i. **W. Va. Code §48-5-202**
 - ii. Parties must have lived separate and apart, uninterrupted, with no cohabitation for one year. The separation can be a voluntary act of one party or by mutual consent of both parties.
 - iii. If the respondent does not file an answer and does not appear in court; a witness will be needed to testify to the fact that the separation has lasted one year, uninterrupted, without cohabitation.

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- c. Cruel or inhuman treatment
 - i. **W. Va. Code §48-5-203**
 - ii. Cruel and inhuman treatment includes; but is not limited to;
 - 1. Reasonable apprehension of bodily harm;
 - 2. False accusation of adultery or homosexuality; or
 - 3. Conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable.
 - 4. It is not necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce.
 - 5. If the respondent does not file an answer and does not appear in court, a witness will be needed to testify to facts establishing cruel and inhuman treatment.
- d. Adultery
 - i. **W. Va. Code §48-5-204**
 - ii. Adultery is the voluntary sexual intercourse of a married man or woman with a person other than the offender's wife or husband. The burden is on the party seeking the divorce to prove the alleged adultery by clear and convincing evidence.
 - iii. A witness will likely be necessary to prove adultery if the respondent denies the claim.
 - 1. However, to reach the burden of proof threshold, most courts will require more concrete evidence witness testimony unless the opposing party was caught in the act of committing adultery.

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- e. Conviction of a crime
 - i. **W. Va. Code §48-5-205**
 - ii. A divorce may be ordered when either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime that is a felony, and the conviction is final.
- f. Permanent and incurable insanity
 - i. **W. Va. Code §48-5-206**
 - ii. A divorce may be ordered for permanent and incurable insanity, only if the person is permanently and incurably insane; and
 - 1. has been confined in a mental hospital or other similar institution;
 - 2. for a period of not less than three consecutive years preceding the filing of the petition; and
 - 3. the court has heard competent medical testimony that such insanity is permanently incurable.
 - iii. A court granting a divorce on this grounds may in its discretion order support and maintenance for the permanently incurably insane party by the other.
- g. Habitual drunkenness or drug addiction
 - i. **W. Va. Code §48-5-207**
 - ii. A divorce may be ordered for habitual drunkenness or drug addiction of either party subsequent to the marriage.
 - iii. A witness or other evidence may be necessary in order to have a divorce granted on this ground.
- h. Desertion
 - i. **W. Va. Code §48-5-208**
 - ii. A divorce may be ordered to the party abandoned, when either party willfully abandons or deserts the other for six months.
 - iii. The petitioner will most likely need a witness at the hearing to testify to the facts of desertion if the respondent does not file and answer or appear in court.

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4. Answer to the Divorce Petition

- a. The answer to the divorce petition, and all other divorce pleadings, must be verified under oath and comply with the components in the West Virginia Supreme Court's Answer to Petition for Divorce form.
 - i. This form can be found on the West Virginia Judiciary's website, or as a Law Help form.
- b. Elements to an Answer to Divorce Petition:
 - i. The Header should state:
 1. IN THE FAMILY COURT OF [BLANK] COUNTY, WEST VIRGINIA.
 2. The case citation should be formatted as:
 3. IN RE: The marriage of [Petitioner's first, middle, last name] and [Respondent's first, middle, last name].
 - a. If a party does not have a middle name, the initials NMN (for-no middle name) can be included in the case citation.
 4. A space for the Civil Actions Number is needed and it is optional to include a space for the name of the judge assigned to the case.
 - ii. A statement of whether or not the petitioner is currently a party to a domestic violence proceeding.
 - iii. A statement that the respondent admits that irreconcilable differences exist between the parties.
 1. This is a default statement on the West Virginia Supreme Court's form.
 - iv. A statement as to the allegations in the Petition that are admitted and which allegations are denied.
 1. On the Supreme court form, the respondent needs only to list the matters of the petition in which the respondent denies with the corresponding item number.
 - v. Relief sought in the answer.

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1. The answer must list the relief that respondent is seeking.
This should include any of the following that apply:
 - a. Order that petitioner pay spousal support;
 - b. That the court make a fair and equitable division of the marital property;
 - c. Whether the exclusive use and possession of the marital home be awarded to the petitioner or respondent, and the address of the marital home;
 - d. Whether the exclusive use and possession of any motor vehicles be awarded to petitioner or respondent, and a description of the vehicle;
 - e. Whether exclusive use and possession of furniture, furnishings, and appliances within the marital home be awarded to petitioner or respondent;
 - f. A description and estimated value of any other property or debt and who should be given ownership or responsibility;
 - g. A statement prohibiting the petitioner from conveying or otherwise disposing of any marital property prior to the time the court divides the property;
 - h. If the respondent wishes to change their name; a statement granting the petitioner the right to resume using the name, and specify the name the petitioner would like to resume using;
 - i. Additional Documents required for a name change:
 1. Birth certificate
 2. Photo ID
 - i. A statement prohibiting petitioner from annoying, abusing, threatening, or interfering with the personal liberty and safety of the respondent;

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- j. A description of any other relief that respondent is seeking;
- vi. The Answer to the Divorce Petition can contain a counterclaim for divorce if the respondent has grounds for divorce that they would like to pursue.
 - 1. The West Virginia Supreme Court's form does not include a space for a counter claim, but additional pages may be added if necessary.
- vii. Verification of the pleading.
 - 1. Petitioner must sign the pleading in the presence of a notary with a statement affirming the truth of the information and the notary's information.
- viii. If an attorney is preparing the petition and is not using the West Virginia Supreme Court's form, the attorney should also sign the pleading and include their state bar ID number and contact information.

5. Documents for Filing

- a. Summons (Petitioner)
 - i. Must information Respondent of whom to serve with an Answer and number of days following service that respondent has to file the answer.
- b. Civil Case Information Sheet for Domestic Relations Cases
 - i. A West Virginia Supreme Court form that is required to be filed in all domestic relations cases.
 - ii. There is a separate form for petitioners and respondents.
 - iii. When completing the form, be sure to provide a mailing address if the party's mailing address is different than their physical address.
 - iv. Forms can be found on the West Virginia Judiciary's website and as Law Help forms.
- c. Petition for Divorce or Answer to Divorce Petition

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- d. Financial Statement
 - i. The financial statement is a West Virginia Supreme Court form that must be completed in every divorce and must be filed with the petition or answer and served on the opposing party.
 - ii. Full financial disclosure by both parties to the divorce is required. All assets and debts must be disclosed to the court and opposing party.
 - iii. Income documentation must be filed with the financial statement. This includes, pay check stubs, benefits awards letters (for SNAP, TANF, social security benefits, etc.), and any other income the party receives.
 - iv. The West Virginia Supreme Court form includes a verification and certificate of service on this form.
 - 1. Even though service of this form is required, there are some county circuit clerk's office who will not serve the financial statement on opposing parties unless the party, or attorney, specifically asks for the document.
 - v. If any information provided in the initial financial statement changes, the party is required to provide the court and the opposing party with the updated information at least five days prior to any hearing.
 - vi. This form is available on the West Virginia Judiciary's website and as a Law Help form.
- e. Vital Statistic's Form
 - i. The Vital Statistic's form is a West Virginia Supreme Court form required in all divorce cases.
 - ii. This form is used to notify the Division of Vital Statistics that the parties are divorced. After the final divorce decree is signed by the judge and entered, the clerk inserts the date of the decree on the form and sends it to the Vital Statistic's Department.

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- iii. This form is available on the West Virginia Judiciary's website and as a Law Help form.
- f. Bureau for Child Support Enforcement income withholding form
 - i. This form is required anytime spousal support is sought and may be ordered.
 - ii. Spousal support is withheld by automatic income withholding through the Bureau for Child Support Enforcement.
 - iii. This form is available on the West Virginia Judiciary's website and as a Law Help form.
- g. Motion for Temporary Relief
 - i. A Motion for Temporary Relief specifies the relief the party is seeking on a temporary basis until the final divorce hearing.
 - ii. The party does not have to request the same relief in the petition or answer and in the motion for temporary relief, but will typically be very similar to the permanent relief requested.
 - iii. Since this is a pleading, it must be verified by the party in the presence of a notary and contain the notary's signature and stamp.
 - iv. This form is available on the West Virginia Judiciary's website.
- h. Fee Waiver

6. Filing and Serving Divorce Pleadings

- a. Where to File:
 - i. The case will be filed in the county in which venue is determined.
 - ii. If the Respondent lives in West Virginia, the petitioner can file in either:
 - 1. The county in which the Respondent resides; or
 - 2. The county in which the parties last lived together.
 - iii. If the respondent does not live in West Virginia, the petitioner can file in either:
 - 1. The county in which the petitioner lives; or
 - 2. The county in which the parties last lived together.

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- iv. All pleadings will be filed in the County Circuit Clerk's Office.
- b. How to Serve:
 - i. Service of divorce pleadings must comply with **West Virginia Rules of Civil Procedure—Rule 4**.
 - ii. The most common ways to serve pleadings are:
 - 1. Personal service through a process server.
 - 2. Certified Mail, return receipt requested, restricted delivery to the recipient.
 - iii. Service by Publication:
 - 1. If the petitioner does not know the respondent's address, and has used due diligence to locate the address, an Affidavit of Unknown residency can be filed.
 - 2. Along with the affidavit, an Order of Publication will need to be filed.
 - 3. Once the clerk has signed the Order of Publication, notice of the proceedings can be published in the local newspaper of the respondent's last known residency.
 - 4. This serves as constructive notice under the **West Virginia Rules of Civil Procedure—Rule 4(e)(1)**.

7. Equitable Distribution

- a. **W. Va. Code §48-7-101-112**
- b. What property is divided?
 - i. The Court will divide all marital property.
 - 1. Marital property is real property, vehicles, firearms, furniture, appliances, possessions, savings, and retirement funds that the parties accumulated during the course of the marriage.
 - 2. It also includes items the parties paid for during the marriage.
 - ii. Gifts and inheritances or bequeaths that were given to one party is not considered marital property and is the separate property of the party to whom it was given.
 - 1. Separate property is not divided.

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- a. Separate property also includes any property that a party had before the marriage.
- c. How is the property divided?
 - i. The court must determine the value of the marital property as of the date of separation pursuant to **W. Va. Code §48-7-104**.
 - ii. Property is divided equitably, or evenly, between the parties, unless there is a good reason for one party to receive more or less than half.
 - iii. One party can “buy out” the other party’s half of a particular item, such as a house, by allowing the other party to have more of other types of property or more of a retirement fund.
 - iv. The court can also order that property be sold and proceeds be divided after any debt on the property is paid.
 1. This can happen when an agreement cannot be made as to the marital home.
 2. The court can make the decision and order that the home be sold while allowing one party to remain in possession until the sale.
- d. What happens to any debt?
 - i. Debt is divided as part of the equitable distribution of property.
 1. A party who receives a higher value of property may also have a higher amount of debt associated with the property, which evens out the distribution.
 - ii. It is important to be aware of the debt associated with a piece of property that a party wants to receive in the divorce and evaluate the means by which the party will be able to pay that debt.
 - iii. If one party paid marital debts after the parties separated, the party paying the debt can ask that the other party reimburse half of the amount.
- e. What happens if everything is titled in only one party’s name?

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- i. If the property is marital property, it is irrelevant in whose name the property is titled, it will still be subject to equitable distribution.
 1. The court can order that the property title be transferred into the other party's name in order to achieve equitable distribution.
 - ii. If a party fails to abide by a court order to transfer title, a Petition for Contempt can be filed and the court can compel the party to transfer title.
- f. How are retirement funds and 401Ks divided?
- i. If a party is awarded a portion of the opposing party's retirement or other 401K or pension plan, a Qualified Domestic Relations Order (QDRO) will need to be drafted and filed.
 - ii. A QDRO instructs the manager of the fund being separated as to how the funds are to be separated and to whom the funds should be paid.
 - iii. The QDRO will be submitted to the judge for signature and then to the fund manager.
 - iv. The complexity of the QDRO depends on the way the fund is to be distributed and the specifications of the entity who manages the fund. Always consult with the fund manager as to what is required for a valid QDRO.
 1. Some managing entities have much more in-depth and complicated requirements while others only need basic identifying information and dates as to when the parties married and separated.
 - v. Parties can "intelligently and knowingly" waive their right to the portion of the opposing party's retirement funds that they are entitled to.

8. Settlement

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- a. Anytime there is marital property that must be divided between the parties, parties should try to reach an agreement as to the division.
- b. Family Courts in some counties are hesitant to hold a final hearing until parties hold a settlement conference or negotiations and attempt to come to an agreement.
 - i. This is especially true when both parties are represented by an attorney.
- c. It is preferred that parties come to an agreement rather than have a judge decide and both parties walk away unhappy.
- d. All marital property must be divided.
 - i. This includes real estate, interests in property (such as mineral rights), vehicles, furniture, appliances, televisions, and retirement accounts.
- e. Spousal support often plays a part in division of property as a way to even out the balance.
- f. In some counties, pro se litigants are given a “property agreement” form when they receive the divorce packet of forms.
 - i. Some counties require that each party submit this form so the judge knows which property each party wants in the distribution.
- g. Judges will typically accept a property distribution agreement between the parties after testimony from the parties that they agree to the division and that they believe such division is fair to both parties and that they were not coerced into making the agreement.
- h. The property a party was awarded in a temporary hearing is not necessarily what the party will be awarded at the final hearing.

9. Discovery

- a. Parties are entitled to Discovery under the **West Virginia Rules of Civil Procedure—Rules 26-37** in accordance with the **West Virginia Rules of Practice Procedure for Family Court—Rule 12**.
- b. A party wishing to engage in discovery in a divorce case should Motion for Leave to Conduct Discovery along with an Order granting

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- leave to conduct discovery. The order should contain a space for the judge to insert by which date discovery is to completed.
- c. Discovery available includes; interrogatories, production of documents; entry upon land; depositions; requests for admissions.
 - d. Discovery in divorce cases is admitted into evidence in the same way discovery in any other civil case is admitted.
 - e. Parties have 30 days to respond to discovery requests.
 - f. The party responding to a discovery request has an obligation to update or supplement previously given information if that information changes.
 - g. Failure to cooperate with discovery requests can lead to sanctions in accordance with **Rule 37** of the **West Virginia Rules of Civil Procedure**.

10. Divorce Hearings

- a. Temporary Hearing
 - i. **West Virginia Rules of Practice and Procedure of Family Court—Rule 14**
 - 1. Most divorce actions will be set for a temporary hearing after allowing the respondent sufficient time to answer the petition for divorce.
 - 2. A party requesting temporary relief must file A Motion for Temporary Relief at least 10 days prior to the scheduled hearing.
 - ii. **West Virginia Rules of Practice and Procedure for Family Court—Rule 15**
 - 1. The court will order temporary relief, which can include possession of the marital home, vehicles, other marital property, a protection order, and possible spousal support.
 - 2. The temporary order will remain in place until the final divorce order.
 - 3. A temporary order is not subject to appeal.

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- iii. **West Virginia Rules of Practice and Procedure for Family Court—Rule 16**
 - 1. Parties will be put under oath and the presentation of evidence in a temporary hearing will be done by proffer of the parties present, or by counsel for the party.
 - 2. The court can limit the time allowed for temporary hearings.
- b. Final Hearing
 - i. **The West Virginia Rules of Evidence, Rules of Civil Procedure, and Rules of Practice and Procedure for Family Court** apply to final divorce hearings.
 - ii. Witnesses can be subpoenaed and called.
 - iii. Final divorce hearings cannot be conducted entirely by the presentation of evidence by proffer, however, judges generally will allow counsel for a party to recite a property agreement between the parties into the record before inquiring of the parties to their agreement and belief of fairness of the agreement.
 - iv. Scheduled hearing can be continued with a Motion to Continue and good cause shown as to why the continuance is requested.
 - 1. An Order granting the continuance should be submitted when the motion is filed for the convenience of the judge.
 - v. Parties or witnesses may appear by phone or video conference with written request and permission of the court.
 - 1. This can be done if attending the hearing would cause a financial hardship or is necessary due to a physical disability of the party requesting the accommodation.
 - vi. At the end of the hearing, the judge will typically make findings of facts, conclusions of law, and issue the ruling of the court.
 - 1. Most often, the judge will assign counsel to prepare an order and submit it to opposing party or opposing counsel before signing the order.

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2. In some instances where there is an attorney involved in the case, a judge will take the evidence under advisement and issue a ruling and order themselves and send it to the parties or counsel of record.
3. The judge will always write the order when both parties are pro se.
- vii. The court has the discretion to limit the duration of the hearing. However, some hearings may take place over multiple days.
- viii. Absent good cause, a final hearing is to take place within 220 days of the filing of the divorce petition.

11. Divorce Order/Decree

- a. **West Virginia Rules of Practice and Procedure for Family Court—Rule 22.**
- b. On most occasions when an attorney is involved in the case, the judge will assign an attorney to prepare the order.
- c. The prepared order will then be sent to either the opposing counsel to review and sign, or to the opposing party by a **Rule 22(b)** of the **West Virginia Rules of Practice and Procedure for Family Court**.
 - i. A “**Rule 22(b)**” gives the opposing party 5 days to review the order and make objections.
 1. If no objections are made, the judge is to sign the order within 10 days and have the order entered and issued to parties or counsel of record.
- d. The divorce order should include the same heading as all the pleadings, along with whether parties were present, counsel for parties, the name of the presiding judge, findings of fact, conclusions of law, evidence presented, and the order of the court.
- e. Divorce orders written by an attorney are to be delivered to the court within 10 days of the final hearing pursuant to Rule 22(b) of the **West Virginia Rules of Practice and Procedure of Family Court**.

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- f. The final order must contain language that explicitly informs the party that:
 - i. It is a final order;
 - ii. Parties can appeal to either the circuit court or directly to the WV Supreme Court;
 - iii. Parties have 30 days to appeal to the circuit court;
 - iv. To appeal directly to the supreme court, parties must file jointly or separately a notice of intent to appeal and waiver of right to appeal to the circuit court.
- g. Attorneys can be sanctioned for failing to prepare an order in a timely manner, or otherwise failing to comply with the provisions of **Rule 22**.

12. Post Hearing

- a. Modification
 - i. If either party wishes to modify the court order after the final order has been signed, the party can file a Motion to Modify the Court Order.
 - ii. There is a West Virginia Supreme Court form for modification.
 - 1. This form is available on the West Virginia Judiciary's website and as a Law Help form.
 - iii. In a divorce situation where there are no minor children, the main matter that a party requests to modify is spousal support.
 - 1. The request can be for an increase, decrease, or end of spousal support.
 - iv. The party seeking the Modification will need to justify the modification.
 - v. The Modification Petition must be signed and verified in the presence of a notary and served upon the opposing party.
 - vi. A copy of the order that the party is seeking to modify must accompany the Petition for Modification.

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vii. Example:

1. If a party's income significantly increases or decreases, a modification may be warranted.
2. If the party receiving spousal support remarries and remarriage is a condition upon which spousal support should cease, a modification is in order.
3. The court will not modify an order unless a party seeks a modification.

b. Contempt

- i. If one party has failed to abide by the final divorce order, the other party can file a Petition for Contempt.
- ii. The party seeking contempt must justify the reason for the contempt and has the burden of proof.
- iii. Any documentation supporting the contempt should be attached to the petition.
- iv. The contempt must be signed and verified in the presence of a notary and served upon the opposing party.
- v. A copy of the order under which the party is seeking contempt must accompany the Petition for Contempt.
 1. This form is available on the West Virginia Judiciary's website and as a Law Help form.
- vi. Contempt Hearings:
 1. There is not always a hearing on the Petition for Contempt.
 2. If the judge determines that there is not enough evidence to support the contempt or that the petition was not completed correctly, the judge can dismiss the contempt.
 3. If the judge finds that there is enough evidence for a hearing on the contempt, a notice of contempt hearing/rule to show cause will be issued and both parties will be served with the notice and the party allegedly in contempt will also be served with the petition.

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c. Reconsideration

- i. A party may file a Motion for Reconsideration under **W. Va. Code §51-2A-10** if and one of the following conditions exist:
 1. Mistake, inadvertence, surprise, excusable neglect or unavoidable cause; or
 2. Newly discovered evidence which by due diligence could not have been available at the time the matter was submitted to the court for decision; or
 3. Fraud, misrepresentation or other misconduct of an adverse party; or
 4. Clerical or other technical deficiencies contained in the order; or
 5. Any other reason justifying relief from the operation of the order.
- ii. The Motion for Reconsideration must be filed with the clerk of the circuit court within a reasonable time and not more than a year after the order was entered and served on the other party.
- iii. The family court must issue an order ruling on the motion within thirty days of filing.
- iv. A Motion for Reconsideration DOES NOT stop the amount of time in which a party must file an appeal of the final order.
 1. The Motion for Reconsideration and the Petition to Appeal should be filed simultaneously if an appeal is also being considered.

d. Appeal

- i. Parties have a right to appeal a final divorce order.
 1. Temporary orders cannot be appealed.
- ii. A Petition for Appeal from the Family Court must be filed with the Circuit Clerk within 30 days of entry of the final divorce order. The final divorce order must contain language notifying parties of their right to appeal.

WEST VIRGINIA DIVORCE (without children) LAW TRAINING OUTLINE

- iii. In order to appeal directly to the West Virginia Supreme Court of Appeals both parties must file, within fourteen days after entry of the Final Order, a joint notice of intent to appeal and waiver of right to appeal to the Circuit Court.

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13. Timeline

Jurisdiction and Venue

- A petition for divorce can be filed in West Virginia if the party seeking divorce has lived in WV for at least one year, regardless of where the parties were married; or if the parties were married in WV and at least one party currently resides in WV, regardless of how long the party has live in WV.
- The divorce can be filed in either: the county where the respondent resides; or the county in which the parties last lived together; or the county in which the petitioner resides if the respondent does not live in WV.

Grounds for Divorce

- Irreconcilable differences
- Voluntary separation
- Cruel or inhuman treatment
- Adultery
- Conviction of a crime
- Permanent and incurable insanity
- Habitual drunkenness or drug abuse
- Desertion

Documents to File

- Summons (if petitioner)
- Civil case information statement
- Petition for or Answer to Divorce
- Financial Statement and supporting documentation
- Vital Statistic's form
- Bureau for Child Support Enforcement Income Withholding form
 - In any case where spousal support is requested
- Fee Waiver
- Certificate of Service

Filing and Serving Divorce Pleadings

- File in the County Circuit Clerk's office of the proper court as determined by jurisdiction and venue rules.
- Serve Summons, petition or answer, and financial statement on opposing party either by personal service through the county sheriff or a process server, or by certified mail, restricted delivery, return receipt requested, or by publication if respondent's address is unknown.

Post-Hearing Remedies

- Modification: Asking the court to change a part of the order.
- Contempt: Asking the court to hold one party in contempt for not complying with the court order.
- Reconsideration: Asking the family court to reconsider a decision. There are limited instances where a party can request reconsideration.
- Appeal: Appealing the decision of the Family Court to the Circuit Court or Supreme Court. There are strict time limits to appeal a final divorce order.

WEST VIRGINIA DIVORCE (without children) LAW TRAINING OUTLINE

14. Case Scenarios

a. Case Scenario #1

- i. Jim and Amy have both decided they want to get a divorce.
- ii. They separated three months ago.
- iii. They do not have minor children, but do have various marital property that will need to be divided.
- iv. Amy has decided to be the one to file for the divorce.
- v. Amy lives in Clay County, in the marital home, while Jim lives in Kanawha County. They last lived together in Clay County and were married in Cabell County.
- vi. Jim worked the entire 20 years of the marriage, while Amy took care of the home and now adult children.
- vii. Amy only worked part time off and on and does not have any retirement account.
- viii. Jim has a considerable retirement fund.
- ix. Amy has filed for divorce through her attorney, Jim has been served, and has come to you for counsel.
- x. Amy has requested spousal support.

b. Response

- i. Get copies of all paperwork Jim has been served with.
- ii. Determine that the divorce action was filed in a proper county.
 1. It could have been filed in Kanawha County, since that is where Jim, the respondent, resides, or in Clay County, since that is where the parties last cohabitated.
- iii. Since both parties agree to the divorce, the grounds will be irreconcilable differences.
 1. If Amy has listed another ground that Jim disagree with, the Answer will need to deny that ground.
- iv. It will be in the parties best interest to try to agree on property distribution and be able to submit an settlement agreement to the court.

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- v. Spousal support is a possibility since Amy likely does not have as much earning potential as Jim.
 - vi. Amy is entitled to one half of Jim's retirement that was accumulated between the date of marriage and date of separation. This can be used to off-set if Amy keeps the house, in order to ensure property is equally distributed.
- c. Case Scenario #2
- i. Laurie and Tommy have been married for ten years and have been separate for almost two years. Tommy packed his clothes and personal possessions and moved out one day and Laurie hasn't heard from him since.
 - ii. They were married and lived in Jackson County WV, and Laurie still lives in Jackson County.
 - iii. Laurie has met someone new and would like to get a divorce so she can remarry.
 - iv. Laurie and Tommy never owned a house together and each had a car titled in their name. Tommy took his vehicle when he left and Laurie has since sold hers and gotten a new vehicle.
 - v. Laurie does not know where to find Tommy. She thinks he moved out of state but has not been able to locate him using social media or internet search engines.
 - vi. The parties do not have children. Both parties worked during the marriage and had similar incomes.
 - vii. Laurie comes to you to begin the divorce process.
- d. Response
- i. If the attorney cannot find a location for Tommy after a due diligence search, Laurie will need to file and Affidavit of Unknown Residency and have the notice published in the local newspaper in Jackson County.
 - ii. The divorce action can be filed in Jackson County, WV.

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- iii. Since there is no property, the divorce may be able to be finalized in one hearing, so long as the court determines that the constructive service is valid and has been done properly.
- iv. The grounds for divorce will be both irreconcilable differences and voluntary separation.
 - 1. If Tommy does not respond to agree to irreconcilable differences, Laurie will need a witness to testify to the fact that the parties have lived separate and apart continuously and uninterrupted for a period of at least one year.
- v. Unless Tommy responds to the petition and makes a claim for any property, the court will likely determine that there is no marital property in need of distribution.
- vi. Since both parties worked with nearly equal income, even though they would both be entitled to one half of the retirement funds of the other party, these funds will likely be equal and the court can rule that each party is entitled to their own.
 - 1. The parties can also waive their right to their portion of the opposing party's fund.
- vii. Be sure to advise Laurie that she cannot remarry until after the final divorce order is signed and entered.
 - 1. She is not legally divorced until the order is signed.