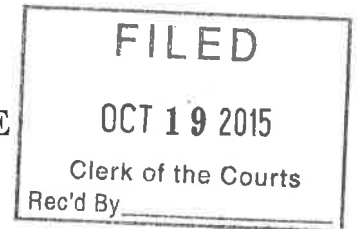


**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**



**IN RE: PETITION OF THE ACCESS TO JUSTICE COMMISSION FOR
THE ADOPTION OF UNIVERSALLY ACCEPTABLE AND LEGALLY
SUFFICIENT FORMS AND INSTRUCTIONS**

No ADM2015-01485

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, William L. Harbison; Chair of its Access to Justice Committee, John Farringer; Family Law Section Executive Council; General Counsel, Paul Ney; and Executive Director, Allan F. Ramsaur, recommends that the Tennessee Supreme Court approve the Supreme Court Access to Justice Commission’s proposed plain language forms and instructions for use in uncontested divorces between parties with minor children, with consideration for the attached proposed edits to those forms and instructions.

BACKGROUND

This comment is in response to the petition and proposed forms and instructions, pursuant to Tennessee Supreme Court Rule 52, filed by the Tennessee Supreme Court Access to Justice Commission (“the Commission”) on August 7,

2015. The Tennessee Supreme Court issued an order on August 18, 2015 soliciting written comments concerning the petition, with a submission deadline of Monday, October 19, 2015.

The TBA has a long and consistent history of supporting pro bono service, resources for self-represented litigants and other access to justice initiatives, including proposed forms very similar to those currently under consideration. As further detailed in the comment filed in this Honorable Court, the TBA consistently has supported the implementation of universally acceptable and legally sufficient forms for use by self-represented litigants.

In September and October 2015, the TBA House of Delegates and Board of Governors considered the Commission's proposed forms and instructions, with input and recommendations from both the TBA Access to Justice Committee and the TBA Family Law Section. The TBA Board of Governors is the body with the ultimate authority to speak for the Association. After thorough deliberation and with consideration of the issues and concerns raised by the House of Delegates, the TBA Board of Governors firmly supports the adoption of the proposed forms and instructions.

The TBA considered the Commission's petition, which indicates that the forms advance the Commission's goal of developing "additional resources for low-income Tennesseans who must navigate the court system without the benefit of

counsel.” The Commission indicated that its Self-Represented Litigants Advisory Committee developed the plain-language forms, with input from “judges, court clerks, state & local bar associations, individual attorneys, legal aid organizations, and other stakeholders.”

The proposed forms and instructions are for use by low-income individuals, meeting a set of very specific requirements, in uncontested divorces with minor children. The Commission’s proposal is consistent with goals set out in its 2014 Strategic Plan. Specifically, the Commission has articulated a goal to continue to develop and monitor the use of plain-language forms, particularly focused on the area of family law, while also continuing to pursue a multi-faceted approach to the issue of lack of meaningful access to justice by so many in our state. These goals follow accomplishments from the Commission’s previous strategic plan (2012 – 2014), which included developing and recommending plain-language forms and instructions, producing and promoting educational videos for self-represented litigants, working with the General Sessions Judges Conference to increase attorney involvement in limited-scope representation initiatives and creating and disseminating a General Sessions pro se bench book and guidelines.

THERE IS A NEED FOR RESOURCES AND MATERIALS FOR
SELF –REPRESENTED LITIGANTS IN TENNESSEE

The TBA recognizes the crisis that exists in our state due to the inability of so many to access our civil justice system. Significant numbers of Tennesseans are attempting to represent themselves using improper and/or inadequate forms; are acting on the advice of people not licensed as lawyers in Tennessee; are being taken advantage of financially; and are creating considerable time and ethical dilemmas for our Courts.

There is a great need for forms like these for low-income individuals. While many will financially qualify for assistance from legal aid, representation is not available in many types of cases. The reality is more than 1.2 million Tennesseans have no resources to hire a paid attorney, so they are going it alone. These forms and instructions provide a starting point and a better option.

The proposed forms are intended for a limited class of litigants who are, by definition, low-wealth. The filings in these cases are by individuals who have agreed to the terms of the divorce and have very little property (retirement accounts, etc.) and very low assets. These are also cases without high intensity or conflict. There are existing forms for individuals meeting these requirements without minor children; these proposed forms expand support for those in need who are also parents.

Some attorneys have suggested that there are “plenty of places to get free legal assistance” in our state. The data shows, however, that this is simply not true. Legal aid groups are pushed beyond their limits and many have constraints on the types of divorce cases that are even eligible to be considered. Many otherwise eligible clients are turned away without options for support because of capacity issues. These forms, therefore, will meet a need in the community.

THE PROPOSED FORMS AND INSTRUCTIONS ARE
A VALUABLE RESOURCE

The Commission’s Self-Represented Litigants Advisory Committee’s work on these forms starts from the premise that there are many unrepresented individuals pursuing uncontested divorces without the ability to secure any meaningful legal assistance. The proposed forms and instructions were painstakingly developed, over many years, with input from a diverse group of attorneys, courts, paralegals, bar associations and plain-language experts. The group focused on accurately representing the substance of the law while also ensuring ease of use, readability and clear and helpful instructions.

Beyond the explicit need for unrepresented litigants to have some starting point when filing for divorce in these limited circumstances, an opportunity also exists to use the forms in pro bono and educational settings to empower clients. The instructions include educational information about the process for getting an agreed divorce including what to expect before and during a court hearing and other frequently asked questions. The instructions also include resources for those who determine that they do need a lawyer or need other support, such as for domestic violence situations. Finally, the forms provide the opportunity for pro bono review by attorneys, who can also alert clients to situations where they DO need to retain legal representation.

In addition to providing tangible, life-changing support for low-income self-represented litigants, the proposed forms would be available for use (and adaptation) by Tennessee attorneys. While their use would not be required, the forms and instructions could be helpful to new lawyers or those seeking to expand practice into family law. Some have noted that forms are a tool to help structure and complete routine legal work faster and make more effective use of paralegals. Forms represent a significant trend in the legal profession, and it is critical that attorneys determine how to survive and even profit from their proliferation.

Some attorneys have expressed a concern that judges will spend more time on the cases involving litigants using these forms, while others point out that uniform forms and instructions are better than the alternative, which is individuals going it completely alone in court. Ideally, every litigant in Tennessee would be able to hire and pay for a skilled attorney to guide them successfully through their case, but that is not – and likely never will be – the reality for thousands of low-income individuals and families.

THE PROPOSED FORMS AND INSTRUCTIONS WOULD BE
IMPROVED BY SOME SPECIFIC EDITS

The TBA notes that overall, the Commission’s Self-Represented Litigants Advisory Committee did an excellent job in developing the forms and instructions and they deserve full accolades. This comment is not intended to discount any of the committee’s work, but only to express specific concerns raised by the Family Law Section about some of the language in the forms and instructions. (*Suggested edits to Instructions attached, Exhibit B. Suggested edits to Forms attached, Exhibit C.*)

The “Final Decree of Divorce” form raised the most concern; specifically, the concern is that not requiring the parties to appear in court could allow falsification of information on the forms or control of the forms by one spouse

without the involvement of the other spouse, which ultimately could result in an arrangement or agreement that was not in a child's best interest. The TBA proposal is to add language to the "Final Decree of Divorce" form that would ultimately have the court affirming that the parties have met all statutory requirements.

Beyond this concern, the TBA finds that all of the suggested attached edits make the forms and instructions stronger and avoids some of the confusion regarding the final decree of divorce.

**THE PROPOSED FORMS AND INSTRUCTIONS ARE APPROPRIATELY
TARGETED TO A LIMITED GROUP OF LITIGANTS**

As noted above, the TBA recognizes that it is absolutely preferable for all individuals to have the assistance of a qualified attorney for these cases. Unfortunately, that is frequently not an option for the litigants eligible to use these proposed forms. The form instructions emphasize who is eligible to use the forms and encourage litigants to talk to a lawyer if anything is unclear. Those eligible to use the forms must not own any buildings, land, businesses or have retirement benefits; there must be agreement on alimony, child support and division of any property; and there must be an agreed Parenting Plan.

The TBA has long been a leader in the access to justice community, carefully considering projects and initiatives from other jurisdictions and creating innovations that now serve as examples across the country. Uniform forms are simply one part of the overall pursuit of access to justice, and none of the work is intended to diminish the population of paying clients seeking legal assistance in our state.

Uniform forms are a stated priority of the Commission and, after careful consideration, the Tennessee Supreme Court already has adopted eight divorce forms and six general sessions forms proposed by the Commission and intended to help meet the challenge of self-represented litigants. Judges and court staff are constantly grappling with how best to face this challenge, so another likely benefit to the use of forms by self-represented litigants includes less delay and more consistency in courtroom proceedings.

CONCLUSION

For the foregoing reasons, the TBA recommends the approval of the Tennessee Supreme Court's Access To Justice Commission's proposed forms and instructions for use in uncontested divorces between parties with minor children, with the proposed edits.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

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COMMENT OF THE TENNESSEE BAR ASSOCIATION

APPENDIX A – SERVICE LIST

IN RE: PETITION OF THE ACCESS TO JUSTICE COMMISSION FOR
THE ADOPTION OF UNIVERSALLY ACCEPTABLE AND LEGALLY
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COMMENT OF THE TENNESSEE BAR ASSOCIATION

APPENDIX B - INSTRUCTIONS

IN RE: PETITION OF THE ACCESS TO JUSTICE COMMISSION FOR
THE ADOPTION OF UNIVERSALLY ACCEPTABLE AND LEGALLY
SUFFICIENT FORMS AND INSTRUCTIONS

No ADM2015-01485

Comments and suggested edits for INSTRUCTIONS accompanying plain-
language forms for use in uncontested divorces between parties with minor
children.

COMMENT #	INSTRUCTIONS PAGE #	COMMENT
1	Page 2 of 7	Add language "or a summons" to third checkbox in "Step 1." Line should now read "Check with your Court Clerk to see if you need to fill out a Civil Case Cover Sheet or a summons."
2	Page 4 of 7	Add language "State's" to "Central Child Support Receiving Unit."
3	Page 5 of 7	Change "may go" to "must go."
4	Page 6 of 7	Change first paragraph to read "You just both have to agree that you and your spouse can no longer get along and that you have no hope of working out your marriage problems."

5	Page 6 of 7	Change indicated language to read "The Court Clerk will ask the judge to decide if you do not have to pay the fee up front."
6	Page 6 of 7	Add language "Because you have children together," to answer for "How soon can the divorce be granted?"
7	Page 7 of 7	Change first paragraph to read "In an agreed divorce, the spouses decide these things together, but the court has to approve."
8	Page 7 of 7	Add word "division" to change sentence to read "The property division does not have to be equal."
9	Page 7 of 7	Change language from "may not" to "will not."
10	Page 7 of 7	Add language "even if you agree between yourselves that one spouse or another will pay for it."
11	Page 7 of 7	Add sentence "Many Court Clerks have lists of mediators that you may contact."
12	Page 7 of 7	Delete indicated language and change paragraph to read "Alimony is money that one spouse pays the other for spousal support. In an agreed divorce, the spouses decide on whether there should be alimony, how much it should be and for how long it should be paid. This goes in your Divorce Agreement."

- **Important!** Only want a lawyer for part of the case? It is always best to talk to a lawyer, if possible. Having a lawyer look at your Divorce Agreement can help you.

Where can I find a lawyer?

- **Your county's Bar Association.** This is a group that lawyers join. They may have programs that can give you free advice. Or they can refer you to a lawyer.
- Look under "lawyer" in the yellow pages.
- Search for "lawyer" on the internet.
- Ask divorced friends which lawyer they used.
- Check the Administrative Office of the Court's website at: www.tncourts.gov and the Court's Access to Justice website, www.justiceforalltn.com.

Where can I get legal help and information?

- Legal information and advice hotline – 1-844-Help4TN (1-844-435-7486)
- www.Help4TN.org
 - See if you can get free legal help online
 - Find legal information
 - Find a list of free legal advice clinics across the state

Free Legal Help for Domestic Violence Victims

Does your spouse hurt or threaten you? There are special programs that can help you get free legal advice. They can also help if your spouse won't agree to a divorce. Call these **FREE** hotlines to find help near you.

- Tennessee Coalition for Domestic and Sexual Violence – 1-800-356-6767 / www.tcadsv.org
- Domestic Violence hotline – 1-800-799-7233

Steps to Get an Agreed Divorce

Tip! Make extra copies of the blank forms in this packet. This is in case you make a mistake. Also, make copies of all papers you give the Court Clerk. Ask the Clerk to date-stamp your copy. Keep all your date-stamped divorce papers in a folder or envelope. Bring it with you when you go to court.

Step 1 You and your spouse **MUST** fill out these papers. The Court Clerk can't do this for you. When they are filled out, go to the Court Clerk's office and give them (file) these papers:

- Request for Divorce, Form 1. Must be signed and notarized.
- Spouses' Personal Information, Form 2A
Fill it out and put it in a letter-size envelope. On the outside, write both spouses' names and your case number. The Court Clerk will give you your case number.
- Check with your Court Clerk to see if you need to fill out a Civil Case Cover Sheet.
- Title IV-D Information Form. This form is only needed if one or both parents receive benefits from the State of Tennessee. If neither of the parents receive benefits from the State of Tennessee, you do not need this form.



1

Step 2 If you can't afford to pay the filing fee, also fill out and give the Court Clerk (file):

- If you need it
- Request to Postpone Filing Fees and Order, Form 3
The court may let you pay the filing fees at the end of your case. You and your spouse must decide how you will split the cost of the filing fees

Important Information about Child Support and the Parenting Plan

All divorcing spouses with minor children must complete the Child Support Worksheet. The Child Support Worksheet will tell you the child support amount. You can download the Child Support Worksheet at <http://www.state.tn.us/humanserv/js/isdocuments.html>.

The Child Support Worksheet is completed at the same time you complete the Parenting Plan. All divorcing spouses with minor children must complete the Parenting Plan. You can find the Parenting Plan Form at <http://www.tncourts.gov/programs/parenting-plan/forms>. You have to know the child support amount to complete the Parenting Plan.

There are a few ways that the spouse that owes child support can pay the other spouse. You make your choice on the Parenting Plan form.

You can agree that the child support will be paid using one of the ways below.

2

- The spouse that owes child support will pay the other spouse directly, OR
- The spouse that owes child support will pay the child support to the Central Child Support Receiving Unit. Then the Central Child Support Receiving Unit will send the support to the other parent, OR
- The child support will be paid by Wage Assignment Order. A Wage Assignment Order is where the child support is automatically taken out of the paycheck of the spouse that owes child support, OR
- The spouse that owes child support will set up a direct deposit to the other parent, OR
- Other arrangements that the court can approve.

If you want to agree to use a Wage Assignment Order, you can use Form 9 – Wage Assignment Order in this packet.

IMPORTANT! If one or both of the parents receives SNAP Food Stamps, Families First (AFDC), and/or TennCare from the State of Tennessee, you may have to use a Wage Assignment Order. Contact the Department of Human Services to see if you have to use wage assignment or can use another way.

IMPORTANT! If one or both of the parents receives SNAP Food Stamps, Families First (AFDC), and/or TennCare from the State of Tennessee, you may have to fill out a Title IV-D Child Support Information Form. Ask the court clerk if you need to fill out this form. You can use the Form 10 – Title IV-D Child Support Information Form in this packet.

IMPORTANT! All divorcing spouses with minor children are required to attend a parent education class unless the court says you don't have to. Ask the court clerk where you can go to take the class. You can find information on the parent education class at <http://www.tncourts.gov/node/254532>.

You can find more information about child support from the Tennessee Child Support Handbook located at http://www.state.tn.us/humanserv/cs/cs_handbook.pdf.

Please talk to a lawyer if you have questions about child support.

Get ready for your Court Hearing

Before the hearing:

- Dress neatly. Wear clothes that look like a businessperson. Wear clothes that show respect for the court. This means:
 - ⊗ No shorts.
 - ⊗ No tank tops or low cut tops.
 - ⊗ No crop tops that show your belly.
 - ⊗ No T-shirts with words or pictures.
 - ⊗ Turn off your cell phone or pager.
- Take all of your court papers.
- Both spouses may go to the hearing. In most counties, just the spouse who filed the divorce may go. You don't need witnesses.
- Get to court **early** on the day of your hearing. You may need to find parking and go through security.
- Go to the Clerk's Office to make sure your case is on the calendar.
- Sit down in the courtroom. Wait for your name to be called. (There may be other cases ahead of you.)

3

At the hearing:

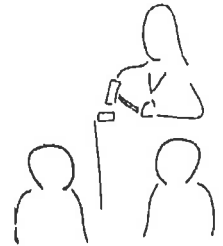
- Step forward when your name is called.
- You will be asked to raise your right hand and take an oath to tell the truth.
- After you swear to tell the truth, say this:
"My name is _____.
I am the Plaintiff in this case. I am here to get a Final Divorce Order."
- Don't sit down until your case is over.
- When you speak to the judge, say, "Your Honor." Be polite.
- The judge will look at your court papers and may ask questions. Listen carefully. Never butt in. Don't talk until the judge asks you a question. Answer all questions fully and tell the truth. What if you don't understand a question? Then ask the judge to explain or repeat it.



The judge may ask you:

- Your name and your spouse's name
- How long you have lived in Tennessee
- If either spouse wants their old name back
- If either spouse is pregnant

- If your Divorce Agreement divides the property fairly
- If the Parenting Plan provides for the care and support of the children and if it is in their best interest
- If you want the court to grant the divorce
- If you and your spouse have irreconcilable differences (cannot get along)



You may answer like this:

- I have lived in Tennessee for at least 6 months.
- We are **not** expecting a child now.
- My spouse and I have children together. We have agreed on a Parenting Plan and child support. We think our agreement is in the best interest of the children. We have told the court about any other cases involving custody of the children.
- My spouse and I have made a Divorce Agreement that is fair. We have divided all property and debt.
- I want a divorce.
- My spouse and I can't get along any more. We have no hope of working our marriage out.

What if there are mistakes on the divorce papers? The judge may ask both spouses to make the changes and initial them. **If both spouses aren't there, you will have to come back another day to correct them.**

At the hearing:

Once approved, the judge will sign the Final Divorce Order. Your divorce is not final until the judge signs the Final Divorce Order and it is filed with the Clerk.

Important! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, don't get married again or buy any property

After the hearing, ask the Court Clerk for certified copies of the Final Divorce Order and Divorce Agreement. You may need this later.

Common Questions About Agreed Divorce

4

To get an agreed divorce, do I have to prove that my spouse did something wrong?

No. You just both have to agree that you and your spouse can no longer get along. Say that you have no hope of working out your marriage problems. The court calls this "irreconcilable differences".

Do I have to live in Tennessee to file for divorce here?

One or both spouses must have lived in Tennessee for at least the last 6 months **OR** you lived in Tennessee when you decided to divorce.

Where do I file my divorce papers?

- In the county where your spouse lives now.
- **OR** in the county where you lived when you separated.

What if your spouse is in jail or doesn't live in Tennessee? Then file in the county where you live.

The court in each county is different. The divorce court in your county could be a Circuit, Chancery, or General Sessions Court. Ask the Court Clerk if their court hears divorces cases. **DON'T** file them in more than one court.

Important! Until the divorce is final, you and your spouse can't do some things. You and your spouse can't:

- Disobey the Court Order for Divorcing Spouses (Form 7) **OR**
- Spend, give away, destroy, waste or use up property from the marriage **OR**
- Harass each other **OR**
- Stop or change insurance policies **OR**
- Hide, destroy or spoil electronic evidence kept on a computer or memory storage device.

Will my divorce papers be public?

Yes. The papers you and your spouse file at court are public record. That means anyone can look at your file. Anyone can get copies of any papers in your file. **BUT** the papers called Spouses' Personal Information, Form 2A, aren't public and will be secret.

Do I have to pay a fee to file my divorce papers?

Yes. Each county has its own fee plus state fees. Ask the Court Clerk's office how much you will have to pay. Bring cash with you. You must pay the Court Clerk when you file your Request for Divorce. Many Court Clerks don't take checks or credit cards.

5

What if I can't pay the court fee?

The court may let you pay the fee at the end of your case. This is when the judge decides which spouse has to pay the court costs.

Need to pay the fee later? Fill out a Request to Postpone Filing Fees and Order, Form 3.

What if I am a victim of domestic violence?

Did your spouse hurt or threaten you? To get an agreed divorce you must talk to your spouse. What if it is not safe to contact your spouse? Then an agreed divorce may not work for you. These **free** resources can help you. They can also help if your spouse doesn't want the divorce.

- Coalition for Domestic and Sexual Violence
1-800-356-6767 – www.tcadsv.org
- National Domestic Violence hotline
1-800-799-7233
- Legal Aid or Legal Services
To find a legal aid program near you go to www.Help4TN.org
- Tennessee Alliance for Legal Services
(615) 627-0956 / 50 Vantage Way, Suite 250,
Nashville, TN 37228

6

How soon can the divorce be granted?

The soonest is 90 days after you file your Request for Divorce. It usually will take longer.

Important! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, don't get married again or buy any property.

What is a Divorce Agreement?

The Divorce Agreement is one of the papers you must file to get an agreed divorce. It tells the court what you and your spouse agreed about

alimony. It says how you will divide your money, property and debts. What happens with your children is covered in another document called a Parenting Plan.

Doesn't the court divide our property?

7

In an agreed divorce, the spouses decide these things together. But the court wants to see that you divide all your property and debts fairly. You have to list how all the property is divided. Even if you think the property belongs only to one of you, it must still be on the list. The property doesn't have to be equal. The court may change things if the agreement is not fair. The court may change things if one spouse will not have enough to live on.

8

Do you and your spouse agree about how to divide the property fairly? Then most of the time the court will OK your agreement.

9

Important! If the agreement is unfair, the court may not OK it.

10

Important! If a debt is in both spouses' names, creditors can try to collect from either spouse. If either spouse is thinking of filing bankruptcy, talk to a lawyer. It may cause problems for the other spouse. If you have a mortgage together, you cannot use these forms or this packet.

What if my spouse and I can't agree on everything in the Divorce Agreement?

You cannot use these forms or this packet if you can't agree on everything in the Divorce Agreement. However, a mediator is someone who helps people agree. The mediator meets with you and your spouse to try to help you and your spouse find an agreement that is ok for both of you.

11

Note: Are you a victim of domestic violence? Then you don't have to meet the mediator with your spouse. You and your spouse can have separate meetings. Sometimes, a judge can waive mediation.

What if the mediator can't help us agree?

Then you can't use this packet. Talk to a lawyer about filing a regular divorce.

What if my spouse will not sign the Divorce Agreement?

Then you can't get an agreed divorce. Don't use this packet.

You can still file a petition for divorce but you **can't use these forms or this packet!**

12

Will the court decide on alimony?

In an agreed divorce, the spouses decide on alimony. Alimony is money that one spouse pays the other for spousal support. You must say how much it will be and for how long it will be paid. This goes in your Divorce Agreement.

For example, some couples may decide that alimony will be paid until:

- The paying spouse remarries or files for bankruptcy, or
- The supported spouse remarries, or
- The supported spouse finishes school, or
- One of the spouses dies.

Alimony may make a difference in your taxes. Talk to a tax expert before you sign the Divorce Agreement.

The judge will review the proposed alimony to make sure it is fair.

What if we can't agree on alimony?

Then you can't get an agreed divorce. Don't use this packet. Is alimony important? Or is there a big difference in salaries? Then talk to a lawyer. You and your spouse may:

- Talk to a mediator, who may be able to help you agree, or
- Talk to a lawyer, or
- File a regular divorce.

How do we divide retirement funds?

If either spouse has retirement funds, then you need to talk to a lawyer. You can't use these forms or this packet.

Should I talk to a lawyer about the Divorce Agreement?

Yes! Talk to a lawyer about your children, property, debt, and alimony. Some lawyers will help with just the Divorce Agreement. You do the rest of the case on your own.

COMMENT OF THE TENNESSEE BAR ASSOCIATION

APPENDIX C - FORMS

IN RE: PETITION OF THE ACCESS TO JUSTICE COMMISSION FOR
THE ADOPTION OF UNIVERSALLY ACCEPTABLE AND LEGALLY
SUFFICIENT FORMS AND INSTRUCTIONS

No ADM2015-01485

Comments and suggested edits for plain-language FORMS for use in
uncontested divorces between parties with minor children.

COMMENT #	FORMS PAGE #	COMMENT
1	Request for Divorce (Complaint) Page 1 of 6	Add language “and the Parenting Plan” to the fourth bullet point.
2	Request for Divorce (Complaint) Page 2 of 6	Delete the word “current” from question “Has either spouse been part of a current court case about these minor children?”
3	Request for Divorce (Complaint) Page 6 of 6	Change the third bullet point to read “My spouse and I have agreed not to lie about the information in this divorce.”
4	Both Parties’ Personal Information- To Be Filed Under Seal Page 1 of 2	Add #5 under “To protect your personal information, follow these steps:” “5) The Court Clerk will keep this information secret.”
5	Divorce Agreement (Marital Dissolution	Add language “including car notes,” to first cell under both Plaintiff and

	Agreement) Page 4 of 7	Defendant. Cell should now read “List all loans, including car notes, credit card, cash advance debts”
6	Divorce Agreement (Marital Dissolution Agreement) Page 5 of 7	Add language “sometimes it cannot be changed at all,” to paragraph with Alimony Warning. Paragraph should now read “Alimony can only be changed if there are significant life changes. Sometimes it cannot be changed at all. You have to get a court order to change alimony.”
7	Divorce Agreement (Marital Dissolution Agreement) Page 5 of 7	Add language “or if the person receiving alimony lives with another person, with or without a romantic relationship,” to paragraph about court modification of alimony. Paragraph should now read “The court can modify the alimony due to significant changes in our lives, or if the person receiving alimony lives with another person, with or without a romantic relationship.”
8	Final Decree of Divorce (with Marital Dissolution Agreement) Page 1 of 4	Add language “and Parenting Plan” to heading, which should now read “Final Decree of Divorce (with Marital Dissolution Agreement) and Parenting Plan”
9	Final Decree of Divorce (with Marital Dissolution Agreement) Page 1 and 2 of 4	<i>SIGNIFICANT EDITS IN FINDINGS & ORDERS SECTIONS.</i> Suggested language (with re-numbering) is below. Edits also include combining the two

		sections “findings” and “orders” into one list of 11 items. (Re-numbering is indicated on annotated form.)
10	Final Decree of Divorce (with Marital Dissolution Agreement) Page 3 of 4	Make language in “Notice” and “What this means” paragraphs BOLD .
11	Final Decree of Divorce (with Marital Dissolution Agreement) Page 3 of 4	Remove indicated (three) paragraphs, starting from “Per T.C.A. 36-4-103” through to Order date and signature.
12	Final Decree of Divorce (with Marital Dissolution Agreement) Page 3 of 4	Add language following “Judge’s Signature” to read “This Order is not final until 30 days after the Judge signs it. During these 30 days, you may have questions about remarrying or buying property. If so, talk to a lawyer.”

FORM COMMENT #9

The court affirmatively finds as follows:

1. The spouses have sworn and affirmed they have children together who are under 18, in high school or disabled. Children together means children they had together before the marriage and all children born or adopted during their marriage.
2. The spouses have both signed under penalty of perjury a proposed permanent parenting plan that includes all children the parties have together.

3. The spouses have made adequate and sufficient provision for the custody and support of all of their children and the court finds the proposed permanent Parenting Plan, including the parenting schedule, is in the children's best interest.
4. The spouses have both signed under penalty of perjury a divorce agreement. That agreement has disclosed fully the spouses' assets and liabilities and the court finds it equitably settles any and all property rights between them.
5. Alimony (remains same)
6. The spouses are now divorced based on irreconcilable differences and are restored to the rights and privileges of unmarried persons. The Parenting Plan and Divorce Agreement are now a part of this Final Decree of Divorce.
7. Orders of Protection (remains same)
8. Name Change (remains same)
9. Lawyers' fees (remains same)
10. Court Costs (remains same)
11. Other Orders (remains same)

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Request for Divorce (Complaint)		File No. _____ (Must Be Completed)
		Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form is only for spouses who:

1

- Have children together who are under 18, in high school, or disabled **AND**
- Have agreed on parenting time, responsibilities, and child support **AND**
- Agree how to divide their personal property and debts, and have no land, or businesses, or retirement benefits, except for social security **AND**
- Agree to sign and notarize the Divorce Agreement **AND**
- Lived in Tennessee when they decided to divorce **OR** one or both spouses lived in Tennessee for at least 6 months.

If you do not meet these rules, you **cannot** use these forms. Please talk to a lawyer.

You **cannot** use these forms if:

- One of the children born while you are married is not both spouses' child. Warning! If this is true, speak to a lawyer. **OR**
- Somebody else has a court order giving them custody or visitation **OR**
- Either spouse is pregnant no matter who the father is.

You may not be able to use these forms if either spouse is in the military. See sections 8 and 9.

Divorce Certificate - Get this official state paper from the court clerk. You must fill it out before going to court.

ANSWER EACH QUESTION.

① **Residency - (check all that apply):**

- My spouse or I have lived in Tennessee for at least 6 months.
- I was living in Tennessee when the reason for this divorce happened.
- Our differences arose in Tennessee.

② **Venue - (check one) I am filing for divorce in this County because:**

- My spouse and I lived in this County when we separated.

Address: _____
Street Address
City
State
Zip

- My spouse lives in this County.
- I live in this County and my spouse does not live in Tennessee, or is in jail.

③ **Reason for Divorce** - My spouse and I can no longer get along, and we have irreconcilable differences.

④ **Children**

List all children you and your spouse have **together**. Children together means:

- Children you had together that were born before the marriage and all children born or adopted during the marriage. This includes ALL children either spouse had during the marriage. The children must be:
 - Under age 18
 - Or over 18 and disabled
 - Or over 18 and still in high school

If you have children, you may need to speak with a lawyer.

The parties have _____ children together.

Child's Name	Child's Date of Birth

Since _____, 20____, the children have lived with _____ at this address _____.

Until the parents separated on (date) _____, the children lived with both parents. For the past 5 years the children lived with both parents at this address: _____

Could another court case affect custody or visitation of a child? Yes No (If yes, you cannot use these forms.)

2

Has either spouse been part of a current court case about these minor children? Yes No (If yes, you cannot use these forms.)

The Plaintiff is the person filing for divorce. As far as the Plaintiff knows, no one except their spouse has a right to custody or visitation with the minor children. Plaintiff has not been part of any court case about the minor children in any state. If there is another court case about the minor children, the Plaintiff does not know about it.

Neither spouse is pregnant. (If a spouse is pregnant, you cannot use this form.)

⑤ **Marriage**

Date: _____ Place: _____

Read the text below then sign ONLY in front of a notary

Signed at (City): _____ on (Date): _____
(MM/DD/YYYY)

State of Tennessee, County of _____
(Name of County Where Notarized)

I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:

- As far as I know, the information on this form is true.
- My request for divorce is serious.
- My spouse and I have not agreed to lie about the information in this divorce.
- As far as we know, we meet all the rules to use these forms.

3

SWORN to and SUBSCRIBED before me, on (date): _____

Signed at (City): _____

State of Tennessee, County of _____

By (Name of Person Filing for Divorce): _____

(Signature of Person Filing for Divorce)

Signature of Notary Public, State of Tennessee

My commission expires: _____
MM/DD/YYYY

(NOTARY'S SEAL)

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Both Parties' Personal Information – To Be Filed Under Seal		File No. _____ (Must Be Completed)
		Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form asks for the personal contact information and Social Security Number of both spouses.

To protect your personal information, follow these steps:

4

- 1) Fill out this form.
- 2) Put the form in an **unsealed envelope**.
- 3) Write this information on the **envelope**: Names of both spouses, and Case Number of your case.
- 4) Give it to the clerk when you file your other court forms.

Plaintiff's Information

Name: _____
First Name Middle Name Maiden Name Last Name (now)

Address: _____
Street Address

_____ City _____ State _____ Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

Defendant's Information

Name: _____
First Name Middle Name Maiden Name Last Name (now)

Address: _____
Street Address

_____ City _____ State _____ Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

Debt

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does **not** protect you against creditors. They may try to collect from you, even if your spouse is supposed to pay the debt. It may be best to cancel, close, or freeze any accounts you have together.

Plaintiff will pay all debts he/she has made since separating from the Defendant. He/she will pay for the following debts:

5

List all loans, credit card, cash advance debts	Name of Creditor (person or company you owe)	Amount still owed
1.		\$
2.		\$
3.		\$
4.		\$

Defendant will pay all debts he/she has made since separating from the Plaintiff. He/she will pay for the following debts:

5

List all loans, credit card, cash advance debts	Name of Creditor (person or company you owe)	Amount still owed
1.		\$
2.		\$
3.		\$
4.		\$

If you need more lines, copy this page. Make sure it is included when you file this paper.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

We Both Agree on How to Divide the Debts

(Hold Harmless Provision)

Both the spouses agree to divide their debts as listed above. The Plaintiff agrees to pay all the debts listed under "Plaintiff's Debts." The Defendant agrees to pay all the debts listed under "Defendant's Debts." The Plaintiff will not try to make the Defendant pay his/her debts. The Defendant will not try to make the Plaintiff pay his/her debts. The Plaintiff and Defendant understand that creditors can try to collect from both of them. A creditor may get one spouse to pay the other spouse's debt. If that happens, the spouse who has agreed to pay the debt will pay the other spouse back. He or she will pay back any payments and reasonable lawyer's fees the spouse paid. He or she will pay back any costs of trying to stop a creditor from collecting the debt.

Alimony (check one):

Warning! This section can be very hard. Please talk with a lawyer if you need help with this section.

6

Alimony can only be changed if there are significant life changes. You have to get a court order to change alimony.

If you want alimony but do not agree on all the sections below, you cannot use this form.

You must fill out each section.

Neither spouse wants alimony

OR

1. The Plaintiff Defendant agrees to pay (amount): \$ _____.

2. We agree that the alimony (check all the blocks that are true for your agreement):

Will be paid until this date _____

Will end when the one who gets the alimony dies or gets married again

Will end when the one who gets the alimony finishes school, or on _____,
whichever date comes first.

Or if this happens: _____

7

The court can modify the alimony due to significant changes in our lives

3. We agree that the alimony will be paid (you must check one):

Weekly

Monthly

Annually

Lump sum paid all at one time

Important: Both of us understand alimony may change our federal taxes. Our initials at the bottom of this page show we understand this. We agree we are responsible for knowing, understanding and accepting this.

Important: If the party receiving alimony remarries, alimony will end in most cases. If the party receiving alimony lives with another person, whether they are romantically involved or not, the court may reduce or end alimony. It's best to talk to a lawyer.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
# 8	Final Decree of Divorce (with Marital Dissolution Agreement)	File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
	Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce) Defendant _____ (Name: First, Middle, Last of the other spouse)	

If you are ready to finalize your divorce, you must fill out this form. Only the spouse asking for the divorce must sign it, and that spouse **must go** to the court hearing. **BUT**, it is a good idea for **both** spouses to go in case the court has questions. The Judge does not have to sign this Order if he/she thinks your Divorce Agreement is not fair.

Take this form with you to your court hearing. It is best to bring all copies of documents you have filed in this case and take:

- **Divorce Agreement**, Form 5, signed by both spouses and notarized if not filed with Request for Divorce
- **Divorce Certificate** - you must get the official state form from the clerk and have it filled out before you go into court.
- **Title IV-D Child Support Information Form** – you only need this form if one of the spouses or children receive Families First or Medical Assistance Only from the State.
- **Permanent Parenting Plan, including Child Support Worksheet**

Court Hearing and Findings:

On (Date) _____, there was a court hearing at the court and county listed above
(MM/DD/YYYY)
before (Judge's Name): _____.

Parties at the hearing:

Plaintiff (Spouse filing the divorce):

Street or P.O. Box City State Zip Phone #

Defendant (The other spouse):

Street or P.O. Box City State Zip Phone #

9 The Court finds that the spouses have signed and filed a divorce agreement. It is a fair settlement of their property rights and debts.

That Agreement is now filed with and made part of this Order. The spouses swear and affirm they have children together who are under 18, in high school or disabled. Children together means children they had together before the marriage and all children born or adopted during their marriage. It includes ALL children the either spouse had during the marriage.

9

Based on the parties' Parenting Plan, Divorce Agreement, their Request for Divorce, and the entire record for this case, the Court finds good cause to make this Final Divorce Order.

The Court makes the following Orders:

① The spouses are now divorced based on irreconcilable differences. Important! This Order is not final until 30 days after the judge signs it. During the 30 days, you may have questions about remarrying or buying property. If so, talk to a lawyer.

② Orders of Protection (check one):

Neither party has a current Protective Order.

Restraining Order (check one):

Neither party has a current restraining order or wants a restraining order.

The Court orders both parties not to hurt or threaten the other.

The Court further orders that they cannot contact each other after the divorce is final. They also cannot send messages to each other through other people.

③ Name Change (check one):

This Order does not change either party's name.

This Order changes the Plaintiff's name to:

First Name Middle Name Last Name

This Order changes the Defendant's name to:

First Name Middle Name Last Name

Important! You need to change your name on your driver's license or other records. You may need a certified copy of this Order to do that.

④ Court Costs will be paid as follows (check one):

The Plaintiff and Defendant will each pay half of the court costs.

Plaintiff will pay all costs.

Defendant will pay all costs.

Other agreement: _____

⑤ Alimony

Neither spouse wants alimony OR

The (check one): Plaintiff Defendant agrees to pay (amount): \$ _____ each

Week Month Year

The alimony will end on (date): _____ OR

The allmony will end when this happens: _____

⑥ **Lawyers' fees**

- Neither side has a lawyer.
 - The Plaintiff will pay for his/her lawyer's fees. The Defendant will pay for his/her lawyer's fees.
 - Other (explain):
-
-

⑦ **Other Orders**

10

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does **not** protect you against creditors. They may try to collect from you, even if your spouse is supposed to pay the debt. It may be best to cancel, close, or freeze any accounts you have together.

11

Per T.C.A. 36-4-103, no divorce shall be granted on the ground of irreconcilable differences unless the court affirmatively finds in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the equitable settlement of any property rights between the parties. If the court does not affirmatively find that the agreement is sufficient or equitable, the cause shall be continued by the court to allow further disposition by the petitioner. If both parties are present at the hearing, they may, at that time, ratify any amendments the court may have to the agreement. The amended agreement shall then become a part of the decree. The agreement shall be incorporated in the decree or incorporated by reference, and such decree may be modified as other decrees for divorce.

What this means: The reason for some divorces is "irreconcilable differences." **Irreconcilable differences** means no one is to blame for the divorce. You two just cannot work out your problems. Tennessee law says to get this kind of divorce:

11

- The Plaintiff and Defendant must both sign a paper that says:
 - Where the children will live and
 - When the children will be with each parent and
 - Who pays child support and how much and
 - How they will fairly divide up any property

The court must say that this has been done and that it is fair. If not, the court will say what is wrong with the agreement. If the Plaintiff and Defendant are both in court, they can change the agreement then. If one of them is not there, the court will set a date for a new hearing. The Plaintiff and Defendant can change the agreement before the hearing. Once the agreement is changed and signed, it becomes part of the divorce papers. It can be changed later by following the rules for changing divorce papers.

12

This Order is made on Date (MM/DD/YYYY): _____ by:

Judge's signature

SWAFFORD, JENKINS & RAINES

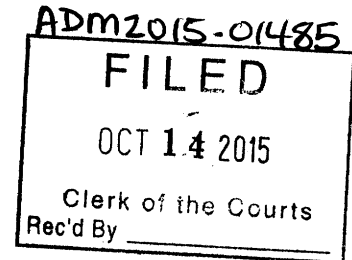
An Association of Attorneys
32 Courthouse Square
Jasper, Tennessee 37347-3530

Telephone: (423) 942-3168
Facsimile: (423) 942-5931

H. Graham Swafford, Jr.*
Charles G. Jenkins, Jr.
Marshall A. (Mark) Raines, Jr.

October 12, 2015

Access to Justice Commission
c/o James N. Hivner, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407



**IN RE: PUBLIC COMMENTS, FORMS –
DIVORCE WITH CHILDREN**

Dear Mr. Hivner,

This afternoon I was reading the September 15, 2015 advance sheets. Quite frankly I was surprised when I discovered that the Access to Justice Commission has proposed do-it-yourself forms so people with children can “do it themselves”. In my view these forms do people a “giant disservice” and should not be presented as a great idea approved by everyone. I would like to make the following points:

1. These forms are overwhelmingly disapproved by the organized Bar.
2. Last month the Tennessee Bar Association House of Delegates addressed this very issue. After a complete discussion, the House of Delegates overwhelmingly voted not to approve these forms.
3. Self-represented clients are absolutely clogging the dockets.
4. The Judiciary is compromised because at the end of the day they become lawyers giving advice, telling people how to do it, sorting it out etc. **At times it is embarrassing.**
5. The Access to Justice Commission is doing the private Bar a disservice. In my view the Access to Justice Commission is doing nothing but giving away the private practice of law.
6. Last but not least I have practiced law for over 37 years. When I first got out of law school it was not at all uncommon for men to “rough their wives up”, file a Petition for Divorce, get a divorce which included no child support obligation, send their wives and children to the Department of Human Services to sign up for welfare and then go out and start another passel of kids. I am not unmindful of the fact that the law has changed; however, this mentality is as present today as it ever was. In my opinion, **which I can state with the certainty of the sun rising in the morning** men will take advantage of and/or bully women with these forms. I see this type of bullying on a regular basis.

I once again repeat these forms are **overwhelmingly disapproved by the Private Bar and Judges**. I will be more than happy to express my views publicly if requested. The public particularly women are ill-served. In my view these forms should not be presented as universally approved by either the Bar or the Trial Judges.

Very truly yours,

SWAFFORD, JENKINS & RAINES

H. Graham Swafford, Jr.

GS: cmp
cc: William Harbison

SWAFFORD, JENKINS & RAINES

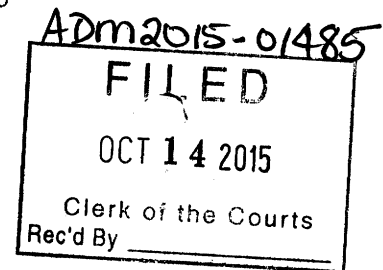
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October 12, 2015

William Harbison Esq.
Sherrard & Roe PLC
150 3rd Avenue, Suite 1100
Nashville, Tennessee 37201



IN RE: ACCESS TO JUSTICE COMMISSION

Dear Bill,

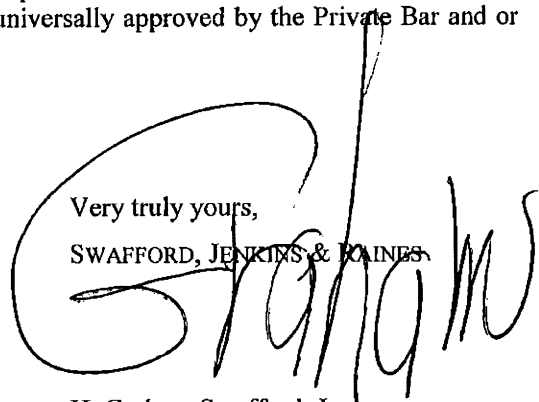
Last night I was reading the September 15, 2015 advance sheets. Right out of the barrel I discovered a draft of proposed forms for divorces with children. **Last month at the Tennessee Bar Association House of Delegates meeting we addressed this very issue and these forms were voted down.** Bill the casual observer might think the House of Delegates vote and views were ignored.

Bill to read the Advance sheet one one think these forms are a great idea universally approved by everyone. **Nothing could be further from the truth!!!!!!!!!!**

It is becoming more and more evident that the courts are clogged up with "do it yourself divorces". The Trial Judges in effect become lawyers trying to sort out the issues.

Last but not least this is a gold-plated situation where particularly women are bullied and threatened. Bill, in my opinion I think the public is being ill-served. In my opinion the Tennessee Bar Association should take a stand and at least express the view that this is not universally approved by the Private Bar and or the Trial Judiciary.

Very truly yours,
SWAFFORD, JENKINS & RAINES


H. Graham Swafford, Jr.

GS: cmp
cc: Access to Justice Commission



FILED
OCT 14 2015
Clerk of the Courts
Rec'd By _____

October 13, 2015

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Mr. James M. Hivner, Clerk via email: appellatecourtclerk@tncourts.gov
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

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IN RE: NO. ADM2015-01485

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order filed August 18, 2015, soliciting comments on proposed plain language forms and instructions, the Family Law Section of the Knoxville Bar Association has carefully considered the proposed amendments and respectfully submits the following comments.

AGREED DIVORCE INSTRUCTIONS

Page 1 of 7

In the right hand column, in the section labeled **Do I need a lawyer**, domestic violence is not mentioned. It is generally best to have a lawyer if domestic violence is involved. The suggestion to involve a lawyer in domestic violence is not mentioned until page 2 of 7 under **Free Help for Domestic Violence Victims**.

Page 5 of 7

At the last "Important!" section in the lower right-hand corner, a period needs to be inserted after "property."

Page 6 of 7

In the section near the bottom of the left column, litigants are advised that they cannot "hide, destroy or spoil electronic evidence." The use of the word "spoil" is confusing. Lawyers refer to spoliation of evidence, which does not translate to "spoil," so this may be an effort to stay close to the term of art. Nonetheless, we suggest deleting or replacing the word "spoil" in that context.

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Executive Director
Marsha S. Wilson
msw@knoxbar.org

Page 7 of 7

In the first paragraph at the top, we suggest that it should be made more clear that the Divorce Agreement will state how the parties will divide their money, personal property, and debts. It should also be made clear that parties cannot use these forms if they own real property.

In the second column under "Will the court decide on alimony", the first bullet point under the "For example" section should not state "The paying spouse remarries or files for bankruptcy." That should say the person receiving alimony remarries or files for bankruptcy.

It also says, "Alimony is money that one spouse pays the other for spousal support." Alimony and spousal support are synonymous. *Pro se* litigants would be better served with an explanatory definition of alimony instead of a synonym.

It says, "Alimony may make a difference in your taxes. Talk to a tax expert before you sign the Divorce Agreement." This is wholly inadequate. Alimony can and does have profound tax consequences. Without a far better explanation, *pro se* litigants are likely to be directly harmed by using this form and we suggest that this section be changed.

REQUEST FOR DIVORCE (FORM 1)

Page 3 of 6 states, "The Order of Protection is ended (expired)." Consider changing it to "has ended."

Page 4 of 6, under the section on Personal Property, the first checkbox should be changed to read "Own personal property. . ."

Page 4 of 6, No. 10 Should state: "If either of you have REAL Property, you cannot use these forms instead of "please see a lawyer first."

DIVORCE AGREEMENT (FORM 5)

Page 3: We feel certain nearly every *pro se* litigant will need to make an additional copy of this page so that they have room to list assets in the "other personal property" section. The need for additional pages could be sharply reduced by eliminating space for Vehicle 4 for both parties and using that space to expand the space available to list other personal property.

Page 3: under "Defendant's Personal Property", the parenthetical explanation for Vehicles needs to have a comma inserted after "boats."

Page 5 of 7: The first paragraph does not state anything about requiring either party to refinance debts to release the other party from the obligation for the debt.

Page 5: says alimony can only be changed if there are significant life changes. It repeats this statement by saying the court can modify alimony due to significant changes in the parties' lives. These statements are true for three out of the four forms of alimony (and even then, the parties are free to contract away the modification of any form of alimony). These statements are not accurate for one of the four forms of alimony: alimony in solido.

No. 2 makes the statement that "The court can modify the alimony due to significant changes in our lives" but does not give the parties the option to opt out of that statement and that will become part of the order. Some parties might agree to non-modifiable alimony.

No. 2 and 3 do not mention tax consequences of alimony which we feel is inadequate.

The statement about alimony at the bottom of page 5 becomes part of the MDA but it should not.

Page 6 of 7: the comments about Changes/Modification become part of the Order but really should not.

It says, "It is VERY difficult to make changes to this contract once the divorce is final." This is an enormous understatement such that it is misleading. A more accurate statement would be "It is practically impossible to make changes to this contract once the divorce is final."

FINAL DECREE OF DIVORCE

Page 3 of 4: The last paragraph on the page is misleading because, if the parties have entered into a MDA and the court does not approve the MDA, it could be considered that the parties have entered into a post-nuptial agreement.

GENERAL COMMENTS

When talking about debts in many forms and stating that a "spouse" may still be liable for a debt even after the divorce is final, it may be a good idea to have a statement that a creditor can/may still be able to come after a debtor even AFTER the divorce is final when the parties are no longer "spouses."

In talking about the Final Decree, it has been pointed out that there is confusion about whether you have to turn in the Final Decree to the Clerk along with the other paperwork or whether you have to bring the Final Decree with you to the Final Hearing. It might be easier for the parties to turn in the original Final Decree at the time of filing the other documents and then bring a copy of the Final Decree to court.

The general consensus is that alimony should not be included as part of the form. If one spouse has enough money to pay the other spouse alimony, then he/she can afford to hire an attorney and the other spouse should be able to seek attorney's fees from the court so that he/she can hire an attorney as well. Alimony is too complicated an area for non-lawyers to delve into especially since failure to pay has serious ramifications. The general consensus is that persons seeking alimony should be excluded from using these forms.

Since the Parenting Plan forms are not complete, the request is that the new forms not be made available for *pro se* litigants until the new Permanent Parenting Plan is included.

The Family Law Section of the Knoxville Bar Association appreciates the opportunity to comment on proposed forms promulgated by the Tennessee Supreme Court.

Sincerely,



Suzanne Nicole Price, Co-Chair
Family Law Section
Knoxville Bar Association

SANTORE & SANTORE
ATTORNEYS AT LAW
121 E. DEPOT ST.
GREENEVILLE, TENNESSEE 37744

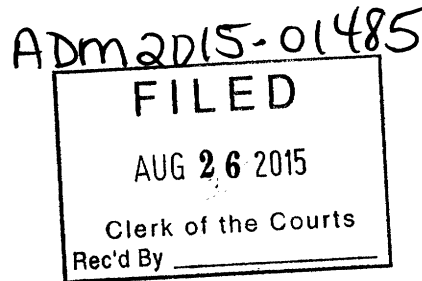
SERVING THE PUBLIC AND THE PROFESSION SINCE 1965

FRANCIS X. SANTORE (1931 - 2004)

FRANCIS X. SANTORE, JR.*

August 19, 2015

Ms. Janice M. Hivner, Clerk
Re: Tennessee Supreme Court Rule 46
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



P.O. Box 113
(423) 639-3511
Fax (423) 639-0394

Dear Ms. Hivner:

The Supreme Court is soliciting comments from the Bar regarding the proposed divorce forms it wishes to promulgate for—and, yes, I do say this sarcastically—the “poor and unwashed” among our citizenry. I rise in opposition, vehement opposition, in fact, to the Supreme Court’s once again ripping another method of our livelihood away from us.

In 2014, I was one of the few attorneys who publicly opposed the retention of the three Justices who were running. At that time, in a letter which was published in the TBA JOURNAL, I explained that my position in opposition to retention was not based upon the political affiliation of the Justices then running (Chief Justice Lee, Justice Clark, and now-retired Justice Wade), but was grounded in two reasons: (1) the failure of the Court to push more strongly for increased compensation for indigent defense work, and (2) the Court’s continued fascination with wanting to play Gunga Din for people who, supposedly, do not have enough money to hire attorneys—which, I may add, all the members of the Court were at one time, lest they forget—but can find enough money to do almost everything else.

I copied the letter I sent to the TBA JOURNAL to the three Justices who were then running for retention. Only one, Justice Wade, was kind enough to reply. Thus, most respectfully, I am copying this letter to all four (4) of the current Justices, as well as Deans Koch and Wade, recently-retired Supreme Court Justices themselves, to, again, attempt to beg this Court to stop putting the welfare of the so-called downtrodden ahead of the members of this Bar, many of whom have to, literally, practice out of the trunks of their automobiles.

It was nice of the Supreme Court to come to Greeneville earlier this year, for the SCALES project. I note that the Court was feted by a local businessman, Mr. Niswonger, a multi-millionaire who, it was reported in our local newspaper, just recently gave \$40,000.00 to the campaign of one of the Republican candidates for President.

Well, Ms. Hivner, I cannot afford to give that type of money, nor can 99% of the attorneys in this State. I note that the Access To Justice Committee and its minions is top-heavy with either (a) members of white-shoe, large-city civil defense law firms in this State, who make in the mid-six figures per year from their rich corporate and insurance clients, and who send their young associates out to work in the ATJ

Ms. Janice M. Hivner
Page Two
August 19, 2015

Committees, probably to assuage their consciences for the roles they play each day as “reverse Robin Hoods “or (b) members of large plaintiffs’ firms, who, at these meetings, after having performed five minutes of work by telephoning an insurance adjustor and wrapping up a large six-figure settlement, tell all present that it is, supposedly, their “duty” to help these so-called “poor and unwashed.”

(With regard to the latter, and concerning one prominent plaintiffs’ attorney in the Tri-Cities area, I have now gotten into the habit, each time someone calls me or comes to me, and I quote them a fee and they say they cannot afford it, to refer them to “Mr. X,” the prominent plaintiffs’ attorney-member of the Access to Justice Committee up here. His slogan, used in his media ads is that you can always “Talk to Him.” So, figuring that he would want real world experience in the milieu in which I operate—a general civil and criminal trial and appellate practice—I refer all these people to him, give them his cell number, tell them that his ads say that he “really wants to talk with them,” and tell them to keep calling him until he calls back! But, I digress.)

It was bad enough that the Supreme Court promulgated these do-it-yourself divorce forms for persons without children. **NOW THE SUPREME COURT WANTS TO TAKE MORE OF OUR LIVELIHOOD AWAY AND ALLOW DIVORCING PARENTS AN OPPORTUNITY TO DO A DO-IT-YOURSELF DIVORCE.** Why, Ms. Hivner? Why does the Supreme Court denigrate attorneys? Why does it always want the public to, in effect, “operate upon itself?” By that, I mean this example, which I have repeated, *ad nauseum*, in prior correspondence.

Medical professionals take care of themselves and every member of their profession, be it doctors, FNPs, RNs, LPNs, CNAs and the like. Never, and I mean NEVER, would any supervisory state medical board allow any layperson to practice medicine upon himself in any form of medicine: regular, homeopathic, osteopathic, chiropractic, podiatric, and so forth. Never would a medical board in this or any other state say, “You don’t have the money, so we’ll let you do brain surgery upon yourself.”

Similarly, when I want something done professionally, that I cannot do myself, I take it to someone who has years of training and experience. I take my car to the auto shop to get it repaired. As of this minute, my general contractor is working on renovating my office (which has not been renovated in 28 years, because my overhead has doubled, my rates have stayed the same, the number of attorneys have increased, and my business is being ripped away from me by administrative fiat of, say, the Court, so I had to borrow the money to have these repairs done). I don’t drill my own teeth: my dentist of many years with his dental degree that he sweated and worked for, does it. I wouldn’t know where to begin to do any plumbing work, so I call my very experienced plumber (who, by the way, charges more per hour than the parsimonious rate we are paid for representing the “poor and unwashed.”)

Yet, most respectfully, the Tennessee Supreme Court, in its infinite wisdom, thinks that everyone can “drill their own teeth,” “operate upon themselves,” or “fix their own clogged drain.” By its well-intentioned, yet wrongfully implemented, Access to Justice Committee, the Court is, unintentionally, turning the screws on most attorneys in this State, who live outside the large metro areas, who practice in the Covingtons, the Huntingtons, the Pulaskis, the Crossvilles, and the Greenvilles of this State, and hundreds more, who, like me, are not starving, are keeping our heads above water and a roof over our head, but who are not living like Donald Trump, and who do not have a mid-six-figure salary, nor a pension to fall back on.

Rhetorically and respectfully, how does the Court think that we small-town attorneys make our living? If

Ms. Janice M. Hivner
Page Three
August 19, 2015

the Court does not know that we make a portion of our living in our small towns by helping people find earnest solutions to dissolving marriages without incurring a fight that will mar them and their children forever, then, again, respectfully, I wonder in which State the members of the Court have practiced? I'm certainly not charging thousands of dollars in my small town for an agreed-upon, uncontested divorce (unlike, say, some young, harried associate in a Memphis law firm trying to bill enough hours to make partner would). But any fee I do earn, I earned through three years of hard study at Cumberland Law School, years where I had absolutely no social life, so much so that a monk in a monastery had more fun than did I in law school, the modern-day American equivalent of a Soviet gulag. I had to learn things we all had to learn which most of us don't use now, such as the "Rule of Shelly's Case," whatever that has to do with the price of rice in China.

I think my law degree was toiled for harder than any medical, dental or other post-graduate degree. Yet my State's highest court wants to rip my professional livelihood away from me to promote itself as the champion of liberty. That is absolutely horrible.

(Another aside: Why does everyone with a post-graduate, doctoral degree, get referred to as "doctor", except for us attorneys? Do you not think, Ms. Hivner, that we in this profession deserve at least that?)

Most respectfully, the Court may not understand what its good intentions—and, yes, I am not imputing any improper motive to the Court, but I just think that its results are not what it intended—have wrought. For example, in an adjoining county, the civil judges of the courts of record have monthly *pro bono* days for the people who wrongfully filed their pleadings to get an attorney, which they should have used in the first place, to correct their mistakes, BECAUSE THEIR DOCKETS ARE CLOGGED TO THE SATURATION POINT. In Knox County on Order of Protection day in Fourth Circuit Court, the line stretches out the building to Market Square, with people lining up to get an Order of Protection against their spouse, significant other, or baby mama in most cases, in lieu of a divorce, or baby daddy without using an attorney, because, although they have the money to buy cigarettes, beer, and, in most cases, illegal drugs, they cannot, supposedly, afford an attorney.

Two examples from my own county involving me, one in the civil realm and one in the criminal. One day in one of our civil courts, I was awaiting my turn when a *pro se* divorce litigant, dressed reasonably well, came to the podium. He presented to the Court one of those documents that our Supreme Court Justices have lovingly licked their lips over, the *pro se* divorce form for litigants without minor children or property. It turns out that the man, not having gone to law school, nor sought the advice of a competent attorney, did not know that a summons had to be issued and served upon his wife to put her on notice. The Court asked me as a favor to it to take the gentleman to the Clerk's office to show him what to do.

Of course, respecting the Court, I did what the Court asked. But on the way to the Clerk's office, I told/asked the man, "You know, for \$500.00 extra or thereabouts, most any attorney in this town could have done this right for you, don't you?" He said—again, he was dressed as well as I and probably drove a newer automobile than my 1997 Buick Park Avenue with 220,000 miles on it—that he could not afford an attorney. Of course, I saw a pack of cigarettes in his front shirt pocket; why that did not surprise me, I know not.

Ms. Janice M. Hivner
Page Four
August 19, 2015

The criminal law example comes from what I see every day. Without getting into specific cases, and, thus, incurring the wrath of the BPR, I am only glad to do appointed criminal work. It takes up 20% of my time, and I am fortunate that, unlike most of the young lawyers out of law school, it accounts for only approximately 5% of my income each year. I believe I do my *pro bono* work each time I represent such a client. And, I am particularly proud of a couple of recent cases, involving clients with serious drug addictions, who are getting the treatment they deserve and whom I sincerely believe will live on the "straight and narrow."

But, Ms. Hivner, there's the other side to that. Watch on any arraignment day when a person, with, supposedly, little income but disability or welfare, can yet make a bond, in many cases (particularly drug cases) a five-figure bond. They know they did the crime, and they know that, inevitably, they will have to serve the time, because, as one of our judges says, "They are doing a life sentence on the installment plan," constantly in and out of jail. It is more important for them to get out on bond for a few weeks or months, however, because then they can continue (a) drinking to excess, (b) consuming illegal drugs, and (c) birthing illegitimate children, which will become public charges (and for which my \$400.00 annual professional privilege tax will most likely be raised in the near future). They only think of us attorneys as necessary evils, and, honestly, I don't think that this is what the U.S. Supreme Court envisioned when deciding Gideon v. Wainwright.

In fact, Ms. Hivner, this leads me to my final point, before I pose some proposals to the Court. I realize the Supreme Court thinks that it is attempting to garner good publicity for the Bar by these Access to Justice Initiatives. However, think about this for a second: Will that really leave the public with a better taste in its mouth for attorneys? Are not we attorneys, wrongfully, always considered lower than pond scum? No matter what our Supreme Court does, the opinion of us from the public will always be that we are deceitful, dishonest, and poseurs.

No, Ms. Hivner, as I have told younger attorneys, our first duty is definitely NOT to the public. Our first and primary duty is to the Bench and Bar, which I term collectively. For example, if someone beats me in a case and prepares an order, I don't have to pander to my client and get his or her approval before I approve it, because, obviously, I was in the same courtroom and heard the judge say the same thing that my worthy opponent said. I go into any relationship with a client thinking that the client will stick it to me in some manner, and that I need to be careful.

I think we need to look after each other first. The public has all sorts of wasteful programs that our taxpayer dollars are funding. Internally, we need to take care of each other. Thus, since the Court has solicited comment, I would like to close by making a few proposals, in the hope that the Court, and other members of the Bench and Bar do not think this missive has merely been a diatribe against our Supreme Court.

First, through our BPR fees, the Tennessee Bar Foundation, the TBA or otherwise, there should be created a pool of money to allow law school graduates who (a) do not land a position with a firm, (b) do not land a position with the government, or (c) do not obtain a permanent judicial clerkship, and who (d) have to "hang out their own shingle," to obtain low-cost loans so that they can, indeed, open their own office. This would defray initial startup costs, be financed through a participating bank or banks, guaranteed, as suggested, privately, and not with public money.

Ms. Janice M. Hivner
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Second, realizing that the Court and the TBA are pressing forward with the General Assembly to raise the parsimonious rates paid for appointed cases, this program must be THE #1 PRIORITY OF THE COURT, ahead of any other program, including Access to Justice. In other words, before trying to take away business from the Bar, the Court, respectfully, should make certain that those who take cases for indigents should be reasonably and fairly compensated, at a rate in excess of the \$60 per hour my plumber charges me for his work.

Third, not wanting to tell the Court to overrule its own decisions regarding who qualifies for indigent counsel, it would seem to me that the General Assembly would be more likely to raise the rate for indigent counsel defense if there were some qualifications concerning who, exactly, qualified for counsel. In the example I gave above, it would seem to me that, if one, or one's mamma, papa, grandma, grandpa, baby mama or baby papa thought enough of them to make a bond, then they ought to be required to pay their own attorney, by Supreme Court Rule. In that manner, the public defender's offices throughout this State immediately become less burdened, the focus can be on those who truly need assistance, and more money would be freed within the present budgetary constraints to pay a higher rate of compensation for indigent defense.

Fourth, the Court, in conjunction with the TBA, ought to write a "Code of Conduct for Indigent Clients," to give to indigent clients each time they are appointed an attorney. I cannot, again, stress the number of times I have had people malign our fine public defenders, or, in some cases, me, because we are "free" lawyers, i.e., if they had the money, they would hire a good lawyer." I think we all are reasonably good, don't you? I think this set of principles (and I would be happy to write such a set, but, after this screed is published, I doubt the members of the Court would want me within 100 feet of them!) should be given to all who are appointed counsel, and they (the public) should sign this document, so that they recognize how truly blessed they are to have advocacy for their cause.

Fifth, if, by now, the Court has not been convinced by my letter to drop its do-it-yourself-divorce with parenting plan, then (a) let's raise our annual BPR fees, so that (b) if a so-called "indigent" person wants someone to do a divorce for them (c) counsel may be appointed to assist them, albeit at a new, higher, more reasonable rate and cap, and not \$40.00 per hour. Obviously, there is precedent in this State for doing this as, despite the U.S. Supreme Court ruling to the contrary, our Court continues to allow those who have possible incarceration facing them in child support contempt cases to have counsel. Even though no incarceration is evident in a divorce matter, it would still be a good way to keep young attorneys from having this aspect of their practice ripped away from them.

Finally—and I realize this proposal may seem "tongue in cheek", but I am actually serious about this—if the Court is adamant that its do-it-yourself divorce mechanism stay in place without any funding for representation for indigents, then should not the work be spread around? Shouldn't the Court require what the Knox County Criminal Courts required then-Mayor Victor Ashe to do some years ago: take indigent representation? Should not the Houston Gordons, Randy Kinnards, and other similar big-time plaintiffs' attorneys be down in Child Support Court taking appointed cases like the rest of us peons, cranking out a meager existence? Should not the named partners in the big "white shoe" firms of our fair cities be required to appear in, say, Shelby County Juvenile Court to provide representation for a poor, unfortunate, young man or woman, raised in the ghetto by a single parent? I would dare say that is only fair, wouldn't you? What makes those men or women better than the rest of us?

Ms. Janice M. Hivner
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Lest anyone who reads this letter thinks I am the lineal descendant of Ebenezer Scrooge, I believe that I have met my obligations to the public. My *pro bono* work is done every day in this office. For example, I am now handling a conservatorship for a slightly developmentally disabled person absolutely free. I am also, of course, performing as much appointed case work as I can, discounting my hourly rate from \$200 down to \$40. When people come in the office, if they cannot afford me fee, I try to help them the best I can. In many cases, particularly probate of small estates when attorneys are, really, not needed, I give informal advice and advise the public not to spend money. The same thing in bankruptcy cases, where I advise persons without assets whose only income is Social Security, for example, that spending money on filing for bankruptcy would be throwing away good money. I think I owe that to the public, to the Bench, and to the Bar, and, most respectfully, I do not need the Court, the AOC, or the AJC to force me to represent the "public", all of whom would hate us regardless if we spoon-fed them steak dinners.

In other words, to quote Henry Vanderbilt in the 19th Century, "The public be damned." Let's take care of our own first, before we deal with the rabble that detests us.

Sincerely,

SANTORE AND SANTORE

Francis X. Santore, Jr.

cc: All Tennessee Supreme Court Justices (4)
Hon. Gary Wade
Hon. William Koch
Ms. Anne-Louise Wirthlin, Esq.



STATE OF TENNESSEE

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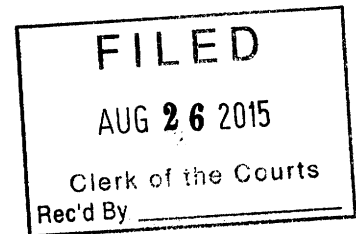
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JAMES G. MARTIN III
JUDGE, DIVISION II

August 21, 2015

Adm2015-01485

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 46
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Dear Mr. Hivner:

In response to the Court's Order of August 18, 2015, I have reviewed the forms developed by the Commission's Self-Represented Litigants Advisory Committee. The forms that I received did not include a change in the current draft of the Permanent Parenting Plan Order. Accordingly, I assume that that form will continue to be used in all cases, including cases involving self-represented litigants.

I would suggest that the Notice of Hearing reflect that both parties must attend. It has been my experience with self-represented litigants that they often do not understand what's required in the forms and changes are frequently necessary with respect to division of property, allocation of debt and other matters. In addition, there have been occasions when I have found that the litigants are misrepresenting facts and circumstances to the Court which cannot be ascertained without the ability of the judge to question both parties under oath in open court. Specifically, I have found cases where income is being misrepresented and where parenting time is being misrepresented to achieve a desired result which is contrary to our child support guidelines.

With kindest personal regards, I remain

Respectfully yours,

James G. Martin, III

JGM/khc

cc: Allan Ramsaur
Christy Gibson