

Who files first?

Does it matter who files for divorce first? The answer, like so many in the law, is maybe. In actuality, there are times when you want to file first and other times that it is better to wait. While you should always discuss an important strategy decision like this with an attorney, here are certain tactical advantages and disadvantages to consider before being the first to file for divorce.

**Possible advantages:**

Although being the party to initiate the divorce action will not necessarily increase your likelihood for success or predict the outcome of the case, there are some advantages to being the plaintiff or petitioner in a divorce action. One advantage, which is likely the most important, is that the plaintiff in a divorce action has more control over when the proceedings begin and where they will occur. The party who files first may choose when to file, thus choosing when the proceedings begin. Additionally, the party who files first will have more control over where the action occurs. Although the location of divorce proceedings are regulated by Georgia law, if there is more than one possible venue where the proceeding may be held, the plaintiff may have the ability to choose which forum is more convenient. This may be important, especially in a divorce between two individual who are currently residing in different states.

Another possible advantage that a plaintiff in a divorce action may have is that through their complaint, a plaintiff is allowed to proceed forward first and last at trial. While attorneys will debate for years which position is best at trial, it is worth noting and considering that being both the first and last person to speak may have its advantages at trial.

In addition, from a non-legal perspective, there may be some emotional advantage (or disadvantage) of being able to say I filed for divorce (rather than my spouse) to family and friends.

**Possible disadvantages:**

In addition to the possible advantages that may result from filing for divorce first, there are possible disadvantages as well. One major disadvantage that is often overlooked is that in order to initiate a civil action, a plaintiff must pay filing fees to the clerk of court in the county in which he or she files. In Georgia, the fee to file a domestic civil action is upward of \$200.00, depending upon the county.

Another disadvantage associated with filing for divorce first is that the plaintiff, by filing first, gives the defendant an opportunity to respond to his or her claims and assert counterclaims of his or her own. Thus, by filing first, the plaintiff risks that the defendant may take her by surprise and counter with claims that were not anticipated by the plaintiff. Fortunately for plaintiffs, Georgia allows the amendment of complaints so that a plaintiff in this position will not be harmed by failing to address all possible claims in the initial petition. Additionally, in Georgia it is not necessary for

a plaintiff to answer counterclaims for divorce as counterclaims for divorce automatically stand denied. *See O.C.G.A. § 9-11-12(a)*.