

CHILD CUSTODY IN PHILADELPHIA COUNTY

WHAT IS CUSTODY?

A custody order is a written order signed by a judge. It determines who will provide care for a child. It is composed of two parts:

Physical Custody –where the child actually lives. There are four types:

- **Primary** – gives the party the right to have the child live with him or her most of the time
- **Partial** – gives the non-primary custodian the right to take possession of the child away from the custodial parent at specified times
- **Visitation** – gives the non-custodial parent the right to visit the child but does not include the right to remove the child from the custodial parent's control. May be supervised by the custodial parent, a family member, other responsible adult, or the staff at the Court Nursery at 1801 Vine Street
- **Shared** – refers to the sharing of custody (sometimes called joint)

Legal Custody – the right to make important decisions in a child's life, such as medical, religious, and educational decisions, which can be sole or shared.

WHO MAY FILE FOR CUSTODY IN PHILADELPHIA?

- **Jurisdiction** – Your child must have lived in Philadelphia for at least 6 months in order for the Court to be able to hear your case. There are a few exceptions to this rule, for example if the child is under 6 months old, or for certain emergencies.
- **Standing** – In order to obtain custody, you must either be a parent of the child or have acted *in loco parentis*. If the child is not your biological child, you may have acted *in loco parentis* if you have served in the role of a parent and taken on the responsibilities of parenthood for a period of time.

This brochure is meant to give you general information and not legal advice.

HOW TO FILE FOR CUSTODY?

Where: The Intake Unit of Philadelphia Family Court, located in the main lobby at 34 S. 11th Street, Philadelphia, PA.

What happens: Court personnel will assist you in preparing your petition. If you fear for the child's safety, you may petition the court to hear your case on an emergency basis. If you do not petition for or are not granted emergency custody, you and the opposing party or parties will be sent a Notice to Appear in court.

What to bring to file for custody: You should bring any important papers and information such as previous custody orders, protection from abuse orders, the opposing party's address and social security numbers for all parties.

Cost: It costs \$57 to file. If you petition for emergency custody, it will cost an extra \$30. If you cannot pay the filing fee, you may ask to be excused from paying the fee by filing a petition to proceed *In Forma Pauperis* (IFP). Ask for and fill out an IFP Petition. If you are on welfare or SSI, bring your welfare photo ID or proof that you receive SSI.

Custody Modification: If you want to change your custody arrangement you may file a modification petition. The fee is \$30.

Contempt of Custody: If someone violates the order, he or she may be held in contempt of court. There is no fee to file a contempt petition.

WHAT HAPPENS IN COURT?

When you go to court, you will meet with a master. If there are no prior protection from abuse orders, you may have the opportunity to participate in mediation. MEDIATION IS OPTIONAL. If you do not feel comfortable mediating an agreement, a custody master will talk to you about your case. If you reach an agreement with the other party at the master's conference, a judge will enter the agreement as a court order. If you do not reach an agreement, the custody master will either take testimony and make a recommendation to the judge (partial custody and visitation cases only) or issue a temporary order and give you a date to have your case decided by a judge.

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HOW DOES THE COURT DECIDE CUSTODY?

A judge or master, after holding a hearing, decides the custody arrangement based on what is in the *best interest of the child*. This may include such things as:

- Where the child is currently living.
- How the child is doing in his/her current situation; at home, at school and in the community.
- Your ability to care for the child.
- The parties' situation; where they live, with whom they live, whether they have a history of substance abuse or a criminal record, and whether there is a history of domestic violence.
- If there are issues of substance abuse or mental health, the judge may order a home investigation, mental health assessment or drug and alcohol screening.
- The judge is allowed to question the child.

HOW DO I PREPARE FOR THE HEARING?

- **Testimony** – each party may present their side and ask questions of the other side. You may prepare a list of your main points as well as questions that you want to ask the other party and bring that list to court with you.
- **Evidence** – you may bring school or medical records or other important papers or photographs. You have the right to see everything that the other side wants to show the court. Make two copies of whatever you plan on giving to the court — the judge or master gets the original, the other side gets a copy and you keep a copy.
- **Witnesses** – you may want to bring witnesses to testify on your behalf. Witnesses must present a subpoena to be admitted into the court. Ask any court employee at 34 S. 11th Street where to get a subpoena. Give your witnesses the subpoena before the hearing date and have them show it to the security guard upon entering the courthouse. You may want to prepare and bring with you a list of questions to ask your witnesses and any witnesses the other party brings.

WHAT IF I DISAGREE WITH THE COURT ORDER?

- If your case is to determine primary custody and you do not reach an agreement before the master, your case will be scheduled for trial before a judge.
- If you disagree with a master's proposed partial custody order, you may file *exceptions* within 10 days after you receive the written recommendation. In your exceptions, you must explain in writing why you think the master's proposal is wrong. The exceptions must be filed in person or received by mail within the 10 days and will not be accepted by fax. After the exceptions are filed, there will be a hearing before a judge. You will need to explain to the judge what the master did wrong.
- If you disagree with a Judge's order, you may file a *request for reconsideration*. You may wish to talk to an attorney if you want to file such a request.
- You may also file an appeal with the Superior Court of Pennsylvania within 30 days of the date of the court order. Appeals are very complicated. You may want to talk to an attorney if you decide to appeal to Superior Court. A request for reconsideration does not stop the 30 days from running.

COPIES OF ALL CUSTODY FORMS WITH INSTRUCTIONS CAN BE DOWNLOADED FROM THE COURT'S WEB SITE AT:

<http://courts.phila.gov/forms.html>

Is Legal Help Available?

Philadelphia Legal Assistance (215) 981-3800
Philadelphia Bar Association Lawyer Referral and Information Service 215-238-6333

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