

PETITIONS FOR UNCONTESTED DIVORCE IN NORTH CAROLINA

Under the law, every person has a right to prosecute an action without the assistance of counsel. Indeed, the right is guaranteed by the Open Courts Clause of the North Carolina Constitution (Article 1, Section 18), statutory law (Gen. Stat. § 1-11), and decisional law. *See, e.g., State v. Pritchard*, 227 N.C. 168, 41 S.E. 2d 287 (1947). Moreover, everyone has the right to “petition the government for the redress of grievances” under the First Amendment to the Constitution of the United States, and the right to represent oneself is guaranteed by the Sixth Amendment (both of which were made applicable to the states through the 14th Amendment). The right of self-representation is also codified at 28 U.S.C. § 1654, and affirmed by decisions of the United States Supreme Court. *See, e.g., Faretta v. California*, 422 U.S. 806 (1975). In short, the court may not prohibit or prevent a person from filing a lawsuit of any kind, even though the person is a prisoner or prefers to prosecute the matter without benefit of counsel.

North Carolina law expressly allows for uncontested divorces granted by the clerk of court upon request of the petitioner. Gen. Stat. § 50-10(e) states that upon request of the plaintiff, the clerk of superior court may enter judgment for absolute divorce when the defendant has defaulted or “has answered admitting the allegations of the complaint” Although the word, “may,” appears in the statute, it simply conditions entry of judgment upon the clerk’s determination that all statutory prerequisites have been satisfied. Once the clerk has made that determination, the clerk is required to enter judgment for absolute divorce – a mandatory, ministerial act. The clerk does not have the discretion to choose not to enter judgment.

In essence, G.S. § 50-10(e) relieves judges, court personnel, and all participants in the process of superfluous paper work, the needless expenditure of time, and unnecessary expense. It eliminates the need for the issuance of writs of *habeas corpus ad testificandum*, the transportation and attendance of the prisoner-plaintiff in such cases, as well as the escort provided by Department of Correction officers, since disposition can be determined as a matter of law in a judgment on the pleadings by the Clerk. Indeed, so well established is this procedure that the Administrative Office of the Courts has developed a form to facilitate the process: “Judgment for Absolute Divorce Before the Clerk,” AOC-CV-710, New [Form] 11/04, 2004 Administrative Office of the Courts.

However, according to the law, no particular form can be required to initiate a lawsuit. *See* Gen. Stat. § 1A-1 Rule 8 General Rules of Pleadings (“A short and plain statement of the claim sufficiently particular to give the court and the parties notice . . .”).

Should one encounter any difficulties, a letter to the court describing the problem and citing the authorities listed above may resolve the matter. It is often helpful to communicate in respectful terms. If a letter does not resolve the problem, one should consult a lawyer and be prepared to describe the difficulty, providing copies of all related documents. Such matters can be promptly resolved without the need for collateral litigation, but conduct that impedes one’s “access to petition the government for the redress of grievances” generally is not permitted.

