

# HOW TO WAIVE APPEARANCE FOR IRRECONCILABLE DIFFERENCES DIVORCES IN THIRD CIRCUIT COURT:

## A GUIDE FOR PRACTITIONERS

Beginning on January 21, 2025, you may waive the in-person final hearing requirement for certain irreconcilable differences divorces in Third Circuit Court. The purpose of this guide is to assist attorneys in preparing their cases and successfully waiving the final hearing requirement. At this time, *pro se* divorces, where neither party is represented by counsel, will still require an in-person final hearing, although we hope to adopt procedures and forms to eventually allow *pro se* litigants the same opportunity to waive the final hearing requirements.

### WHAT CASES ARE ELIGIBLE FOR A WAIVER OF APPEARANCE AT FINAL HEARING?

- Irreconcilable Differences (uncontested) divorces where one or both parties are represented by counsel
- All necessary documents have been completed and filed prior to requesting a final hearing date. Typically, this will include:
  - Notice of Insurance
  - Properly executed Marital Dissolution Agreement
  - Properly executed Permanent Parenting Plan (if applicable)
  - Tennessee Child Support Worksheet (if applicable)
  - Properly Executed Affidavit to Waive Appearance at Final Irreconcilable Differences Divorce Hearing from the party to whom the divorce is being granted
- The applicable statutory waiting period of 60 or 90 days has elapsed since filing

### WHAT CASES ARE NOT ELIGIBLE FOR WAIVER AND WILL STILL REQUIRE FINAL HEARINGS?

- Divorces where both parties are *pro se* (at this time cases where there is no attorney of record will not be eligible for waiver)
- Divorces by default.
- **Cases where the parties have agreed to a shared residential parenting schedule such as parenting plans with a proposed 50/50 schedule or week-on week off equal parenting time. Appearances at final hearing will not be waived for equal parenting schedules and both parents must appear at the final hearing.**

- Cases where no Affidavit to Waive Appearance has been filed prior to requesting a final hearing date.
- Any case where a proper Order to Set Irreconcilable Differences Divorce with Appearance Waiver is not timely filed (9 days prior to the date of the final hearing). These cases will be removed from the no appearance docket and placed on the appearance docket and the attorney will then have to timely submit a traditional order to set to maintain their requested hearing date.

#### PROCEDURES TO WAIVE APPEARANCE AT THE FINAL HEARING

1. Be sure the appropriate statutory waiting period (60 or 90 days) has elapsed
2. Check Caselink or EFiled to be sure you have filed the following necessary documents:
  - a. Notice of Insurance
  - b. Properly executed Marital Dissolution Agreement
  - c. Properly executed Permanent Parenting Plan (if applicable)
  - d. Tennessee Child Support Worksheet (if applicable)
    - o Properly Executed Affidavit to Waive Appearance at Final Irreconcilable Differences Divorce Hearing from the party to whom the divorce is being granted
3. Call Third Circuit Court to request a final hearing date and a waiver of appearance. You will be provided with upcoming available final hearing dates for your case. If you are requesting a waiver, the earliest your final hearings may be set is three weeks out rather than two. Once you have selected your final hearing date, call back and let the staff know your selected date so that it may be written on the docket book. This does not set your case; you must still submit an Order to Set to properly place your case on the docket.
4. File an Order to Set Irreconcilable Differences Divorce with Appearance Waiver. This Order must be submitted no later than 4:30 p.m. on the Monday two (2) weeks prior to your scheduled hearing date. (For example, if your hearing is scheduled on January 21 or 22, 2025, the Order to Set must be filed by January 6, 2025.) This will be fifteen (15) days before Tuesday final hearings and 16 days before Wednesday final hearings. If the Order to Set is not timely filed, the appearance will not be waived, and you will be expected to appear. If we do not receive the Order to Set with Appearance Waiver, your case may remain on the scheduled date, but you must then file a traditional Order to Set and the attorneys and parties will be expected to appear.
5. When the Order to Set with Appearance Waiver is received, the Court will review the file and determine whether the waiver request will be granted. If the request is granted, the Court will enter the Order to Set with Appearance Waiver. If the

request is denied, your case may remain on the docket on your selected date, but the parties and attorneys will be expected to appear in-person.

6. The Court staff will make every effort to notify counsel whenever waiver requests are denied and to ask that you file a traditional order to set and to advise regarding any other issues with your case in advance. As always, certain cases may still require the parties to appear if there are issues or concerns.
7. Cases with approved waivers will be placed on the Court's Uncontested Divorce Docket on the date set by the Order. The Court will not review or sign Final Decrees until the date set for hearing. Submit the proposed Final Decree of Divorce prior to the scheduled final hearing for timely entry on the date of the final hearing.

## FORMS

Attached are the preferred forms necessary to waive appearances at final hearings in Third Circuit Court. You will find:

1. Affidavit to Waive Appearance at Final Irreconcilable Differences Divorce Hearing
2. Order to Set Irreconcilable Differences Divorce with Appearance Waiver

**These are the only forms developed and approved by the Court. Any documents submitted which do not meet the requirements of the Court will cause your waiver request to be denied.**

These will also be available on the Davidson County Circuit Court Clerk's website.

The Final Decree of Divorce for cases where the appearance has been waived should include the following opening paragraph:

*This matter came to be considered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the Honorable Phillip Robinson, Judge for the Third Circuit Court for Davidson County, Tennessee, upon the Plaintiff/(Wife or Husband)'s Complaint for Divorce, a duly executed Marital Dissolution Agreement (and Proposed Permanent Parenting Plan [if applicable]) submitted to the Court for approval, an Affidavit to Waive Appearance at Final Irreconcilable Differences Divorce Hearing executed by the Husband/Wife, and the entire record.*

A full sample final decree of divorce is available in the Court's Chamber Rules.