

CHARLESTON PRO BONO LEGAL SERVICES

WITH

VOLUNTEER ATTORNEYS:

DANA ADKINS & GREGORY S. FORMAN

FAMILY COURT PROCEDURE 101:

A Seminar on How to Represent Yourself in

Family Court

1. Pleadings

a. SC Judicial Department Self-Represented Litigant Plaintiff and Defendant Forms:

i. Divorce

1. Family Court Cover Sheet
2. Summons
3. Complaint for Divorce
4. In forma pauperis
5. 365 Rule

- a. Must request final hearing with 365 days of filing or case subject to dismissal
- b. To request contested final hearing must undergo three hours of mediation first

6. Service of summons and complaint

- a. Affidavit of Mailing (Mailing)
- b. Affidavit of Service

- c. If Defendant does not answer within 30 days of service, one may file an [Affidavit of Default](#)
 - 7. [Answer AND Counterclaim](#)
 - a. [SCRCP 8](#)
 - b. [Affidavit of Service by Mailing – Defendant](#)
 - c. [How not to bung-up a responsive pleading](#) – Blog, Gregory Forman
 - 8. Reply
 - a. If Defendant serves counterclaim, must reply within 30 days of service
 - b. Reply bears same relationship to counterclaim that answer bears to complaint
 - b. [SC Judicial Department Self-Represented Litigant Child Support Modification Forms](#)
 - c. [Simple Rule to Show Cause](#)
 - i. [Rule 14, SCFRC](#)
- 2. Motions for Temporary Relief**
- a. What is a Temporary Hearing?
 - b. [Motion Cover Sheet](#)
 - c. Motion for Temporary Relief
 - i. [Family Court Rule 21](#)
 - d. [Temporary Hearing Background Information](#)
 - e. [Proposed Parenting Plan](#)
 - f. Return to Motion
 - g. Affidavits
 - i. Greg’s Tips
 - ii. Dana’s Tips
 - iii. [How does on draft an affidavit?](#)
 - h. [Financial Declaration](#)
- 3. Discovery**
- a. [What is Discovery?](#)
 - b. Serving Discovery
 - i. [SCRCP 26](#): *“The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.”*
 - ii. Interrogatories
 - 1. [SCRCP 33](#): Standard 7
 - 2. Supplemental

- a. 50 total, including subparts
 - b. Put thought into your case to know what to ask
 - 3. Rule 33(a): Duty to [Verify](#) Answers
 - iii. Requests to Produce
 - 1. [SCRCP 34](#):
 - 2. Rule 34 can also be used for Request to Inspect
 - 3. No limit but must be relevant
 - 4. What goes around comes around
 - iv. Requests to Admit
 - 1. [SCRCP 36](#):
 - a. Request to Admit Facts – Limited to 20 questions
 - b. Request to Admit Authenticity of Documents – Unlimited
 - 2. [What makes a good Request to Admit?](#) – Blog, Gregory Forman
 - v. [Subpoena](#)
 - 1. [What can you do with a subpoena?](#) – Blog, Gregory Forman
 - 2. Certificate of Authenticity
- c. Answering Discovery
 - i. [SCRCP 37\(a\)\(3\)](#): *“Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.”*
 - ii. [Best Practices in Responding to requests for production.](#) – Blog, Gregory Forman
 - iii. [“I don’t know/ recall” may be the best interrogatory or deposition answer you can get.](#) – Blog, Gregory Forman
 - iv. [Using opposing parties’ evasive discovery responses against them.](#) – Blog, Gregory Forman
- 4. Trial Prep**
- a. Preparing for a Family Court trial
- 5. Trial**
- a. Sample Examination Questions
 - b. Courtroom Etiquette
 - c. [Tips for Testifying and Behaving in Court](#)
- 6. Mediation**
- a. [Request for Appointment of Mediator](#)
 - b. [Mediation and Meeting Center of Charleston](#)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
)
 vs.)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

FAMILY COURT COVERSHEET

Docket No. _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: _____ **SC Bar #** _____
Address: _____ **Telephone #** _____
 _____ **Fax #** _____
Email: _____ **Other:** _____

DOCKETING INFORMATION (Check one box below if filing in a Mandatory Mediation County)

- This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

**Nature of Action Codes
 (Check One)**

Marital Dissolution

- Divorce (110)
- Annulment (120)
- Separate Support and Maintenance (130)
- Registration of Foreign Divorce Decree – without support/custody (190)
- Registration of Foreign Divorce Decree – with support/custody (191)
- Marital Dissolution – Other (199) _____

Abuse and Neglect

- Abuse and Neglect – Child (210)
- Abuse and Neglect – Adult (220)
- Abuse and Neglect – Other (299) _____

Juvenile Delinquency

- Truancy (311)
- Incurable (312)
- Runaway (313)
- Criminal Offense – Drug (315)
- Criminal Offense – Against a Person (316)
- Criminal Offense – Property (317)
- Criminal Offense – Public Order (318)
- Criminal Offense – Other (320)
- Juvenile Delinquency – Other (399) _____

Protection from Domestic Abuse

- Domestic Abuse – Intimate Partner (410)
- Domestic Abuse – Minor (420)
- Registration of Foreign Order of Protection (490)
- Domestic Abuse – Other (499) _____

Support

- Child Support – Private (501)
- Child Support – Administrative Process (502)
- Child Support – Judicial Process (503)
- Registration of Foreign Order of Support (504)
- UIFSA – Outgoing (505)
- UIFSA – Incoming (506)
- Modification of Child Support – Private (507)
- Modification of Child Support – DSS (508)
- Modification of Alimony (525)
- College Expenses (530)
- Support – Other (599) _____

Custody/Visitation

- Child Custody/Visitation (610)
- Modification of Custody/Visitation (615)
- Temporary Custody – Nonparent (616)
- Registration of Foreign Child Custody Order (690)
- Custody/Visitation – Other (699) _____

Miscellaneous Actions

- Name Change (710)
- Correction/Birth Record (720)
- Judicial Bypass (730)
- Adoption (740)
- Foreign Adoption (741)
- Post Dissolution Equitable Distribution (750)
- Paternity – Private (761)
- Paternity – DSS (762)
- Termination of Parental Rights – Private (771)
- Termination of Parental Rights – DSS (772)
- Miscellaneous Actions – Others (799) _____

Submitting Party Signature: _____ **Date:** _____

Custodial Parent (if applicable): _____

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

Effective January 1, 2016, family court actions in all counties are subject to mediation. Under the provisions of the Supreme Court's Rules for Alternative Dispute Resolution (ADR), mediation is defined as [an] informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial.

Also under the ADR Rules, the parties may agree on a mediator or the Clerk of Court will appoint a mediator from the certified list. If the Clerk appoints a mediator from the list, the mediator will be certified by the Board of Arbitrator and Mediator Certification and may be either a lawyer, a licensed mental health professional or any other individual meeting the certification requirements.

Whether or not the mediator is a lawyer, if appointed by the court, the charge per hour is set at a specified amount under the provisions of ADR Rule 9. Parties are responsible for payment of the mediator as set out in ADR Rule 9.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO MEDIATION YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

Rule 3	Actions Subject to ADR
Rule 4(d)(1)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

ALL OTHER CONTESTED ACTIONS

Rule 3	Actions Subject to ADR
Rule 4(d)(2)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)

Plaintiff,)
vs.)
)
)

Defendant.)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

SUMMONS FOR DIVORCE
(One Year Continuous Separation)

Docket No. _____

To the **DEFENDANT Above-Named:** _____

YOU ARE HEREBY NOTIFIED that you have been sued by the Plaintiff for DIVORCE in the Court indicated above. You must respond in writing to the attached Complaint for Divorce and serve a copy of your Answer on the Plaintiff at the address below within thirty (30) days after the service of this Summons upon you, not counting the day of service, or thirty-five (35) days if you were served by certified mail, restricted delivery, return receipt requested.

If you wish to retain an attorney to represent you in this matter, it is advisable to do so before submitting your Answer to the Plaintiff.

If you do not answer the Complaint within the required thirty (30) days, the Court may grant a DIVORCE and grant the Plaintiff the relief requested in the Complaint.

Date: _____, 20_____

Plaintiff's Signature

_____, S.C. Address: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

Plaintiff,)
vs.)

Defendant.)

COMPLAINT FOR DIVORCE
(One Year Continuous Separation)

Docket No. _____

Plaintiff, _____, would respectfully show this Court the following:

1. Plaintiff is a resident of _____ County in the State of _____.
2. Upon information and belief, Defendant is a resident of _____ County, State of _____.
3. Plaintiff and Defendant last shared a residence in _____ County in the State of _____.
4. Subject matter jurisdiction (check one):
 - Plaintiff has lived in South Carolina for over one year prior to the start of this action; or
 - Plaintiff and Defendant have both lived in South Carolina for longer than three (3) months prior to the start of this action; or
 - Plaintiff is a resident of another state, but Defendant has lived in South Carolina for more than one (1) year.
5. Plaintiff is informed and believes this Court has subject matter jurisdiction over the issues and personal jurisdiction over the parties in this action.
6. Plaintiff and Defendant were married to each other on _____ (date) in _____ County, City of _____ in the State of _____.
7. Plaintiff and Defendant separated on or about _____ (date). The parties have remained living separate and apart from each other without cohabitation for more than one (1) continuous year prior to filing this action.
8. There are:
 - no minor children of this marriage and none are expected; or
 - _____ number of child(ren) were born of this marriage: namely

Name	Date of Birth

9. The parties:

- have no marital property or
- have agreed as to how the marital property shall be divided.

10. The parties:

- have no marital debt or
- have agreed as to how the marital debt shall be divided.

11. Name Change

- The (Plaintiff/Defendant) requests to resume the former name of _____.
- The (Plaintiff/Defendant) does not request to resume the former name.
- The preference is unknown.

12. Plaintiff believes that this marriage is forever broken and is that Plaintiff is entitled to a complete and final divorce, a *vinculo matrimonii*, from Defendant upon the ground of One (1) Year’s Continuous Separation, pursuant to § 20-3-10(5) of the Code of Laws of South Carolina, 1976, as amended.

13. Plaintiff gives up the right to alimony and believes Defendant should be barred from receiving alimony from the Plaintiff.

14. There is no collusion (agreement to defraud the court) between the parties to get a divorce, and reconciliation of the parties is not possible.

Plaintiff asks that this Court to grant the following relief:

- A. For an Order of divorce, a *vinculo matrimonii*, from Defendant upon the ground of One (1) Year’s Continuous Separation, pursuant to § 20-3-10(5) of the Code of Laws of South Carolina, 1976, as amended; (If no name change is requested, please leave blank).**
- B. For an Order allowing the Plaintiff to resume the former name of _____ pursuant to §20-3-180 of the Code of Laws of South Carolina, 1976, as amended;**
- C. For all other just and proper relief.**

I affirm under the penalties of perjury that the statements and representations in the Complaint are true.

Date: _____, 20____
_____, S.C.

Plaintiff's Signature

Printed Name of Plaintiff

Street Address

City, State, Zip

Telephone No.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)

) Plaintiff,
)
) vs.)
)
)

) Defendant.)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

**MOTION AND AFFIDAVIT
TO PROCEED IN FORMA PAUPERIS**

Docket No. _____

I, _____, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in this case. I request that the complaint be filed and service made without cost to me.

Sworn to before me this
_____ day of _____, 20____

Notary Public of South Carolina

Plaintiff

My Commission expires: _____

ORDER

- Leave is *granted* to proceed in forma pauperis.
- Leave is *denied* to proceed in forma pauperis. This case will be dismissed without further order of the court if the filing fee and associated costs are not paid on or before _____, 20____. (Family Court Only)

Date: _____, 20____

Family Court Judge

_____, S.C.

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

Custodial Parent (if applicable): _____

The Supreme Court of South Carolina

RE: Family Court Benchmark

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. Const. Art. V, § 4,

IT IS ORDERED that all domestic relations and juvenile cases in the State of South Carolina, with the exception of DSS Abuse and Neglect cases, shall be disposed of within 365 days of their filing. Further, the Family Court Chief Judges for Administrative Purposes (Chief Administrative Judges) shall direct and oversee the monitoring of all cases which are older than 365 days, and for which no final hearing has been requested. Once a case older than 365 days has been scheduled for a final hearing, only the Chief Administrative Judge for the circuit or county may continue it, even if the request for continuance is received by the assigned judge during the week of trial.

The County Clerks of Court shall indicate on all domestic relations and juvenile cases (with the exception of DSS Abuse and Neglect cases) the following notice: "Written requests for a final hearing in this case must be delivered by a party or attorney to the Clerk's Office within 365 days of this filing date. Failure to comply with this notice shall result in the dismissal of this case by the Chief Judge for Administrative Purposes."

In the event no request for a final hearing is received by the Clerk of Court within the time period prescribed and there is no other order by the Chief Administrative Judge extending the case, the Clerk of Court shall prepare an Order of Dismissal without prejudice and provide the order and file for review by the Chief Administrative Judge. If it is determined that dismissal is appropriate, then the Chief Administrative Judge shall sign the Order of Dismissal. If a case is continued for any reason past 365 days, the Order of Continuance must include a time and date rescheduling the case.

IT IS FURTHER ORDERED that in the event an action is dismissed without prejudice pursuant to this Administrative Order, any existing orders in the affected case file which were not final will be considered null and void and no longer subject to enforcement by this court (including, but not limited to, the enforcement and collection of child support and/or alimony), with any support arrearages being thereby dismissed.

This Order supersedes the Family Court Benchmark order issued May 9, 2006, and is effective immediately.

IT IS SO ORDERED.

s/Jean H. Toal

Jean H. Toal

Chief Justice of South Carolina

August 27, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

(One Year Continuous Separation)

Plaintiff,)
vs.)

Defendant.)

Docket No. _____

Personally appeared the Plaintiff who states that (s)he served the Defendant with a copy of the Family Court Coversheet, Certificate of Exemption, Summons, Complaint for Divorce and Financial Declaration:

_____ by certified mail, restricted delivery, return receipt requested (receipt attached) in the United States Mail, with proper postage attached,

_____ by commercial delivery pursuant to Rule 4(d)(9), SCRCF with delivery record attached, _____ on _____ (date) addressed as follows:

Sworn to before me this
_____ day of _____, 20__

Notary Public of South Carolina

Plaintiff

My Commission expires: _____

Date: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)

) Plaintiff,)
)
) vs.)
)
)

) Defendant.)

IN THE FAMILY COURT
____ JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

Docket No. _____

Personally appeared before me, the affiant, who being duly sworn, states that (he/
she) served the _____ in this action on _____ (Party Served).

Service was completed in the following manner:
(check one)

- Personally served on _____ (Party served).
- Served at their residence by leaving the documents with _____ (Name of the person served) the _____ (Relationship of the person served) of the person served, a person of age and discretion. Service was completed at this address: _____ at their residence by leaving the documents with _____ (Name of the person served) the _____ (Relationship of the person served) of the person served, a person of age and discretion.
- _____ (Name of the person served) the _____ (Relationship of the person served) of _____ (Corporation name). Service was completed at this address: _____ on _____ (date) at _____ (A.M./ P.M.) (time).
- Unable to locate and serve after diligent efforts to do so. The process is returned unexecuted. The following service attempts were made: _____.

Affiant is not a party to this action, is not less than eighteen (18) years of age and has no interest in or connection to this action.

Custodial parent (if applicable): _____

Sworn to before me this _____ day of _____, 20____

Notary Public of South Carolina

Affiant Signature

My Commission expires: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
)
)
 _____)
 Plaintiff,)
 vs.)
)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**AFFIDAVIT OF DEFAULT
 FOR DIVORCE**
 (One Year Continuous Separation)

Docket No. _____

Personally appeared the Plaintiff who states that the Defendant was served with a copy of the Family Court Coversheet, Certificate of Exemption, Summons, Complaint for Divorce and Financial Declaration on the _____ day of _____, 20____. The Defendant was served in the following manner:

(Check One)

- Personal service – an Affidavit of Service has been filed with this Court.
- Certified mail, restricted delivery – and Affidavit of Service by Mailing and return receipt have been filed with this Court.
- Accepting service – an Acceptance of Service has been filed with this Court.
- Commercial delivery service, pursuant to Rule 4(d)(9), SCRPC and Affidavit of Service with delivery record attached have been filed with this court.

The Plaintiff further states that

- 1) more than 30 days have passed since the date of service;
- 2) no contested Answer or other responsive pleadings have been served upon the Plaintiff as required by the Summons;
- 3) Defendant is either not in active military service of the United States or has waived his/her rights under the Uniformed Service Members Civil Relief Act; and
- 4) Defendant is now in default.

Sworn to before me this

_____ day of _____, 20____

 Notary Public of South Carolina

 Plaintiff

My Commission expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)

Plaintiff,)
vs.)
)

Defendant.)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

DEFENDANT'S ANSWER
(One Year's Continuous Separation)

Docket No. _____

The above named Defendant files the following Answer to the Complaint for Divorce:

1. As to paragraph 1 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 1 and states the following: _____.

Defendant denies the remaining allegations in paragraph 1.

2. As to paragraph 2 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 2 and states the following: _____.

Defendant denies remaining allegations in paragraph 2.

3. As to paragraph 3 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 3 and states the following: _____.

Defendant denies the remaining allegations in paragraph 3.

4. As to paragraph 4 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 4 and states the following: _____.

Defendant denies the remaining allegations in paragraph 4.

5. As to paragraph 5 in the Complaint, Defendant

- admits each and every allegation

- denies each and every allegation
- admits so much of paragraph 5 and states the following: _____.

Defendant denies the remaining allegations in paragraph 5.

6. As to paragraph 6 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 6 and states the following: _____.

Defendant denies the remaining allegations in paragraph 6.

7. As to paragraph 7 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 7 and states the following: _____.

Defendant denies the remaining allegations in paragraph 7.

8. As to paragraph 8 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 8 and states the following: _____.

Defendant denies the remaining allegations in paragraph 8.

9. As to paragraph 9 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 9 and states the following: _____.

Defendant denies the remaining allegations in paragraph 9.

10. As to paragraph 10 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 10 and states the following: _____.

Defendant denies the remaining allegations in paragraph 10.

11. As to paragraph 11 in the Complaint, Defendant

- admits each and every allegation
- denies each and every allegation
- admits so much of paragraph 11 and states the following: _____.

Defendant denies the remaining allegations in paragraph 11.

*****IF THE COMPLAINT CONTAINS MORE THAN 11 PARAGRAPHS, YOU MAY ADD ADDITIONAL PARAGRAPHS TO THIS FORM OR LIST THEM ON A SEPARATE PAGE.*****

BY WAY OF COUNTERCLAIM

1. Defendant incorporates into this Answer each defense, allegation, and admission that is set forth above.

2. Name Change

Defendant requests to resume the former name of _____, pursuant to §20-3-180 of the Code of Laws of South Carolina, 1976, as amended.

Defendant does not request to resume the former name.

3. In addition to the above statements, Defendant would ask the Court for the following:

4. Having fully answered the Complaint, Defendant requests this Court issue its order granting the parties divorce, a *vinculo matrimonii*, on the ground of a one year's continuous separation.

5. For an Order of this Court granting Defendant name change pursuant to §20-3-180 of the Code of Laws of South Carolina, 1976, as amended (if applicable).

Defendant's Signature

Printed Name of Defendant

Street Address

City, State, Zip

Telephone No.

Date: _____

RULE 8 GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Relief for a sum certain in money may be demanded for actual damages, but claims for punitive or exemplary damages shall be in general terms only and not for a stated sum, provided however, a party may plead that the total amount in controversy shall not exceed a stated sum which shall limit the claim for all purposes.

Note:

This Rule 8(a) is in the same general language as the Federal Rule with the important distinction that the State practice requiring pleading of the facts (rather than a "statement of the claim") is retained. The prayer or demand for relief is also designated as a part of the pleading to finally eliminate confusion on that point. Liberal rules as to amendment throughout (i.e., Rule 15) enable the parties to conform the pleadings to the facts and relief demanded, as they develop. See Rule 54(c). The final sentence is added to eliminate prayers for exaggerated and sensational claims for damages.

Note to 1986 Amendment:

Rule 8(a) is amended because the amount in controversy may determine the jurisdiction of the State and Federal courts, as well as the methods of discovery available in State courts. As originally adopted a general plea seeking punitive damages placed no limit on the amount sought and could expand the scope of the case unduly. This amendment avoids an exaggerated interpretation of a claim for punitive damages and permits the pleader to keep the case proportionate to the actual injury suffered.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

Note:

This Rule 8(b) is the same as the Federal Rule. It abolishes the "general denial" unless the pleader can controvert every allegation of the complaint, including the jurisdictional allegations. Every allegation must be specifically admitted or denied. Failure to deny constitutes admission. An answer neither admitting nor denying but "demanding proof thereof" is insufficient. The pleader must deny in good faith all parts of an averment not admitted.

Note to 1986 Amendment:

Rule 8(b) is amended to make clear that fact pleading is required for both the complaint and answer.

(c) Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses.

Note:

This Rule 8(c) is the same as the Federal Rule except for some affirmative defenses added to the list as a guide. The aim is to avoid the "surprise" defenses permissible under the old general denial answer, and require the defendant also to stick to "fact" pleading. The last sentence permits a fact pleading reply to all affirmative defenses. This reinforces the intent to fix the facts by the pleadings, an important departure from the Federal Rules approach to pleadings.

Note to 1986 Amendment:

The affirmative defenses of condonation and recrimination are added to Rule 8(c) because they are often asserted in pleadings in Family Courts.

Note to 1995 Amendment:

Rule 8(c) is amended to add the affirmative defense of duress to conform the rule to the comparable federal rule. The amendment does not change substantive or procedural law because duress is recognized as an affirmative defense, and the concluding clause of the first sentence requires it to be asserted as a matter of avoidance.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Note:

This Rule 8(d) is simply a restatement of Code § 15-13-80.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a cause of action or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many

separate causes of action or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice to all parties.

Note:

These Rules 8(e) and 8(f) substantially restate Code §§ 15-15-40 and 15-13-20, and are no change to State practice. This Rule does not allow "jumbling" of two or more causes of action in one count.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
)
)
 _____)
 Plaintiff,)
 vs.)
)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**AFFIDAVIT OF SERVICE
 BY MAILING
 (Answer)**

Docket No. _____

Personally appeared the Defendant who states that (s)he served the Plaintiff with a copy of the Answer by first class mail in the United States Mail, with proper postage attached, on _____ addressed as follows:

Sworn to before me this
 _____ day of _____, 20____

 Notary Public of South Carolina

 Defendant

My Commission expires: _____

How not to bung-up a responsive pleading

 gregoryforman.com/blog/2013/09/how-not-to-bung-up-a-responsive-pleading/

I often see responsive pleadings that hurt the other side's case. Frequently the response will include extraneous information. This information is like free discovery—learning about the other side's case strategy without using precious supplemental interrogatories or requests for admissions.

Other times parties will deny things they should have admitted because they seem unaware they can admit part of an allegation without admitting the whole allegation. In fact, unless a party intends to deny the full allegation, such partial admissions/partial denials are required by the rules of civil procedure:

When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.

Rule 8(b), SCRPC.

Basically any allegation in a pleading can accurately be responded to by one of the seven methods below.

1) Admit the allegation: "Paragraph [seven] is admitted."

Use this response when one isn't challenging any element of the allegation and one's client knows the allegation to be accurate.

2) Admit the allegation upon information and belief: "Upon information and belief, paragraph [seven] is admitted."

Use this response when the client doesn't know with certainty that something is true but that the matter is likely true and either isn't consequential or in dispute. A good time to use this pleading response is when the other party pleads something like, "Plaintiff has incurred attorney's fees and costs in prosecuting this action." One's client can't be certain that this has happened but it is very likely to have and unlikely to be in dispute.

3) Deny the allegation due to lack of personal knowledge: "[Plaintiff/Defendant] lacks sufficient knowledge to admit or deny the allegations of paragraph [seven] and therefore denies same."

This response is the mirror of response 2 above. Use it when one isn't certain the allegation is inaccurate but one doesn't know and one intends to contest the allegation at trial.

One can also use this response when the allegation is so confusing that one cannot understand what is actually being alleged. When confronted with a confusing allegation, another remedy is to file a motion pursuant to [Rule 12\(e\), SCRPC](#), to make the pleading more definite and certain:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading.

However if there are just a few allegations in the pleading that are vague or confusing it's often easier to deny these allegations due to lack of personal knowledge.

4) Admit the allegation but correct an inconsequential fact

Use this response if a paragraph has a small inconsequential inaccuracy, such as a misspelled name. For example, in response to an allegation, “The parties are parents of one minor child, Samantha Brook Jones,” one might respond, “Paragraph [seven] is admitted, except that the minor child’s middle name is Brooke, not Brook.”

One could accurately plead by denying part of the allegation: “Paragraph [seven] is admitted in part and denied in part. It is admitted that the parties are parents of one minor child. The remaining allegations of paragraph [seven] are denied.” However such a response leaves the opposing party and the court confused as to whether one’s client is alleging there is some other child at issue. Correcting the inconsequential fact while admitting the allegation avoids this confusion.

5) Deny the allegation: “Paragraph [seven] is denied.”

Use this response when one believes the allegation is inaccurate.

6) Admit the allegation in part and deny it in part: “Paragraph [seven] is admitted in part and denied in part. It is admitted that..... The remaining allegations of paragraph [seven] are denied.”

Failing to use this type of response when an allegation is partially accurate leads to credibility problems at trial. One can be impeached for denying that which is obviously true, as Rule 8(b), SCRCP is explicit that when an allegation is partially true it is inappropriate to deny the whole matter. Attorneys who deny an allegation because it is only partially true are being too cute at their client’s expense.

If one is denying just one or two elements of the paragraph, it can be easier to frame the response as, “Paragraph [seven] is admitted in part and denied in part. It is denied that..... The remaining allegations of paragraph [seven] are admitted.”

7) Indicate no response is required to the allegation: “No response is required to paragraph [seven].”

Often when attorneys plead more than one cause of action, they will begin each new cause of action with variation of, “[Plaintiff/Defendant repeats and realleges the above paragraphs as though set forth herein below.” There’s no argument the other party is doing that but there’s really no need for a response. However failing to respond to an allegation may lead to that allegation being treated an admission. Rule 8(d), SCRCP states:

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

If the trial judge believes such averments require a response, failing to respond to such allegations could be treated as an admission. In that circumstance, is the admission that the other party is repeating its allegations or that the repeated allegations are true? It’s safest to simply indicate one’s belief that no responsive pleading is required.

Conclusion

Overly verbose or inaccurate responsive pleadings can damage one’s case. After twenty years of practice I’ve yet to see a pleading allegation that cannot be responded to accurately by one of the seven methods noted above.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

Plaintiff,)

RULE TO SHOW CAUSE

vs.)

Defendant.)

Docket No. _____

To: _____

Based upon the attached affidavit, it appears that you have not obeyed certain court order(s). Therefore,

IT IS ORDERED that you appear before the _____ County Family Court on _____ (date), at _____,

a.m./p.m.

At the hearing be prepared to show cause, if any, and explain why the relief requested in the affidavit should not be granted and why you should not be held in contempt of court for such disobedience.

Date: _____, 20____
_____, S.C.

Family Court Judge

Address of Family Court

Courtroom: _____

Time Allotted: _____

RULE 14
RULE TO SHOW CAUSE

(a) For Contempt of Court. Except for direct contempt of court, contempt of court proceedings shall be initiated only by a rule to show cause duly issued and served in accordance with the provisions hereof.

Note:

The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause.

Direct contempt is an act committed in the presence of the Court while it is in session. A person may be held in direct contempt if his/her conduct interferes with judicial proceedings, exhibits disrespect for the Court, or hampers the parties or witnesses. *Stone v. Reddix-Small*s, 295 S.C. 514, 369 S.E.2d 840 (1988). Direct contempt is usually resolved by the trial judge during the regular proceeding already in session.

The rule to show cause provided herein is for contempt of court arising from failure to comply with the Court's orders, decrees or judgments and for enforcement thereof. This form of contempt is known as constructive contempt of court.

(b) Issuance; Form. A rule to show cause for contempt of court shall be issued by a Family Court judge, except as provided by Rules 24 and 27, SCRFC. The rule to show cause shall be signed by the issuing judge with the date of issuance and shall require the responding party to appear in court, at a clearly stated date, time and place, to show cause why the responding party should not be held in contempt and why permissible relief requested by the moving party should not be granted.

Note:

Rules to show cause brought pursuant to Rules 24 and 27, SCRFC, are issued by the clerk of court for enforcement of support and for enforcement of visitation or child custody rights, respectively.

Requiring the rule to show cause in Rule 14, SCRFC, to set forth the date, time and place of the contempt hearing satisfies rudimentary due process requirements. "Permissible relief" is relief normally incident to contempt of court proceedings, such as enforcement of court orders, decrees and judgments and awarding compensatory contempt damages. The judge issuing the rule to show cause is empowered to strike from the rule any request for relief not normally incident to contempt proceedings; e.g., modification (by either decrease or increase) of the child support amount. Such matters should be brought before the court by the filing of a Summons and Complaint as in any other modification action. However, in furtherance of justice and to serve the best interests of children, the judge should be able to consider, in his/her discretion, reasonable requests, e.g., the imposition of a restraining order or modification of visitation. See Rule 27(d), SCRFC.

(c) Affidavit or Verified Petition. No rule to show cause shall be issued unless based upon and supported by an affidavit or verified petition, or unless issued by the judge *sua sponte*. The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act(s) or omission(s) which constitute contempt, and the specific relief which the moving party is seeking. Such court order, decree or judgment shall be attached to the affidavit or certified petition.

Note:

Requiring an affidavit or verified petition is consistent with manifest case law and other procedural rules.

A rule to show cause issued to initiate contempt proceedings must be based upon an affidavit or verified "petition." *State v. Johnson*, 249 S.C. 1, 152 S.E.2d 669 (1967). The failure to support the rule to show cause by an affidavit or verified petition "is a fatal defect." *Toyota of Florence v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994) (citing *State v. Blackwell*, 10 S.C. 35 (1878)). See *Brasington v. Shannon*, 288 S.C. 183, 341 S.E.2d 130 (1986) and *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E. 29, 32 (1938). Requiring the supporting affidavit or verified petition in Rule 14, SCRFC, satisfies due process concerns by ensuring that rules to show cause will only be issued with clear, specific allegations being set forth for the court and the responding party.

(d) Notice. The rule to show cause, and the supporting affidavit or verified petition, shall be served, in the manner prescribed herein, not later than ten days before the date specified for the hearing, unless a different notice period is fixed by the issuing judge within the rule to show cause. In an emergency situation, the notice period of ten days may be reduced by the issuing judge.

Note:

Requiring that rules to show cause be served with the supporting affidavit or verified petition and providing for ten days' notice are consistent with standard motion practice as provided by Rule 6(d), SCRCP. These requirements will also help alleviate the "surprise" problems which have plagued contempt proceedings, thereby satisfying due process. Nevertheless, the rights of the moving party are not ignored as the issuing judge has the discretion to shorten the notice period in emergencies.

(e) Service. The rule to show cause shall be served with the supporting affidavit or verified petition by personal delivery of a duly filed copy thereof to the responding party by the Sheriff, his deputy or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action.

Note:

The manner of service provided by Rule 14, SCRFC, is consistent with standard practice in all courts as provided by Rules 4(c) and 4(d), SCRCP, with the exception that the rule to show cause and supporting affidavit or verified petition are to be served by personal delivery upon the responding party.

Personal service as specified within Rule 14(e) ensures due process by facilitating reliable service directly upon the responding party.

(f) Return. If at the contempt proceeding the responding party intends to seek counsel fees and costs, or other appropriate relief permitted by law, then he shall serve a return to the rule to show cause prior to the commencement of the hearing, unless a Family Court judge requires a return to be served at some other time. The responding party's failure to serve a return does not relieve the moving party from the burden of establishing contempt of court.

Note:

The requirement of a return satisfies the due process rights of the moving party, thereby balancing the protection for the responding party provided elsewhere by Rule 14, SCRFC. Serving a return is analogous to the required service of an answer or reply or responsive

affidavits in other litigation, and provides the moving party with some notice of the responding party's defense to the contempt allegations.

(g) Hearing Procedure. The contempt hearing shall be an evidentiary hearing with testimony pursuant to the Rules of Evidence, except as modified by the Family Court Rules. At the contempt hearing, the moving party must establish a prima facie case of willful contempt by showing the existence of the order of which the moving party seeks enforcement, and the facts showing the respondent's noncompliance. The moving party shall satisfy the burden of proof required by law for the specific nature of contempt before the court. Once the moving party establishes a prima facie case, the respondent is entitled to present evidence of a defense or inability to comply with the order. If requested, the Court may allow reply testimony. The Court may impose sanctions provided by law upon proper showing and finding of willful contempt, and may award other appropriate relief properly requested by a party to the proceeding.

Note:

In *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (1998), the Supreme Court defined civil contempt of court and criminal contempt of court, and clarified the separate burden of proof for both forms of contempt. Requiring the moving party to meet the burden of proof at the contempt hearing is consistent with *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986) (In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. The burden then shifts to the respondent to establish his defense and inability to comply with the order.); *Messer v. Messer*, 359 S.C. 614, 598 S.E.2d 310 (Ct. App. 2004); *Widman v. Widman*, 348 S.C. 97, 557 S.E.2d 693 (Ct. App. 2001); *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997).

Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion. *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997) (citing *Sutton v. Sutton*, 291 S.C. 401, 409, 353 S.E.2d 884, 888 (Ct. App. 1987)). Statutory sanctions for contempt are enumerated at S.C. Code Ann. 63-3-620 (Supp. 2010).

The court may also award compensatory contempt damages to the moving party. Compensatory contempt seeks to reimburse the party for the costs he or she incurs in forcing the non-complying party to obey the court's orders. See *Poston v. Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998) ("In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees. The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding."); *Lindsay v. Lindsay*, 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct. App. 1997) ("A compensatory contempt award may include attorney fees."); *Curlee v. Howle*, 277 S.C. 377, 386-87, 287 S.E.2d 915, 919-20 (1982) ("Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order." "Included in the actual loss are the costs of defending and enforcing the court's order, including litigation costs and attorney's fees.").

In furtherance of justice and to serve the best interests of children, the judge should be able to consider, in his/her discretion, appropriate requests, e.g., the imposition of a restraining order or modification of visitation. See Rule 27(d), SCRFC (court may modify prior order's provisions in visitation enforcement proceedings).

Added by order dated April 30, 2012.



What is a Temporary Hearing?

I. What is the purpose?

To quickly review the circumstances of your legal matter, then issue a formal temporary order to set limits and a structure for the spouses and/ or children until a final, longer, and more detailed hearing can be scheduled and held.

II. How is it handled?

By a single judge who:

- a. Reads/ scans sworn and properly notarized statements (affidavits) of people who know something important about the disputes in the case;
- b. Usually listens to brief statements by attorneys for both sides regarding the case. Most judges "allow" arguments by attorneys, but they do not have to do so (which is why your written affidavits are so important).

III. Updated Financial Declaration with Current Paystub is Required

Each party must file an updated financial declaration with an attached current paystub. A Financial Declaration is a form created and required by all South Carolina Family Courts, which gives an overview or "snapshot" of each spouse's finances at the time it is signed.

IV. What can a judge order at a temporary hearing?

- a. Terms of "temporary" custody and visitation.
- b. If child support and/ or temporary alimony should be paid by a spouse and how much.
- c. Which party gets "temporary" use and possession of the marital home and other properties. Note, without consent of both parties, a judge is not justified by law to order the sale of property, until a final hearing is held. So, you can not force the sale of real property until the final hearing unless both parties agree.
- d. Which spouse gets "temporary" use and possession of what personal property, such as cars, furniture, boats, etc.
- e. Which spouse pays what marital debts, such as, mortgages, credit cards, tax debts, car loans, etc.
- f. Payment/ reimbursement of attorney fees and expenses for either party.

V. What is the difference between a temporary relief hearing and a final hearing?

A temporary hearing is based solely on affidavits and usually brief statements by both attorneys. There is no witness testimony at a temporary hearing, even by the parties. The only exception is in the rare event the judge determines it to be necessary to directly question one or both parties.

Conversely, at a final hearing only live witness testimony is admissible. Affidavits can not be submitted in lieu of appearing to testify at a final hearing.

VI. What if someone lies or misrepresents the circumstances in their affidavit?

Each spouse tends to feel the other spouse's affidavits are untruthful or that they otherwise misstate the circumstances. This is understandably very frustrating. After the hearing, the affidavits can be, and often are, "checked" for truthfulness by both parties. If someone's statement is later shown to not be true, or is extremely misleading, the affidavit may be used to demonstrate at the final hearing that the witness is not credible. If the false statement is serious enough, another temporary relief hearing can be held to identify the fraud upon the court and justification for changing a temporary relief order based on the fraudulent statements or information.

Affidavits should not be used to mislead the judge or just to try to get what you want. You should be clear and truthful not only because it is morally correct, but because it is the best way to present your case (not to mention avoid perjury charges).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
 vs.)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Docket No. _____

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO										
SECTION II: Motion/Order Type										
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
_____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted										
SECTION III: Motion Fee										
<input type="checkbox"/> PAID – AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table style="margin-left: 20px; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____	<input type="checkbox"/> Other: _____
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<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
Name of Court Reporter: _____										
<input type="checkbox"/> Other: _____										
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____									
CLERK'S VERIFICATION										
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____										

Custodial Parent (if applicable): _____

RULE 21
TEMPORARY RELIEF

(a) Motion for Temporary Relief. A written motion for temporary relief, and notice of the hearing thereof, shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by order of the court. In an emergency situation, such order may be made on ex parte application.

(b) Evidence at Hearing. Evidence received by the court at temporary hearings shall be confined to pleadings, affidavits, and financial declarations unless good cause is shown to the court why additional evidence or testimony may be necessary.

(c) Service of Affidavits. Notwithstanding the provisions of Rule 6(d), SCRCP, affidavits filed at a temporary hearing need not be served on the opposing party prior to the temporary hearing.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
 vs.)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**TEMPORARY HEARING
 BACKGROUND INFORMATION
 PROVIDED BY:**

_____)
 Docket No. _____

1. Date of Marriage: _____
2. Date of Separation: _____
3. Unemancipated Children:

Child's Name	Date of Birth	Child's Name	Date of Birth
1.		4.	
2.		5.	
3.		6.	

4. Gross Monthly Incomes (indicate if imputed):
 Husband/Father: \$ (imputed)
 Wife/Mother: \$ (imputed)
5. If child support is a contested issue, complete the following, using monthly amounts:

Father Mother

- A. Previously Ordered Alimony OR Child Support:
- B. Other Children in the Home:
- C. Health Insurance Premium for Children:
- D. Regularly Occurring Extraordinary Med. Exp.:
- E. Gross Work-Related Child Care Expense:

6. The following are issues that are settled or contested as indicated on a temporary basis:

	<u>Contested</u>	<u>Settled</u>
Paternity	<input type="checkbox"/>	<input type="checkbox"/>
Custody	<input type="checkbox"/>	<input type="checkbox"/>
Visitation	<input type="checkbox"/>	<input type="checkbox"/>
Child Support	<input type="checkbox"/>	<input type="checkbox"/>
Alimony	<input type="checkbox"/>	<input type="checkbox"/>
Use of Property	<input type="checkbox"/>	<input type="checkbox"/>
Attorney's Fees and Costs	<input type="checkbox"/>	<input type="checkbox"/>
Vehicles	<input type="checkbox"/>	<input type="checkbox"/>
Health insurance	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____		

7. Attached is a completed and signed Financial Declaration.
8. If child support is a contested issue, attach a child support calculation pursuant to the South Carolina Department of Social Services Child Support Guidelines.

Attorney for the Plaintiff/Defendant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
 vs.)
 _____)
 Defendant.) Docket No. _____

IN THE FAMILY COURT OF THE
 _____ JUDICIAL CIRCUIT

**PROPOSED PARENTING PLAN
 OF _____**

This document is being submitted for consideration at a Temporary Hearing, pursuant to SC Code of Laws §63-15-220, and will have no precedential effect against the submitting party at the time of trial.

HUSBAND/FATHER		WIFE/MOTHER	
Address		Address	
Age		Age	
Occupation		Occupation	
Employer		Employer	
Employer's Address		Employer's Address	
Work Schedule		Work Schedule	

CHILDREN'S NAMES	SEX	AGE	DATE OF BIRTH

Please outline your proposed Parenting Schedule below. The items listed are intended to assist you in developing a plan; however, it is not required that you address each item. NOTE: Use Additional Space As Needed.

CUSTODY:

1. Please designate which custody arrangement you propose.

Sole Custody to _____

- Joint Custody
- Joint Custody with Primary Custody to _____ and Secondary Custody to _____.
- Other custodial arrangement: _____

SHARING OF INFORMATION/MAJOR DECISIONS:

2. Please also identify the major decisions that need to be discussed between the parents prior to decisions being made and how any disagreements should be resolved. Be sure to include the following: (1) Medical & Dental Care, (2) Religious Training, (3) Education, and (4) Extra-Curricular Activities: _____

PARENTING SCHEDULE :

REGULAR/SCHOOL YEAR SCHEDULE:

3. Based upon a fourteen day time period, how would you propose to divide time with your child(ren): (The below schedule is provided to assist you. However, you may choose to provide the requested information in a different format.)

Sunday	Sunday
Monday	Monday
Tuesday	Tuesday
Wednesday	Wednesday
Thursday	Thursday
Friday	Friday
Saturday	Saturday

Special circumstances for consideration during the school year, including extended weekends during the school year: _____

SUMMER:

4. What summer schedule do you propose to follow for your child(ren):

- The regular school year schedule shall continue on a weekly basis. In

addition to this parenting schedule, the parent with secondary custody shall have _____ additional weeks of parenting time to include the regularly scheduled weekend parenting.

- The regular school year parenting schedule shall be suspended during the summer, and the summer parenting schedule should be _____

Special circumstances for consideration during the summer: _____

HOLIDAYS & BIRTHDAYS:

5. Identify holidays that carry a level of significance in your family life and address the terms of access to the child(ren) during those holidays. A list is provided below, but may not include all holidays. Include start date and time and end date and time for each holiday.

HOLIDAY	MOTHER	FATHER
New Year's Day		
Martin Luther King, Jr. Day		
President's Day		
Passover		
Easter		
Memorial Day		
Fourth of July		
Labor Day		
Halloween		
Thanksgiving		
Hanukkah		
Christmas		
Mother's Day		
Father's Day		
Child(ren)'s Birthday		
Mother's Birthday		
Father's Birthday		
Other:		

RESTRICTIONS:

6. Identify any additional factors for the court to consider, such as exposure of the child(ren) to paramours, disparaging the other parent, supervision of internet use, exposing child(ren) to inappropriate material, use of drugs and/or alcohol, etc.

CONTACT CONSIDERATIONS:

7. Address the method and frequency of contact each parent will have with the child(ren) while in the other parent's care (ie. Facebook, telephone, Skype, email, etc.). Also address the method and frequency of contact between the two parents.

OTHER CONSIDERATIONS FOR THE COURT:

8. Please identify any other issues or concerns you would like for the court to consider in regards to the issues involving your child(ren) that has not already been provided in this document.

APPOINTMENT OF A GUARDIAN AD LITEM:

9. I respectfully request that the court appoint a lay / attorney guardian ad litem for the minor child(ren).
 I would like to request that the court appoint _____ to serve in that capacity.
 I do not have any recommendations as to the appointment of a guardian ad litem.

Submitted this the _____ day of _____, 20_____.

MOTHER:

FATHER:

PLAINTIFF / DEFENDANT

PLAINTIFF / DEFENDANT

ATTORNEY FOR MOTHER:

ATTORNEY FOR FATHER:

(NAME)

(NAME)

(ADDRESS)

(ADDRESS)

(PHONE/FAX)

(PHONE/FAX)

(EMAIL)

(EMAIL)

To: [witness]
From: [your name here]
Subject: Witness affidavits
Date: June 11, 2017

MEMORANDUM

If one has to go to family court to obtain temporary relief (that is relief pending trial or settlement) or defend a motion for temporary relief, one cannot have testimony but must rely simply on affidavits in order to present one's position. There are page limitations on affidavits for temporary hearings so brevity is crucial. An affidavit is simply a written (preferably typed) statement, signed under oath in front of a notary public. Each witness affidavit should have the following information:

1. Some brief biographical information indicating why the court should believe this person's information and an explanation of the relationship between the witness and the parties (e.g., friend, boss, co-worker, uncle, neighbor, child's teacher).
2. An explanation of how the witness was in a position of knowing what he or she is stating in their affidavit, including dates and times of observations if applicable and remembered.
3. A recitation of important **FACTS** personally observed by the witness supporting your position. The facts can be corroborated by documents: simply attach the documents and note that you are attaching the documents as an exhibit. Label the first exhibit referenced in any affidavit as Exhibit A, the second as Exhibit B and so on. With the affidavit, describe what each exhibit is, why it is corroborative of what the witness says and note what letter the exhibit (A, B ...) has been labeled.
4. A **SHORT** conclusion.

[here is where you list the topics that you want these affidavits to cover. These topics should address contested issues in the motion and bolster your strong points while explaining and minimizing your weaknesses and undermine the opposing party's strengths and highlight that party's weaknesses].

If your witness has questions about the affidavits, they may contact me at [phone number here]. They may also e-mail rough drafts of their statements for my review to [list your email address here]. They may also review: [How Does One Draft an Affidavit?](#)



MUST-READ TIPS ON WRITING AFFIDAVITS

1. Affidavits are limited to eight (8) pages for fifteen (15) minute hearings. Parties requesting thirty (30) minutes from the Clerk of Court are not held to the eight-page document limit, per the Order. (If you request more than fifteen (15) minutes, please be mindful that interpretation of the page limit varies among judges).
2. Left margin must be 1 ½ inches with each page numbered consecutively.
3. Rule 267(c) SCACR specifies standard 12 point font or larger for affidavits.
4. A good affidavit must be typed and the lines must be spaced at least 1 ½ .
 - Hand-written affidavits are almost always dead on arrival, meaning most judges will not even read or consider it.
5. In order for an affidavit to be useful it must be 1) credible; 2) knowledgeable; 3) factual; and 4) relevant.
 - The affidavit must not be vulgar, argumentative, opinionated or one-sided. An affidavit that simply praises one party and slams the other party is generally less credible than an affidavit that acknowledges the strengths and weaknesses of each party.
 - When one-sided affidavits are justified, it helps if editorial commentary is kept to a minimum and the affidavit substantiates its claims with documentary evidence.
6. A crucial part of drafting a credible affidavit is minimizing typographical and grammatical errors, using appropriate language, and having the affidavit flow in an organized fashion.
 - An affidavit full of errors in language, spelling, punctuation or diction, or is unorganized reflects poorly on the person providing the affidavit and diminishes his or her credibility.
 - Headings usually make it easier for a judge to quickly understand your affidavit's organization and then agree with your points.
7. A good affidavit should start with an explanation of who the witness is and what about the witness' background and experience makes that witness credible.

- The introduction can also explain the witness’ relationship to the parties or the dispute so that the court can understand how that witness was in a position to know what he or she is testifying to.
8. Affidavits that draw conclusions are dead on arrival, meaning the judge may not even read or consider it. For example, an affidavit that states, “John is a wonderful father and husband” with no facts to support the statement is of no value.
 9. The affidavit must be sworn to and properly notarized.
 - A notary block that does not include the language “*Sworn to and subscribed before me*” but merely shows a notary’s signature and expiration date is not considered to be an affidavit and is usually not even read by most South Carolina Family Court Judges.
 - The person who writes the affidavit must give oath, in the presence of a notary, that the affidavit is true and correct.
 - **The Affidavit MUST include the exact following language:**

SWORN TO AND SUBSCRIBED BEFORE ME THIS ____ DAY OF
 _____, 20____.

 Notary Public State of _____.
 My Commission Expires: _____.

10. **The notary must actually watch the affiant sign the affidavit before notarizing it.**

AFFIDAVIT OUTLINE

PERSONALLY APPEARED BEFORE ME, [Insert Name], who being first duly sworn says:

1. Introduction - Name, current address, and occupation.
2. Knowledge of party and/or situation
 - a. Explain the your relationship to the parties or the dispute so that the court can understand how you are in a position to know what you are testifying to.
3. Knowledge of the factual issues in dispute
 - a. Specific incidents and examples are better than general and broad statements.
 - b. When factual claims can be substantiated by documentary evidence, such documents should be attached to the affidavit as an exhibit with the affidavit describing and explaining the exhibit.
4. State any positive comments about the person you are giving affidavit for.
 - a. Specific incidents and examples are better than general and broad statements.
5. State any observations of person you are giving affidavit for with his or her children
 - a. Specific incidents and examples are better than general and broad statements
6. State why you believe it would be in the best interest of the child(ren) to reside with the person you are giving affidavit for
 - a. Specific incidents and examples are better than general and broad statements
7. State any negative comments concerning the other party
 - a. Specific incidents and examples are better than general and broad statements

[SIGN AND PRINT NAME]

**SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF
_____,20____.**

Notary Public State of _____.

My Commission Expires: _____.

How Does One Draft an Affidavit?

 gregoryforman.com/faqs/how%20does%20one%20draft%20an%20affidavit/

Almost any court hearing that does not allow testimony is going to require affidavits [a written statement signed by the witness and attesting to its accuracy before a notary public] so that the court can reach a decision on the motion before it. Drafting a proper affidavit is simply thinking about the best way to convince a judge that one's position in a factual dispute is the correct one. I often let clients and their witnesses produce the first draft of affidavits. It saves the client money, often provides me knowledge or understanding that a rushed interview of a witness might not generate, and prevents a situation in which all the affidavits sound like the attorney (or paralegal) who drafted them but instead contain much of the witness' own voice.

The court (correctly) perceives the client as vouching for the affidavits he or she provides the court on his or her behalf. Too often witness affidavits read like something written by someone OD'ing on the Jerry Springer show: vulgar, argumentative, opinionated and one-sided. Such affidavits are sometime less than worthless; they can actually harm a party's position. In order for an affidavit to be useful it must be four things: 1) credible; 2) knowledgeable; 3) factual; and 4) relevant.

An affidavit must be credible because if the court cannot believe what the witness is saying, then the affidavit has no use. An affidavit must be knowledgeable because if the witness lacks knowledge on the subject upon which the witness is testifying (an affidavit is sworn testimony) then there is no basis to believe the witness' statement. An affidavit needs to be factual because it is facts that the court needs to consider in reaching a decision (even when a witness is allowed to render an opinion, if the opinion is not based in fact it has very limited use). An affidavit needs to be relevant because if it does not address topics in dispute it cannot help the court resolve the dispute.

A good affidavit should start with a section explaining who the witness is and what about the witness' background and experience makes that witness credible. The introduction can also explain the witness' relationship to the parties or the dispute so that the court can understand how that witness was in a position to know what he or she is testifying to.

The next section of the affidavit should deal with the witness' knowledge of the factual issues in dispute. It is not necessary for each witness' affidavit to cover every area of factual dispute. If a witness only knows about a few issues in dispute better to have the witness focus on those few issues than have the witness opine on every issue: not only does a narrow affidavit help focus the court's attention but it also makes the affidavit more credible.

It is important that this section of the affidavit remain focused on facts, not opinion. If the purpose of a witness affidavit is to establish that the mother is the more actively involved parent, it does little good to simply state "mom is the more actively involved parent" as it is likely that dad will present affidavits that state "dad is the more actively involved parent." Rather, the affidavit should focus on what things mom does that makes her the more actively involved parent. A description of these activities, and a comparison of the activities that dad takes primary responsibility for, is much more powerful than a simple conclusory statement.

While in a custody case, the statement "mom is a wonderful parent" has limited value, it is much more powerful if it comes at the conclusion of a paragraph that describes the things or attributes that make mother so wonderful.

Further when factual claims can be substantiated or corroborated by documentary evidence, such documents should be attached to the affidavit as an exhibit with the affidavit describing and explaining the exhibit. For example a statement that mother is the person taking the children to the pediatrician is much more credible if the affidavit contains the pediatric records showing this. If a client's income is in dispute, attaching the pay record substantiating the income claim provides the court a reason to resolve this dispute in one's favor.

Further in drafting this section, it is helpful for a witness to be balanced. An affidavit that simply extolls one party and

slams the other party is generally less credible than an affidavit that acknowledges the strengths and weaknesses of each party. Further such one-sided affidavits provide cross-examination material for trial when the witness is asked to acknowledge good points about the other party and weak points in one's own client. When one-sided affidavits are justified, it helps if editorial commentary is kept to a minimum and the affidavit substantiates its claims with documentary evidence.

An affidavit should be relevant by focusing on the issues in factual dispute. If custody is not in dispute, an affidavit focusing on custody issues wastes the court's time and diverts the court's attention from the disputed issues.

Somewhat more subtle is the crafting of affidavits that focus on the factual disputes within the larger dispute. For example when custody is contested because one parent is allegedly abusive, affidavits should focus and read differently than when custody is contested because one parent is allegedly a substance abuser. In a custody case in which there are allegations that a parent is a substance abuser, affidavits that provide a factual basis to substantiate or dispute this allegation are vital. Affidavits that discuss custody but ignore this issue are suspect.

Finally affidavits that speak glowingly of a party but fail to address or acknowledge that party's serious weaknesses are simply not credible. Take an example of a parent who lost custody of a child after succumbing to drug addiction and who is now trying to get custody of that child back. Affidavits describing that parent as "a wonderful parent" do not assist the fact finder unless there are also affidavits explaining how this parent has overcome the addiction. A witness who describes such a parent as "wonderful" without even acknowledging the past drug use appears too biased to be credible or too ignorant to be trustworthy.

Part of the craft of drafting a credible affidavit is minimizing typographical and grammatical errors, using appropriate language, and having the affidavit flow in an organized fashion. An affidavit rife with errors in language, spelling, punctuation or diction, or one that moves chaotically through topics or time reflects poorly on the person providing the affidavit and diminishes his or her credibility. After the introductory section explaining biography and the witness' involvement with the parties or the dispute, an affidavit can be organized by topic or flow chronologically. When organizing an affidavit by topic, bold explanatory headers at the beginning of each topic are helpful.

The first and only task of every affidavit is to convince the judge that the witness has credible, knowledgeable, factual and relevant information. Reminding clients and witnesses of this necessity and providing them a list of relevant topics that their affidavits might cover is the first step in obtaining well crafted affidavits. In editing draft affidavits, counsel should be focused on confirming factual accuracy, insuring balance (when possible) in describing the facts, removing or corroborating incredible statements, limiting conclusory statements (or justifying conclusory statements by providing significant factual detail) and removing melodramatic or irrelevant language.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
 vs.)
 _____)
 Defendant.)

IN THE FAMILY COURT OF THE
 _____ JUDICIAL CIRCUIT

**FINANCIAL DECLARATION
 OF _____**

Docket No. _____

HUSBAND/FATHER		WIFE/MOTHER	
Address		Address	
Age		Age	
Occupation		Occupation	
Employer		Employer	
Employer Address		Employer Address	

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹		
Overtime, Tips, Commission, Bonuses ²		
Pensions, Retirement, and Annuities income		
Additional Employment income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from other marriage/relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits		
Other (Specify):		
TOTAL GROSS MONTHLY INCOME		

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³		
State Income Tax		
Social Security and Medicare Tax (FICA)		
Self-Employment Tax		
Health and Dental Insurance (Adult)		
Health and Dental Insurance (Child)		
Union Dues		
Voluntary Retirement Contribution (401(k), 457, IRA)		
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		
TOTAL MONTHLY DEDUCTIONS		
NET MONTHLY INCOME ⁴		

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included. _____)

MONTHLY EXPENSES ⁵	Husband/Father	Wife/Mother
Residential Rent Payment		
Note or Mortgage Payment on Residence(s)		
Food and Household Supplies ⁶		
Utilities, Water, and Garbage Collection		
Telephone and Cellular Phone		
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		
Life Insurance Premiums (not deducted from paycheck)		
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷		
SUBTOTAL: <input style="border: 3px double black; width: 100px; height: 20px;" type="text"/>		
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult Incidental expenses ¹⁴		
All Installment payments ¹⁵		
Other (Specify):		
SUBTOTAL: <input style="border: 3px double black; width: 100px; height: 20px;" type="text"/>		
TOTAL MONTHLY EXPENSES		

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? YES NO

Are any obligations listed above, including mortgage and note payments, in arrears? YES NO

If yes, please list the obligations in arrears.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)			
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.			
Value of Voluntary Retirement Account(s)			
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds			
Value of Privately Held Stocks and Other Business			
Value of Real Estate – Net of Mortgage Balances			
Value of All Other Property ¹⁷			
TOTAL ASSETS			

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁸

Owner	Name of Institution	Type of Account	Balance

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

Name of Company	Number of Shares/Type of Account	Value

Real Estate Section²⁰

Owner	Address	Value	Mortgage Balance	Mortgage Equity

Other Property Section¹⁷

Owner	Description of Asset	Value	Loan Balance	Equity

Signature

Sworn to before me this ____ of _____,
2____.

(SEAL)
Notary Public for South Carolina
My commission expires: _____

Custodial Parent (if applicable): _____

-
1. A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
 2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
 3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
 4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
 5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
 6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
 7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
 8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
 9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
 10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
 11. Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
 12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
 13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
 14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
 15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
 16. Indicate which spouse legally owes the payment (husband, wife, or joint).
 17. Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china, silver, jewelry, collectibles, and other personal property.
 18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
 19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
 20. Itemize each parcel of Real Estate in the Real Estate Section.

What is Discovery? | Gregory Forman, Attorney at Law

 gregoryforman.com/faqs/what-is-discovery/

In most contested family court cases, it is a good idea to ask for “discovery.” Discovery is the term for the organized exchange of information between the parties. Even though engaging in discovery adds to the expense of the case, learning about the other side’s case and being forced to reveal one’s own case increases the likelihood of settlement. Since both sides can have a better idea what “facts” each side will try to prove at trial, each can weigh how strong or weak their case is relative to the other party’s case. Further, discovery makes trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.

The issues that can be inquired into through discovery are quite broad. Under [Rule 26\(b\)\(1\), SCRPC](#):

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

There are basically six types of discovery in family court: 1) [interrogatories](#); 2) [requests for production of documents and inspection](#) 3) [requests for admissions](#); 4) [depositions](#); 5) [subpoenas duces tecum](#); 6) [physical and mental examinations](#).

[Interrogatories](#) are written questions that may be asked of the other party with responses required to be in writing and under oath. These answers can be used as evidence by the other party at trial. There are standard interrogatories that are defined by the court rules. These [standard interrogatories](#) ask for information about the identity of expert and lay witnesses, the briefest synopsis of their expected testimony and the exhibits that the other side has that might be relevant to the issues in the case.

[Supplemental interrogatories](#) are additional interrogatories that the party and his or her attorney can uniquely fashion to the particular facts of the case. A party is limited to fifty interrogatories (including sub parts) but, so long as the questions asked are relevant, there is little limit as to what can be asked. Supplemental interrogatories tend to get the most information when they ask specific, limited questions as opposed to opinion or open ended questions.

[Requests for production and inspection](#) are designed to allow one part to seek documents from the other party. The other party is required to make available for copying documents that are in his or her “possession, custody or control.” Thus, even documents that are not in a party’s possession but are within his or her control (such as banking records or medical records) must be made available for copying. Sometimes the way these records will be made available is by providing the party requesting the documents a release that allows that party to obtain the records from a third-party. In many family court cases the documents that parties have generated while living their life are the best evidence on contested issues. This rule can also be used to request the inspection of land and other tangible objects.

[Requests for admissions](#) require the other party to admit or deny specific facts or to admit or deny the authenticity of documents. It is often helpful to have the authenticity of documents admitted prior to trial so that one can determine whether to call witnesses to authenticate these documents. There are no limit on the number of requests for admissions that can be made on the authenticity of documents. Documents produced by one party can be used by the other party at trial. For further information on requests for admissions read: [What makes a good request for](#)

admission?

There is a limit of twenty requests for admissions on factual issues. Such requests for admission typically work best when dealing with contested factual disputes that do not involve subjective opinions. Asking someone to admit he or she is a bad parent or a spendthrift is likely to lead to a denial of a “fact” that cannot be disproved. However, asking a party to admit or deny contested facts that are narrowly framed (i.e., admit you spend the night of August 12, 2003 in a hotel room in August, Georgia with a member of the opposite sex unrelated by blood or marriage) can be extremely helpful. Sometimes the party will admit the contested fact which makes that fact a “stipulated fact” at trial that does not have to be otherwise proven. More often, the other party will deny the fact in which case they can be shown to be a liar at trial. Further, a party is entitled to fees as a matter of right for proving a material fact at trial when the other party denied the fact without a reasonable grounds for denying that fact.

Depositions allow a party to have any witness (including the opposing party) answer questions orally and under oath. Because one must pay the court reporter for attending the deposition (and transcribing the deposition if desired) and one must pay for one’s attorney to prepare for and attend the deposition, depositions are expensive. They are best reserved for cases in which there are substantial disputes and the parties have sufficient funds to take them.

Depositions are ideal for learning details about the witness’ knowledge of the disputed facts, pinning down that witness (and determining the limits of the witness’ knowledge) so that the witness cannot present more damaging testimony at trial without looking like a liar and seeing if one can get useful admissions from that witness. Such depositions can be used to impeach a witness at trial (i.e., show they are lying, biased or overstating his or her knowledge).

Depositions are also useful when one’s own witness might not be available at the time of trial (often because the witness lives or may be moving out of state or is in poor health). Depositions of witnesses who are considered unavailable at the time of trial can be used in lieu of their appearing at trial.

Subpoenas duces tecum are similar to requests for production or inspection except that they may be sent to non-parties. They are especially useful for getting medical records, banking and credit card records as well as school records. They are most useful for obtaining records that a party would ordinarily not have in his or her custody or control, such as hotel room records (useful for proving adultery) or personnel records (useful for proving income, assets or behavioral problems).

The final form of discovery is **physical and mental examinations**. Unlike other forms of discovery (which can be done in any family court case in which there is an order of discovery), these examinations require an explicit court order. DNA paternity testing or drug and alcohol testing are not thought of as medical examinations but actually they are. A party may request (and the court may order) psychological evaluations in cases in which a party’s mental health affects their parenting ability.

Failing to respond to **requests for admissions** in the proper time frame results in the requests being deemed admitted. See **Rule 36(a), SCRPC**. Failing to respond to a **subpoenas duces tecum** in a proper time frame or a non-party failing to appear for his or her deposition can result in a request for contempt sanctions and an order requiring the non-party to comply with the subpoena or attend his or her deposition. See **How Does One Enforce A Family Court Order?** If a party fails to attend his or her deposition or properly respond to requests for production or inspection or interrogatories, one can file a **motion to compel** that party to comply with the discovery request. **Rule 37(b)(2), SCRPC** lists numerous sanctions the court can impose for failing to respond to discovery. **Rule 37(a)(4), SCRPC** mandates an award of fees in most circumstances when a motion to compel has been required to obtain a party’s cooperation in discovery.

While discovery adds to the cost and complexity of family court litigation, it is foolhardy to undertake a contested family court case in which alimony, substantial marital assets or child custody is at issue without engaging in it.

Discovery tools are vital in understanding the other party's case and preparing for trial.

What makes a good request for admission?

 gregoryforman.com/blog/2012/11/what-makes-a-good-request-for-admission/

Other than requests for admissions on the authenticity of documents—which can be issued in unlimited numbers—[South Carolina Rule of Civil Procedure 36\(c\)](#) limits a party to twenty requests for admissions absent “good cause shown.” How to employ those twenty requests is an important strategic concern.

There’s really only two ways one can utilize a request for admission that does not involve authenticating documents: 1) get a useful admission from the opposing party; 2) get a denial that potentially challenges the opposing party’s credibility. Requests to admit that cannot conceivably do either are a waste of one’s twenty allowed requests.

Thus a request to admit something that is trivial is (probably) a wasted request. A request to admit something that is already acknowledged by the opposing party (typically in a pleading or affidavit) is generally redundant as one can “prove” that fact at trial through the opposing party’s acknowledgment. See [SCRE 801\(d\)\(2\)](#), which makes the use of a party opponent’s statements an exception to the hearsay rule.

A request to admit something broad or vague is also a wasteful request. Asking an opposing party to “admit or deny that you are an unfit parent,” “admit or deny that you are a horrible spouse” or “admit or deny that you regularly consume alcohol to excess” is almost certainly going to be met with a denial. When it is, there is little ability to impeach the opposing party on his or her denial. Anyone can give a reasonable explanation as to why they are not an unfit parent, a horrible spouse, or a habitual drunk. And, when faced with the denial and explanation, how can one prove the opposing party is a liar?

Thus, the ideal request to admit is: 1) not trivial; 2) not already acknowledged; and 3) narrow enough that an admission is useful but a denial is subject to impeachment. A request to admit that one is an unfit parent might better be reframed as “admit or deny that your untreated mental health disorder placed the minor child in danger on [date].” A request to admit that one is a horrible spouse is better reframed as a request to admit some horrible behavior or action. A request to admit that one consumes alcohol to excess might be better narrowed as “admit or deny that you were too intoxicated on [date] to safely drive a motor vehicle [or to safely care for the parties’ minor child].” Such requests are helpful if admitted and subject to impeaching evidence if denied.

The craft—and it is clearly a craft—of developing good requests to admit is so case specific that it’s impossible to create useful go-bys for such requests. However trivial, redundant or unimpeachable requests are rarely useful and should be avoided.

[Print PDF](#)

STATE OF SOUTH CAROLINA

ISSUED BY THE COURT IN THE COUNTY OF

, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

, Defendant

Case Number:

Pending in County

TO:
[] YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

Table with 2 columns: PLACE OF TESTIMONY, COURTROOM. Row 2: DATE AND TIME, AM

[] YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Table with 2 columns: PLACE OF DEPOSITION, DATE AND TIME, AM

[] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Table with 2 columns: PLACE, DATE AND TIME, AM

[] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Table with 2 columns: PREMISES, DATE AND TIME, AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature Date Print Name
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

Clerk of Court/Issuing Officer's Signature Date Print Name
Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

What Can One do with a Subpoena?

 gregoryforman.com/faqs/what-can-one-do-with-a-subpoena/

A subpoena basically requires non-parties to cooperate in litigation by supplying documents or testimony. It is one of the most powerful tools an attorney or litigant has to develop and present relevant information to the court.

A subpoena serves two distinct purposes. First, it can be used to compel a witness to come to a testimonial court proceeding. These are commonly referred to as “trial subpoenas.” Second, it can be used to obtain information from persons, corporations or partnerships who are not actually parties to the litigation at issue. These are commonly referred to as “[discovery](#) subpoenas.” The form for subpoenas is available [here](#) at the South Carolina Judicial Department website. [South Carolina Rule of Civil Procedure 45](#) sets forth the procedural rules governing subpoenas.

Subpoenas can be used to compel a witness to come to court for a testimonial hearing. Even for favorable witnesses it can be useful to issue trial subpoenas. If that witness becomes unavailable (due to illness or serious injury), and that witness’ testimony is relevant and not cumulative, the court can allow that witness’ prior deposition testimony to come into evidence, continue the trial, or hold the trial open until that witness becomes available. If that witness is not under subpoena, the court is less likely to continue the trial or hold the trial open. If a subpoenaed witness refuses or fails to show for trial, the court can ask the sheriff’s office to locate that witness and bring him or her to court (often in handcuffs).

Discovery subpoenas can be used to obtain information from non-parties that the discovery rules authorize from parties. There are direct parallels between discovery subpoena options and the rules of civil procedure regarding discovery. A subpoena can be used to compel a non-party to be deposed, just as [Rule 30, SCRPC](#) can be used to depose a litigant. A subpoena can be used to compel a non-party to produce documents for inspection and copying or permit the inspection of a premises, just as [Rule 34, SCRPC](#) can be used to require a litigant to produce documents for inspection and copying or permit the inspection of a premises.

There are different procedural requirements regarding trial subpoenas and discovery subpoenas. Discovery subpoenas must be served on all parties of record. Rule 45(b)(1). This is not required of trial subpoenas. Trial subpoenas issue from the county where the trial will take place. Rule 45(a)(2). Discovery subpoenas issue from the county where the witness lives or conducts business, or the county where the deposition will take place. Rule 45(a)(2). So long as the witness lives within South Carolina there is no geographic restriction on trial subpoenas. Rule 45(c)(3)(A)(ii). A witness cannot be compelled to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person for a discovery subpoena. Rule 45(c)(3)(A)(ii).

Attorneys wishing to issue subpoenas can sign and serve them. A pro se litigant can ask the clerk of court to sign and issue blank subpoenas which that litigant can then fill out and serve. Rule 45(a)(3). A subpoena actually has the authority of a court order and persons violating subpoenas can be subject to the court’s [contempt](#) powers. Rule 45(e).

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JANE DOE,

Plaintiff(s),

v.

JOHN DOE,

Defendant(s).

) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
)
) CASE NO: 2016-DR-08-XXXX
)
) **CERTIFICATE OF AUTHENTICITY**
)
)
)
)
)
)
)
)
)
)

The undersigned hereby certifies that the enclosed documents are a complete, true and accurate copy of all records requested in the Subpoena for production of documents in the above matter, dated July 25, 2017, as kept in the ordinary course of business at Mega Giant Corp.

Signed: _____
 [Your Name]

Position: _____
 [Official Title]

Dated: _____

Firm Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Sworn and Subscribed before me
 this _____ Day of _____, 201_____

NOTARY PUBLIC FOR:
My Commission Expires:

Best practices in responding to requests for production

 gregoryforman.com/blog/2017/02/best-practices-in-responding-to-requests-for-production/

I spend a lot of time struggling to get opposing attorneys to fully respond to requests for production. Often it's hard to tell if the response is adequate because often the response is not clear.

Vague request for production responses can be treated as a failure to respond. See [Rule 37\(a\)\(3\), SCRCF](#) (“an evasive or incomplete answer [to discovery] is to be treated as a failure to answer”). Furthermore, a response that isn't clear in what is being produced can lead to problems at trial. If a party cannot show a document was produced in responding to discovery, that party may not be able to enter that document as an exhibit at trial.

In developing what I consider to be best practices in responding to requests for production, I look to the language of [Rule 34, SCRCF](#), which addresses such requests. There's particular language I find meaningful. Rule 34(a) allows “the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents.” This gives the requesting party the right to copy the documents. It does not require the requested party to actually make the copies.

Rule 34(b) has language, “[a] party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.” This leaves the responding party two options. The first is to make the documents available for inspection in a manner “as they are kept in the usual course of business.” This option is rarely used in family court: a requested party who makes the requesting party come and make copies of the documents can expect similar treatment in return. However, where a request to produce is exceedingly broad and general, one can make the requesting party come and inspect documents as they are kept in the ordinary course of business – and make that party search thousands of documents to locate the few useful ones.

The second – almost uniformly used – option is to produce copies of the requested documents and “organize and label them to correspond with the categories in the request.” While producing copies of the requested documents is the more commonly used option, often the responding attorney fails to organize and label the documents to correspond with the categories in the request. Such a response fails to comport with the rules of procedure, is evasive, and therefore can be treated as a failure to respond. See [Rule 37\(a\)\(3\), SCRCF](#).

Finally, [Rule 26\(a\), SCRCF](#), places a limit on all discovery and part of that limit is that discovery “shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive...” Requests are limited to items “which are in the possession, custody or control of the party upon whom the request is served...” Rule 34(a), SCRCF. This means that documents do not need to be in a party's possession to be subject to a request to produce – documents in that party's “custody or control” also need to be produced. However if they are “obtainable from some other source that is more convenient, less burdensome, or less expensive” that method can be used for production.

The interplay of these rules has led to what I consider best practices for responding to requests for production. First, for non objectionable requests I ask my clients to gather documents that fall into one of four categories: 1) requested documents within their possession or obtainable without any expense or significant effort; 2) documents that can be downloaded from the internet; 3) documents that they really should have in their possession even if they don't; 4) documents they will want to use at trial.

I have clients obtain records in the first two categories because those records really are in their possession. I have clients obtain records in that they really should have in their possession because I don't want the other side to learn my client doesn't have that record. For example, in a custody case in which my client justifies exposing the children

to a romantic companion overnight because (s)he is married to that romantic companion, I would not want to respond to a request to produce the marriage license by indicating it's not in my client's possession. Instead, my client will be told to get the marriage license.

I will also have clients make effort to obtain documents they would want to use at trial. For example, in a custody case the child's medical or educational records might not be in my client's possession. However, if these records will support my client's custody claim I will want to produce them and my client will be directed to obtain them. Often I don't have my expert's CV in my possession. However, I will ask my experts to provide me one so I can provide it in responding to a request to produce. When that expert testifies at trial, I will want the CV to be an exhibit.

I don't necessarily have my clients obtain documents outside these four categories. An example of documents I do not necessarily have them obtain if they don't already have them are their own medical records (if those records are not available online), SLED reports, and driving records. As such records are "obtainable from some other source that is more convenient, less burdensome, or less expensive," I leave it to requesting party to obtain those records – my client's only obligation being to indicate where such documents might be located and signing any authorization necessary to obtain them.

Once the client has gathered up the records, it is time to fashion a formal response. There are two keys to doing this. The first is to detail and describe the documents being produced so it is clear what documents are being produced. The second is to organize the actual documents to respond to the categories.

Take a request for production, "Please produce all checking account statements for the Defendant for the past three years." A response, "**Response:** See enclosed" doesn't show what was produced. A better written response is "**Response:** See enclosed bank statements for Defendant's Wells Fargo checking account #1234 for March 2014 through February 2017." The benefit of a more detailed response is that, when one tries to enter the Wells Fargo checking account #1234 statement for February 2017 at trial, there is clear evidence that this document was part of what was produced.

In addition to the written response, one also needs to produce copies of the actual documents. Here the best practice is to produce the documents on a non-modifiable electronic medium, such as a DVD-Rom. If one is producing electronic copies of documents it is vital that they be produced in a non modifiable medium (thus, no thumb drives). Otherwise disputes can arise as to what was actually produced. Further, the documents should be clearly labeled to correspond to the specific request. Thus, if the request for the checking account statements was the 13th request, I might have a file folder on the DVD-Rom labeled "RTP 13" and in that folder I would include PDF copies of all the bank statements (electronic, not hard, copies [if electronic copies were requested](#)). I would make an additional copy of that DVD-Rom for myself. That way, if at trial, there was an issue as to whether a particular document was produced, I could locate it on my copy of the DVD-Rom.

If one is producing actual paper copies of documents, it is useful to bates stamp the documents being produced to help clarify which documents correspond to which request to produce and to be able to demonstrate at trial that these documents were actually produced. Assuming bates stamped hard copies are being produced, the written response would be "**Response:** See enclosed bank statements for Defendant's Wells Fargo checking account #1234 for March 2014 through February 2017–bates stamped 001-124."

For documents in a client's "custody or control" but not in a client's possession, the response should note what records are available and where they can be produced. For example, a request to produce "All Defendant's medical records for the past three years" might be met with a response, "**Response:** None in Defendant's possession. Records may be obtained from Dr. Joseph Wilson, 123 Calhoun Street, Charleston, SC 29401. Defendant will execute any release required by Dr. Wilson to enable the Plaintiff to obtain these records."

Sometimes a client will be able to download some, but not all, of the requested records. For example, if the request for checking account statements had included a request for cancelled checks and deposit slips, these items would

likely not be in the party's possession. Thus a valid response would be, "**Response:** See enclosed bank statements for Defendant's Wells Fargo checking account #1234 for March 2014 through February 2017. The remaining requested records may be obtained from Wells Fargo at the address located on the statement."

Following these practices does not unduly inconvenience the responding party by making that party go to significant effort or expense to obtain records he or she does not intend to use at trial. However it minimizes the risk of a (successful) motion to compel being brought. It further makes it *very* clear what records have been produced so that any challenge to admitting exhibits at trial on a claim that they were not provided in discovery can be clearly and quickly refuted.

[Print PDF](#)

“I don’t know/recall” may be the best interrogatory or deposition answer you can get

gregoryforman.com/blog/2016/04/i-dont-knowrecall-may-be-the-best-interrogatory-or-deposition-answer-you-can-get/

I lectured last week to recent law school graduates about family law discovery. Part of this lecture discussed [Rule 37\(a\)\(3\), SCRCF](#) which reads: “Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.”

I remarked this rule meant that they should not accept incomplete answers to discovery. Even evasive answers that fail to answer the question should lead to a motion to compel. However there is one type of evasive answer that I informed them I will gladly accept: the “I don’t know” response or its close relatives, “I don’t remember” and “I don’t recall.”

I begin my depositions with a [script](#). Part of that script involves getting the deponent to agree with the following:

Sometimes, when I ask a question, you will have partial knowledge but not absolutely certain or complete knowledge. For example, if I asked you the temperature right now you couldn’t necessarily tell me the exact degree but you could give me an approximate answer and even if you couldn’t you probably know whether its really hot or really cold or somewhere in between. In that circumstance an answer of “I don’t know” is not appropriate but an answer giving a range or estimate based on your knowledge with an explanation that it’s a range or estimate is appropriate. Do you understand this?

My interrogatories now include standard language:

In answering these questions if you have any knowledge available to answer the question, a response indicating a lack of knowledge is not appropriate. Instead, please provide all available information to answer the question. A response indicating lack of knowledge is only appropriate if you have absolutely no information on the question being asked.

Questions engendering an “I don’t know” response after such warnings are a litigation gift. An absolute lack of knowledge on an important issue in the case is rarely accurate. However the witness or party has now claimed to have absolutely no knowledge. This means that party cannot challenge any assertion the other party makes without being impeached on his or her “no knowledge” response.

For example, assume the question is “when did you last use cocaine?” If one last used cocaine in the distance past, an accurate answer might be “I don’t recall the exact date but it was at least twenty years ago.” However an “I don’t know” response means they could have last used moments before their deposition and are high while being deposed. If, at trial, the party denies the possibility that he could have been high during his deposition, one can note that his deposition response was clearly inaccurate. If the response to “when did you last beat your wife?” is “I don’t know,” that husband cannot impeach wife on any date she claims for his last beating. If the answer to “when did you last help your child with his homework?” is “I don’t know,” one can argue he never helps the child with homework.

When parties are confronted with their lack-of-knowledge response, they will often try to explain that they gave this answer because they weren’t certain. This is where the script at the beginning of the deposition or the instructions

as the beginning of the interrogatories are vital. One can confront the party with the deposition script or interrogatory instruction to shut this nonsense down.

“I don’t know” (and its kissing cousins) may strike the answering party as a clever response, but the saying “too clever by half” comes to mind. The other party can use that response to give that question any answer that party wishes, and the answering party has lost the ability to counter that claim without undermining his or her own credibility. It is often more valuable to accept the evasive “I don’t know” response for exhumation at trial, than to force the answering party to provide an accurate answer.

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Using opposing parties' evasive discovery responses against them

gregoryforman.com/blog/2016/02/%ef%bb%bf%ef%bb%bfusing-opposing-parties-evasive-discovery-responses-against-them/

Often opposing parties will respond to discovery with evasion: giving answers that respond to some, slightly different allegation; providing lengthy responses to “yes/no” questions without really stating “yes” or “no”; citing a lack of knowledge to answer a question that, given their litigation posture, they really should be able to answer.

The Rules of Civil Procedure treat such responses as failures to respond and provide remedies for such unresponsiveness. [Rule 37\(a\)\(3\), SCRCP](#) explicitly states “an evasive or incomplete answer [to discovery] is to be treated as a failure to answer.”

In theory one could file a motion to compel when one receives evasive discovery responses. However often such evasive responses are useful—perhaps even more useful than an accurate and non-evasive response. Sometimes the responses are evasive because the other side doesn't want to acknowledge his or her weaknesses or the other party's strengths. At trial one can cross-examine the other party on such evasive responses to not only attack that party's credibility but to make that party seem immature or churlish.

Other times, the evasion is intended to prevent the party issuing discovery from pinning the answering party down on the information being sought: basically a response that indicates a lack of knowledge without actually stating “I don't know.” Often such a response is issued when the answering party should know the answer but the answer might hurt that party's case. However, at trial, that party is now committed to a “non answer” answer. If there's a factual dispute where the issuing party “knows” the answer, the answering party can't challenge it.

Parties and attorneys issuing evasive discovery responses may think they are being clever but they are actually limiting their input on contested issues at trial. Recently, in a common-law marriage case being litigated in Probate Court, my client was granted summary judgment, in part, because the party claiming common-law marriage was evasive in answering discovery questions in which she should have known the answer. Her ability to survive summary judgment depended, in part, on having knowledge of the information sought in discovery. Since her evasive responses indicated a lack of knowledge, she couldn't prove the requisite knowledge of the removal of an impediment to marriage. Non-evasive responses wouldn't have helped her at trial but might have enabled her to survive summary judgment.

Evasive discovery responses may prevent the other side from learning information harmful to one's position. If the information is vital one can always file a motion to compel. However it is often better strategy to simply accept the evasive response and use it to attack the other party's credibility or limit the other party's testimony and evidence at trial.

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Preparing for a family court trial

- 1) Intro
 - a. Different levels of preparation for “ready to negotiate” versus “read to try”
 - b. Waste client’s money if you get “ready to try” before negotiation/mediation
 - c. However takes three months to go from one level of preparation to the next
 - d. Trial retainers in initial fee agreements
- 2) What preparation has to be done at the start of the case
 - a. Preserve evidence of date of filing values of assets and debts
 - b. If pre-marital or non-marital assets were comingled or transmuted during marriage, want to establish evidence of value at date of marriage (or date of acquisition if gifted during marriage) and develop records showing all contributions to that asset during marriage
 - i. May need financial expert to do evaluation
 - c. Initial discovery—at a minimum standard interrogatories and requests to produce all exhibits that might be used at trial
- 3) Three months before trial—First trial prep meeting with client
 - a. Outline trial issues
 - i. Each contested issues (alimony; equitable distribution; custody)
 - ii. Within each contested issue what factors to highlight/defend
 - iii. With equitable distribution, how to establish value and date of filing and how to address changes in value since filing
 - iv. Within each of those sub issues, what evidence to marshal to establish that fact
 1. Active versus passive gain (or loss) and who is responsible
 - b. Determine who will testify at trial--begin issuing trial subpoenas vial email
 - i. Ask witnesses to accept service
 - ii. Ask witnesses if they are available during those dates
 - iii. If not available
 1. Depose for trial
 2. Forgo the testimony
 3. See if others can make this witness merely cumulative
 - iv. If reluctant
 1. See if one can convince they to be more willing
 2. See if others can make this witness merely cumulative
 3. Serve subpoena and prepare for reluctant witness
 - v. Out of state witnesses
 1. Will they come for trial
 2. If not, telephonic depositions
 3. If other party will not agree to telephonic deposition, motion to authorize telephonic depositions [SCRPC 30\(b\)\(7\)](#)
 - c. Authenticity of documents
 - i. Requests to admit the authenticity of documents—unlimited [SCRPC 36](#)
 - ii. Certificates of authenticity [SCRE 903](#); [SCRE 902\(8\)](#)
 - iii. Client authentication [SCRE 901\(b\)\(1\)](#)
 - d. Guardian ad litem

- i. Review initial report
 - 1. What new areas does guardian need to investigate?
 - 2. Any follow up investigation
 - 3. Is guardian's investigation incomplete in some areas?
 - 4. Ask guardian, in writing, to conduct additional investigation
 - e. Review client's discovery responses
 - i. What is no longer accurate and needs to be amended? [SCRCP 26](#) notes to 1996 amendment
 - ii. What is incomplete and needs to be supplemented [SCRCP 26\(e\)](#)
 - 1. Time to think about adding witnesses
 - a. Experts?
 - i. Financial expert
 - ii. Earning capacity expert
 - 2. Time to think about additional trial exhibits
 - f. Review opposing party's discovery responses
 - i. What is incomplete
 - ii. What needs to be supplemented? [SCRCP 26\(e\)](#)
 - iii. What supplemental discovery requests need to be issued
 - g. Has enough time been set aside for trial?
 - i. If not, see if court can grant more time by adding days at end of trial?
 - ii. Better to seek more time three months out than on eve of trial or during trial
- 4) Five weeks after initial meeting—second meeting with client
 - a. Issue supplemental discovery responses
 - b. Check on status of acceptance of service of trial subpoenas
 - c. Check on status of other side's discovery responses
 - i. Time to file motion to compel
 - ii. Issue even more supplemental discovery requests?
 - d. Notice depositions of unavailable witnesses
 - e. Take deposition of opposing party?
 - f. Issue trial subpoenas to additional witnesses
 - g. Begin thinking about testimony outline for client and opposing party
 - i. Similar to outline for trial issues
 - ii. Add notes when exhibits will be introduced and list exhibit
 - iii. Add notes when evidence may be contested and note applicable rule of evidence
 - iv. Anticipate cross examination of client
 - 1. What is certain to be covered--address on direct and remove some of the sting
 - 2. What is likely to be covered—address on direct?
 - h. Check on status of guardian investigation
 - i. Begin crafting final financial declaration
- 5) Five weeks to two weeks before trial
 - a. Depositions
 - b. Follow up with guardian about investigation

- c. Follow up on discovery responses—[motion to compel](#)
 - d. Follow up on certificates of authenticity
 - e. Follow up on witnesses' acceptance of trial subpoenas
 - i. Get sheriff or process server to serve subpoenas
 - f. Further supplementation of client's witness list and trial exhibits
 - g. Continue crafting deposition outlines of parties
 - h. Consider second mediation
 - i. Final settlement proposal
 - i. Goal it to meet or beat it at trial and obtain attorney's fees
 - ii. Consider whether one is willing to settle part of the case if one cannot settle all of the case
- 6) Week to day before trial
- a. Designate portions of deposition(s) to be read into the record. [SCRCP 32\(a\)\(5\)](#)
 - b. What order to call witnesses?
 - i. If Plaintiff, will one call Defendant
 - ii. If Defendant, prepare client to be called as witness
 - iii. Typically prefer to call own client last
 - iv. Typically prefer to call opposing party first
 - v. Other witnesses
 - 1. Convenience
 - 2. Coherence
 - c. Talk to witnesses
 - i. Preferably with client present
 - 1. Client and witness can jog each other's memory and suggest issues to cover
 - ii. Prepare trial testimony outlines similar to party outlines but covering fewer topics
 - 1. Who witness is—why credible
 - 2. How witness knows parties—why knowledgeable
 - 3. Facts versus opinion
 - a. Inherently biased witnesses should stick to facts (opinion undermines credibility)
 - iii. Discuss process of trial testimony
 - iv. Discuss likely cross examination
 - v. Stress credibility
 - vi. When should witness arrive?
 - d. Prepare testimony outline of guardian
 - i. Is guardian's investigation insufficient?
 - 1. Preserve communications where one asked guardian to conduct investigation that the guardian did not investigate
 - ii. List questions where guardian's investigation differs (unfavorably) to what one believes the testimony and evidence will show
 - iii. Pick out portions of guardian's report that are favorable to client and ask guardian questions that highlight those portions

- e. Finalize client's financial declaration
- f. Finalize testimony outlines of client and opposing party
 - i. Collate trial exhibits
- g. Discuss with opposing counsel submitting fee affidavits last day of trial
 - i. If no agreement, prepare fee affidavit

Sample Trial Examination Questions

I. **Opposing Party**

A. **General**

1. Please state your full name for the record.
2. Please state your address for the record.
 - a. Do you own or rent your home?

Grounds for Divorce

B. **One-Year Separation**

3. Must establish through testimony of cooborating witness:
 - a. Date of separation.
 - b. Have not resumed marital relations, or spent the night together since that time.
 - c. 365 days have passed (The final hearing must be scheduled for day 366 or later).

C. **Adultery**

4. Have you had inclinations to have romantic relations with anyone else during our marriage, even during our separation?
 - a. With who?
 - b. Have you ever been alone with that person?
 - c. Have you acted on those inclinations?
5. Have you ever bought gifts for that person? – If yes, ask to describe. May submit as **EXHIBITS** – Any documents obtained through discovery, such as receipts or bank records, that would show questionable transactions. For example, purchases by a husband at Victoria Secret that weren't gifted to wife.
6. Questions about any inappropriate postings on Facebook. **EXHIBIT** – Request through discovery and introduce into evidence.
7. Did I ever condone your adulterous behavior?

D. **Habitual Drunkenness**

8. Do you drink alcohol?
9. Do you ever drink alcohol to point of becoming intoxicated?
10. Would you agree you have a habit of drinking alcohol to point of becoming intoxicated?
11. Did you often drink alcohol around the time we separated?
12. Would you agree your consuming alcohol caused the breakdown of our marriage?

E. **Physical Cruelty**

13. Have you ever struck me?
14. On how many occasions?
 - a. When was the most recent incident?

15. Did it ever leave any marks, bruises, etc.? – **EXHIBIT** – May introduce evidence, such as pictures if the witness can testify as to their authenticity, but it may be better to do this with another witness, such as the person who took the pictures.
 - a. Was it your intention to harm me?
 - b. Did you realize it was reasonably foreseeable your actions would most likely cause great bodily harm to me?
16. To your knowledge did I require medical attention? -- **EXHIBIT** – If yes, may introduce medical records here, but also may do so when you are giving your direct testimony.
17. Did the police ever respond? – **EXHIBIT** – If yes, may introduce police reports here, but also may do so when you are giving your direct testimony. However, it would be preferable to Subpoena the responding Officer and have him or her testify at the trial; otherwise, the evidence may not be admitted, because it is hearsay.

F. Desertion = Rarely, if ever, used as a ground for divorce.

Issues Arising from Marriage

G. Equitable Distribution

1. The Court must ascertain the value of the marital estate (marital assets – marital debts = marital estate). Then, the court considers a number of factors to “equitably” divide the marital estate; however, “equitably” often translates to roughly “equally.”
2. Enter into evidence documents to support your Financial Declaration. For example, for the marital home, you will want to introduce as **EXHIBITS** – Most recent mortgage statement, showing current payoff, and either an appraisal, CMA, or at least a report from an online service (such as Zillow.com) evidencing the current fair market value.
3. For vehicles, you will want to introduce as **EXHIBITS** – Most recent bill or online statement, showing current payoff, and a report from an online service (such as KBB.com or NADA.com) evidencing the current fair market value.
4. For bank accounts, you will want to enter as **EXHIBITS** – Statements from the time of the separation, not current statements.
5. For retirement accounts (and investment, and similarly held accounts), you will want to introduce as **EXHIBITS** -- Statements proving the contributions made during the marriage. This will require obtaining statements demonstrating the value of the accounts as of the date you got married, and as of the date you separated.
6. For valuable personal property, such as antiques, art, collectables, etc., you will want to introduce as **EXHIBITS** – appraisals, or at least a report from an online auction (such as Ebay or Craig’s List) evidencing the current fair market value.
7. Debts, such as credit cards and loans, you will want to introduce as **EXHIBITS** – most recent statement showing current balance owed. For any personal loans, you should introduce as an **EXHIBIT**, a written and signed loan agreement; for example, if you had to borrow money from family or friends to pay bills during the separation, it will most likely be considered a gift, not a loan, absent a formal loan agreement.
8. Businesses – Business valuations are complicated. It is nearly impossible to prove the value of a business, even for attorneys, without an expert witness.

H. Income

9. Are you currently employed?
 - a. Where? How long?
10. What is your annual salary? (or hourly wage?)
11. How many hours do you typically work per week?
12. Do you ever work overtime? – If yes, ask follow-up questions, such as, how often.
13. Do you ever receive bonuses? – If yes, ask follow-up questions, such as how often, how much?
14. Is any of your income based on commission? -- If yes, ask follow-up questions, such as how often, how much?
15. Does your employer ever pay you in cash?
16. Do you ever work any side-jobs? If yes, ask follow-up questions to establish income that is derived.

I. Alimony

17. Adultery is an absolute bar to alimony!
18. The court considers a number of factors to determine whether or not to award alimony, and if so, the type, amount and duration of alimony to award. Questions should include, but not be limited to the following:
 - a. The length of the marriage.
 - b. The age of the parties.
 - c. The health of the parties.
 - d. Educational background of parties.
 - e. Employment history of parties.
 - f. The earning capacity of the parties.
 - i. Earning capacity may be different than actual earnings. To prove earning capacity, you may want to introduce **EXHIBITS**, such as job postings from online sources (such as Monster.com or Indeed.com).
 - g. Standard of living established during the marriage.
 - i. Depending on whether you are seeking or defending payment of alimony, you will want to introduce certain evidence demonstrating what the standard of living was (or should have been) during the marriage. **EXHIBITS** may include the Financial Declarations of each party, and credit card statements.
 - h. Current and reasonably anticipated expenses and needs of each spouse.
 - i. Depending on whether you are seeking or defending payment of alimony, you will want to introduce certain evidence demonstrating both parties reasonably anticipated expenses. **EXHIBITS** may include the Financial Declarations of each party, and evidence of post-divorce expenses, such as anticipated out-of-pocket medical expenses.
 - i. Non-marital property
 - i. **EXHIBITS** – Introduce proof of non-marital property, such as trusts, or real estate that are not part of the marital estate.

J. Child-Related

19. Please state the names and birthdays of our children.
20. Do you have any other children?
 - a. Are they in your custody? If not, why not? What is your visitation schedule with them?
21. Are you listed on any national or state registries for abuse and neglect?
22. Have you ever been investigated by DSS? **EXHIBIT** – Should obtain DSS Central Abuse Registry Check, and introduce into evidence.
 - a. When?
 - b. What was the accusations?
 - c. What was the outcome?
23. Are you listed on any national or state sex offender registries?
24. Have you ever been accused of Criminal Domestic Violence or Child Abuse?
 - a. When?
 - b. What were the accusations?
 - c. What was the outcome?
25. Have you ever been charged with any crime? --- **EXHIBIT** – Should obtain SLED Record through discovery, and introduce as evidence.
 - a. What? When? What was the outcome?
26. Do you drink alcohol? – Follow-up questions to establish if it’s a problem. May introduce **EXHIBITS** – Such as, CDT tests, driving record showing DUI’s, arrests for public intoxication, etc.
27. Do you take any illegal substances or abuse prescription medications? – Follow-up questions to establish details. May introduce **EXHIBITS** – Such as drug tests, employment records showing patterns indicative of substance abuse, etc.
28. Have you been diagnosed with any physical or mental health condition that could impact your ability to parent our child(ren)? --- **EXHIBIT** – MEDICAL RECORDS
29. Please describe your home.
 - a. Number of bedrooms, distance from schools, distance from other parent.
30. How many times have you moved in the past year?
31. Do you date?
 - a. Have our children been around anyone that you’ve dated?
 - b. Has your GF/ BF ever stayed overnight when our children are with you?
32. Please name everyone who lives in or routinely stays overnight at your home.
33. Please describe your relationship with our child(ren).
34. How do you discipline our child(ren)?
 - a. Have you ever spanked our child(ren)?
 - b. Have you ever left marks or bruises on our child(ren)?
35. What are your strengths as a parent?
36. What are your weaknesses as a parent?
37. How would you describe my relationship with our child(ren)?
38. What do you believe my strengths are as a parent?
39. What do you believe my weaknesses are as a parent?

40. Do you have any concerns about our child's academic performance and/ or behavior issues at school? **EXHIBIT – SCHOOL RECORDS**
- a. How many times in the during the current or last school year did you meet with our child(ren)'s teachers? School counselor? Principal?
41. Are you aware of my concerns regarding our child(ren)'s school attendance when they spend the night with you? **EXHIBIT – SCHOOL ATTENDANCE/ TARDY RECORDS**
42. What extracurricular activities do our child(ren) participate in?
- a. How often do you attend those activities?
43. What are the names of our child(ren)'s current pediatrician, psychologist, counselor?
- a. How often have you communicated with these medical care givers?
 - b. What is your viewpoint as to our child's medical and mental health? – **EXHIBIT – MEDICAL/ MENTAL HEALTH RECORDS**
44. What is a typical school night like in your house when our children are with you?
45. Please describe a typical morning before school, when you have the children.
46. How do you typically spend a day with our child(ren) when they aren't in school?
- a. What kind of things do you enjoy doing together?
47. How many months were you unemployed in the past year?
48. How many times have you switched jobs in the past year?
49. What is your normal work schedule?
- a. Do you ever have to work when the child(ren) are with you?
 - a. Who watches (or would watch) our children when you are working?
 - b. How much annual vacation time do you get?
50. Please describe your relationship with me.
- a. What do you believe I could do to improve our relationship as co-parents of our children?
 - b. What do you believe you could do to improve this relationship?
51. What is your proposed plan for our child(ren)'s spiritual growth?
- a. What church do you go to? How often?
52. What custodial/ specific visitation schedule are asking this court to order?
- a. Please explain why you believe that is in the best interest of our children.
 - b. Please state every reason you should be awarded custody.
 - c. Please state every reason I should not be awarded custody.
53. Have you reviewed the Parenting Plan that I provided to you prior to start of this trial setting forth the custodial and visitation arrangement I am proposing? --- **EXHIBIT - --- PARENTING PLAN**
- a. Please explain why you believe my proposal is not in the best interest of our children.
54. What concerns do you have for our children's safety and/ or well-being if I am granted custody?

II. Guardian *ad Litem* (GAL)

1. The GAL will first make a statement to the court, this is considered his or her direct testimony. Then, the Plaintiff, followed by the Defendant, are allowed an opportunity to question the GAL.
2. In his or her direct testimony, the GAL will likely move to admit his or her Final Report into evidence. If it contains hearsay, or other objectionable content, you should object.
 - a. By statute, GAL's are prohibited from making recommendations as to who should have custody, unless the court specifically requests it. If any such recommendation is in his or her report, object.
3. Have you heard anything during this trial that affects the content of your report?
4. Ask specific questions regarding the report.
5. Review the GAL Statute, [SC §§63-3-810 – 63-3-870](#), and question anything the GAL has done or not done that didn't comply with the statute.
6. Question the capacity and willingness of each parent to cooperate with each other, and to foster a positive relationship between the other parent and the children.
7. Question the capacity and willingness of each parent to support the child's academics.
8. Question the capacity and willingness of each parent to support the child's spiritual upbringing.
9. Question each parent's cooperation with the GAL's investigation.
10. Question the child(ren)'s wishes, keeping in mind the child's age, emotional maturity, and if the child's stated preference may have been influenced by the other parent.
11. Ask what factors the GAL believes are both of your best qualities as a parent.
12. Ask what factors the GAL believes are both of your greatest weaknesses as a parent.
13. Ask what recommendations the GAL made during their involvement in the case.
 - a. Ask the GAL to explain to what extent you each complied or didn't comply with his or her recommendations.
14. Ask the GAL how he or she would describe each of your commitment to your child(ren)'s welfare.
15. Other questions may include:
 - a. On how many occasions did you observe the children with each parent?
 1. How long was each observation?
 2. Where was each observation?
 3. Was anyone else present? Who?
 4. How would you describe each parent's interactions with the child(ren)?
 - b. How would you describe the child(ren)'s attachment to each parent?
 1. Do you believe these are healthy relationships? Why or why not?
 - c. Did you visit both homes?
 1. How many times?
 2. Did you make any unannounced visits?

- d. When did you first come to the conclusion that your recommendations would be in the best interests of the child(ren)?
 - 1. Did anything during your investigation sway your belief in this regard?
 - e. Did either parent ask you to investigate any issue that you did not investigate? If so, what? Why not?
 - f. Did either parent ask you to undertake any task, such as interviewing any particular witnesses, that you did not do? If so, what was the task? Why did you not do it?
16. You may question the GAL regarding their bill(s).
- a. Review the GAL statute linked above, and question any noncompliance.
 - b. Review the Order(s) pertaining to the GAL's fees and billing, and question any noncompliance.

III. Fact Witness – Child Issues

- 1. Name, Address, Age, Occupation
- 2. Are you a parent? How many children? Ages?
- 3. Are you divorced?
 - a. What is your custodian/ visitation arrangement?
- 4. Does your spouse (or former spouse) have children with anyone else?
 - a. How would you describe your relationship with the other parent?
 - b. How would you describe your role as the step-parent?
- 5. Do you know both parties? How? How long?
 - a. Are you closer to the Mother or Father?
- 6. Have you seen both parties with the child(ren)?
 - a. How often?
 - b. Most recently?
 - c. How would you generally describe the child(ren)'s interactions with each parent? Give examples
- 7. Have you been in my home? If yes, how would you describe it?
- 8. Have you been in the other parent's home? If yes, how would you describe it?
- 9. Have you ever seen either or both parents discipline the child(ren)?
 - a. How would you describe his and/ or her method of discipline? Give examples.
- 10. What do believe is each parent's strength's as a parent? Give examples.
- 11. What do you believe is each parent's weaknesses as a parent? Give examples.
- 12. Are you aware of the other parent's: criminal record, DSS record, GF/ BF, other proven parental character flaws and/ or actions.

IV. Expert Witness

- 1. Expert's are the only witnesses that may give their opinions during testimony!
- 2. Common experts include: Psychological Evaluator, Custody Evaluator, other medical care providers, educators.
- 3. You must ask general questions to establish his or her qualifications, such as: Name, educational Background, training, and experience. Then, offer him or her as an expert witness.

4. If they have issued a written report or statement that is supportive of your case, then admit it into **EVIDENCE**.
 - a. If the witness is going to testify on your behalf, it may be best to ask a broad or general question, such as: Please summarize your report for the court. Then, step-back and allow the witness to speak, without interrupting him or her. Remember, most expert witnesses have testified before, and know what they are doing. Once he or she is finished summarizing his or her position in the case, then you can ask follow-up questions to clarify or emphasize any points.
5. Generally expert witnesses should be asked:
 - a. Did you observe the child(ren) in this case?
 1. How many times?
 2. How recently?
 3. Did you observe the child(ren) with both parents?
 - a. How many times?
 - b. How recently?
 - b. Question their knowledge of the key facts in the case.
 - c. If the expert did not already offer a clear opinion as to the issues in the case, then you might want to respectfully ask him or her to please clarify and/ or expand upon, or more thoroughly explain his or her recommendations and/ or opinions as to the ultimate issues in your case.
6. Psychological/ Custody Evaluators may be able to testify as to:
 - a. Is the other parent enmeshed with the children?
 - b. Is there any evidence the other parent may be alienating the children?
 - c. Is the other parent seeking custody for their own or the children's best interests?
 - d. Did you interview everyone who lives in both parent's home? If not, who not and why not?
 - e. Did you interview the children? If not, why not?
7. If they issued a written report or statement that is not supportive of your case,
 - a. Question any lack or shortage of the expert's qualifications, such as disciplinary actions, length of time in practice, outdated training.
 - b. You should question the credibility of his or her report, for example:
 1. What types of evaluation methods were used? Subjective? Objective?
 - a. Were the same tests administered to both parents? If not, why not?
 2. What alternative methods of evaluation are available?
 3. Why did you select the methods used over the alternative methods?
 - c. Questions any bias.
 1. How did you first become involved in this case?
 2. Were you paid for your testimony?
 3. How many cases have you worked with opposing counsel?
 - a. How many times did you meet with and/ or discuss the issues in this case with opposing counsel?
 4. How many times did you meet with and/ or discuss the issues in this case with each parent?

5. How many cases have you worked on with the GAL?
 - a. How many times did you meet with and/ or discuss the issues in this case with the GAL?
- d. For any psychological diagnosis, question how it may impact the ability to parent. And the likelihood it will impact the ability to parent.
- e. What other information and/ or documentation did they review related to this case?
 1. Question any evidence that wasn't considered, which may have been contrary to his or her final recommendations.
- f. Question any insufficiencies in the information the expert considered; for example: Did he or she fail to interview an essential witness? Is there a key fact key or she was unaware of?
- g. If the expert's stated opinion is contrary to your interests, you might want to ask if there is anything that would change his or her opinion. You may also want to ask if there is anything you could do, or improvements you could make that would impact his or her opinion and recommendations. It may also be helpful to ask if the expert has any hesitation or concerns in making the recommendations, and if there is anything the other party could do that would change his or her opinion and recommendations. Also, it is worth asking about any facts that remain unproven at trial (or subject to reasonable debate/ interpretation), and how different viewpoints may alter the expert's opinion and/ or recommendations.



Courtroom Etiquette

Do arrive at least 15 minutes before your hearing.

Do dress appropriately for court.

Do be respectful to the judge, the staff AND the other party.

Do wait for your turn to speak.

Do listen carefully to the Judge's questions and answer them honestly.

Do bring all necessary documents.

Do sit quietly at the courthouse while waiting for your turn before the judge.

Don't be late.

Don't wear hats, flip-flops, jeans, t-shirts, clothing with obscene language or clothing that's too tight or skirts that are too short, and tuck in your shirt.

Don't be rude, yell, scream, and don't roll your eyes.

Don't interrupt others and **NEVER** speak when the Judge is speaking.

Don't interrupt the Judge.

Don't bring your children to court. **Don't** try to bring your cell phone into the courthouse.

Don't participate in loud conversations.

Don't eat, drink or chew gum.

Tips for Testifying and Behaving in Court

 gregoryforman.com/faqs/tips-for-testifying-and-behaving-in-court/

1. Listen to the question and make sure you understand it before you start formulating your answer.
2. If you do not understand the question, do not answer it. Instead ask for clarification
3. Once the question has been completely asked and you understand it, answer the question:

a. Do not lie

b. Do not raise your voice

c. Do not fidget, or do things that make you appear blase or uninterested

d. Do not get argumentative

e. If the question calls for a yes or no response, give a yes or no response. Only explain your response if asked a "why" questions. Your attorney can always seek explanation on redirect examination.

f. Do not guess

i. If you have a general idea of the correct answer but are not sure, it is fair to give a range (i.e., the cost was around \$19,000.00; or the date was sometime in mid-November)

ii. If you do not know, answer that you do not know. Better to appear ignorant than to answer inaccurately and appear a liar.

g. Do not go beyond the question (do not volunteer information that the question does not call for)

4. Objections

a. If you are testifying and you hear someone object, stop talking immediately.

b. If the judge sustains the objection, do not try to answer the question. Simply wait for the next question to be asked

c. If the judge overrules the objection, you must answer the question

5. Courtroom demeanor

- a. Everyone (the judge, the other party, the other party's attorney; court personnel) is watching you
- b. Behave in ways that make you appear reasonable and calm
- c. Do not show strong reaction or emotion
- d. When court is in session, do not talk unless the judge is asking you a question or you are on the stand testifying.

If the judge asks a question for someone else, do not volunteer the answer. If you need to tell me something write it down. If you furiously write notes, it makes you look manic.

STATE OF SOUTH CAROLINA)
)
COUNTY OF)
)
)
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Plaintiff,)
)
)
vs.)
)
)
)
Defendant.)
)

IN THE FAMILY COURT
JUDICIAL CIRCUIT

**REQUEST FOR APPOINTMENT
OF MEDIATOR**

_____ -DR - _____ - _____

Case File Date:

Plaintiff/Attorney for Plaintiff: _____
Office Address: _____
Telephone: _____
Email Address: _____
SC Bar #: _____

Defendant/Attorney for Defendant: _____
Office Address: _____
Telephone: _____
Email Address: _____
SC Bar #: _____

Pursuant to Rule 4(d)(2)(C) of the South Carolina Alternative Dispute Resolution Rules (SCADR), I hereby request that the Clerk of Court appoint a primary mediator and a secondary mediator for this action utilizing the process prescribed for in Rule 4(d)(2)(B), SC ADR.

Mediator requested
by:

 Attorney for Plaintiff Attorney for Defendant
 Pro se Litigant

Attorney or Pro Se Litigant Signature

Date: _____