

## Judicial separation procedure

### A rough guide/timetable

#### Starting the Proceedings:

Proceedings begin when a Petition for Judicial Separation is filed at the Court, along with certain additional documentation. The court fees quoted are in addition to any which a party has to pay to their lawyer for the conduct of the case and are given at the levels which are current as at January 2009. It is believed that the fees will increase either later in 2009, or in 2010.

The person who starts the proceedings is known as the Petitioner whilst the spouse is the Respondent. If there are allegations in the Petition of an improper relationship or adultery by the Respondent with someone else, this person is known as the Co-Respondent.

In cases where no Co-Respondent is involved, the Court will require at the outset:-

- 1 a fee of £300.00
- 2 the original Marriage Certificate or a copy prepared by the Church/Register Office where the marriage took place or from the local Register Office or the Central Records Office. If in a foreign language an official interpretation must also be filed, with an affidavit verifying the content as true.
- 3 Two Petitions signed by the Petitioner and completed in accordance with the Court Rules (if there is a Co-Respondent(s) an additional copy of the Petition is required per Co-Respondent).
- 4 Two signed Statements of Arrangements for any children under 16 or between 16 and 18 who are undergoing education. If possible, it is desired that both parents

sign the Statement but if the Respondent does not agree the contents, then the Petitioner alone should sign it and submit it to the Court - the Respondent will have his/her chance to say what he/she wishes at a later stage.

- 5 If a Solicitor is involved he or she will also have to submit to the Court a Reconciliation Certificate.
- 6 If any previous orders have been made regarding the children or the parties or their property, and the Court does not have access to those Orders already, then copies of these Orders will also have to be produced.
- 7 If any child is suffering from a physical handicap, disability or severe illness, it is usual also to lodge a medical certificate about that child's health.

#### Serving the Petition:

The Petition will be issued by the Court. The documents submitted to the Court are sealed and given a reference number before the "second" copies of the Petition and Statement of Arrangements for the children are sent by post to the Respondent along with a form called an Acknowledgement of Service. If there is a Co-Respondent, he/she too will receive a copy of the Petition and Acknowledgement (but not the Statement of Arrangements for the Children).

#### Acknowledging Service:

The Respondent and any Co-Respondents have eight days to reply to the court office. This is done by completing the Acknowledgement of Service. This form is in 2 parts - a tear off set of notes and a

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3 Lonsdale Gardens  
Tunbridge Wells  
Kent TN1 1NX  
T 01892 510000  
F 01892 549884

#### Thames Gateway

The Old Rectory  
St. Mary's Road  
Greenhithe  
Kent DA9 9AS  
T 01322 623700  
F 01322 623701

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table of questions. The table has to be completed. The questions asked include:-

- Where and when the document was received
- Whether any alleged adultery is admitted
- Whether the Respondent intends to defend the Judicial Separation
- Whether he/she has any comments about claims for costs in the Petition
- Whether he/she has comments about any arrangements for children described in the Statement of Arrangements for the children
- Whether they want to be heard by the Court about those arrangements
- Whether the marriage is a polygamous one

The Co-Respondent's Acknowledgement makes no reference to arrangements for children.

Once completed, dated and signed this part of the document must be returned to the Court within 8 days of receipt. Court Offices are open from 10 am until 4 pm on weekdays only but not on Bank Holidays and there are often local closures for a day around a Bank Holiday.

### Defending the Petition:

If the Respondent wants to defend the Petition, he/she has 21 days after the initial eight days response time, to lodge a formal Answer to the Petition in Court. This must be done in duplicate. A fee of £200.00 has to be paid to the Court office on lodgement.

If the Answer is not lodged within the time limit, the Respondent will have to seek special leave from the Court. This involves

paying a £80.00 Court fee, an application to a District Judge and a hearing. If the application is with the consent of the other party the court fee reduces to £40.00.

A formal Answer is usually accompanied by a Cross Petition which gives other reasons for the request for a decree of Judicial Separation. If another third party is referred to, this time by the Respondent, this party is called a "Party Cited".

### Undefended Judicial Separation:

If the Respondent does not want to defend the Petition and says so in his Acknowledgement, the Court will wait for the 21 day period to elapse before taking the next step. At this stage the Court will send the Petitioner a photocopy of the Acknowledgement of Service bearing the Court seal. It will be accompanied by two more forms.

The first is an Affidavit. This form performs the same function as giving evidence in person to a Judge and must be completed as accurately as possible. The Affidavit must be taken before either a County Court Officer or a Solicitor not representing any of the parties to the case, in order that the Petitioner can formally identify the Respondent's signature on the Acknowledgement and swear, on oath, that the contents of the Affidavit and therefore, the Petition, are true.

While a Solicitor will make a small charge for swearing an Affidavit with supporting documentation, the Court Office will not unless the application precedes the commencement of the proceedings – as may be the case if the Petitioner has good reasons to apply for the omission from the court documents of his/her address and is

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applying on affidavit for permission to omit the address from all Court documents, or if the case is being conducted in the High Court.

The second form is the Petitioner's request to the Court Office to place the Court file before the District Judge. The Judge will consider the contents of all of the documents and decide whether it is appropriate to grant the Decree of Judicial Separation. This form is lodged with the Court at the same time as the sworn Affidavit.

#### The Special Procedure Trial:

In addition to determining whether or not the Petitioner should be allowed a decree the District Judge must decide on what grounds it should be granted and whether any costs should be paid by the Respondent to the Petitioner. The District Judge will also consider whether there should be a hearing about the arrangements for children or whether they should be referred to the CAFCASS Officer for a conciliation session.

In those cases where no Orders, appointments or conciliation are required for the children because the parents are in full agreement, the Judge will ask the Court Office to simply list the date on which the Decree will be pronounced.

In the other cases, parents will be told to visit the Court on a particular day to discuss arrangements for their children.

#### The Decree "Hearing":

Where the parents are in agreement about children, the pronouncement of the Decree need be no more than the names being read out in open Court or even the posting

of a list in the Court Office and Court waiting room. There may be times when one party or another wants to address the Judge about costs. In such a case there would be a brief hearing following which the Judge will decide the issue. A couple of weeks after the hearing, the parties should receive the Decree of Judicial Separation through the post together with a Certificate stating whether the District Judge was satisfied with the proposed arrangements for the children.

If an Order for Contact or Residence has been made during a hearing about the children, this will also follow.

This information sheet has been prepared to highlight some key issues relating to the judicial separation procedure. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2006 and may be affected by subsequent changes in the law.

If you require any further information, please contact us on 01892 510000 or by email:

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