

INSTRUCTIONS FOR FILING A PETITION FOR CUSTODY OR VISITATION

If you are the father of a child and you have an order from a judge legitimating your child and you want custody of that child, then you must file a Petition for Custody in the Superior Court in the county of the parent who has legal custody of that child. **(Please note the mother is usually the other side in a father's request for custody after he has legitimated his child. If the other side is another relative that was granted custody through a court order, you should consult with an attorney.)**

You should consult an attorney when filing legal papers to be sure that your rights are protected and that all procedures are correctly followed particularly if:

- \$ The case is contested and the mother has a lawyer.
- \$ You cannot locate the mother to serve her with your papers.
- \$ You think you will have difficulty obtaining documents from the mother.

- Step 1.** Complete the Petition for Custody and Visitation
- Step 2.** Complete the Verification Form
- Step 3.** Attach other documents to your petition
- Step 4.** Pay the filing fee to the Clerk of Court
- Step 5.** File the forms with the Clerk of Court
- Step 6.** Serve the other side with a copy of your petition and other required documents
- Step 7.** Prepare for Hearing

HERE ARE DETAILED INSTRUCTIONS ON HOW TO APPLY FOR CUSTODY:

STEP 1: Complete the attached sample form for petition for custody

Fill in your name as the Petitioner and the mother's name as the Respondent. Do not fill in the section where it says "Civil Action File No". The clerk will assign a number to your case when you file your petition. Then write your name in the space provided after the word **Al@**.

Paragraph 1: Subject Matter jurisdiction

In order for a judge in Georgia to make a decision as to whether you should have custody of your child(ren), the child(ren) must have lived in Georgia for at least six months before you file your petition. **You must not have illegally removed the child(ren) from the state where the mother lives.** If your child(ren) have not lived in Georgia for six months before you file, there may be other situations that will give a judge in Georgia authority to decide custody, but you will need to speak with an attorney to determine whether or not your situation might meet those requirements.

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

In subparagraph (b), write in the number of minor child(ren) you and the mother have. Then list the child(ren)'s names, gender, date of birth, and with whom they are living.

In subparagraph (c), write in the name of the county where you got your Legitimation Order and the Civil Action File Number of your legitimation case where indicated. Write the judge's name that granted the legitimation and the date the judge signed the order. You must attach a copy of your Legitimation Order to this petition, and write Exhibit AA@ on the top of the first page.

Paragraph 2: Venue and Service

"Venue" is another name for county. "Service" is a legal way of making sure that the other side gets a copy of the papers that you are filing with the court. It is very important that you file in the proper county and that the other side is served correctly.

The general rule is that you file your Petition for Custody in the county where the mother lives **unless** the mother signs a **Waiver of Venue** form or a **Waiver of Jurisdiction** form. If the mother lives in a different county in Georgia, but will agree to you filing in your county, she will need to sign a **Waiver of Venue** form. If the mother lives in another state, but will agree to you filing in your state and county, she will need to sign a **Waiver of Jurisdiction** form unless the child has lived with you for at least six (6) months prior to you filing this petition. (The Waiver forms are available at the Family Law Information Center.)

Write the name of the Respondent in the space provided.

PLEASE READ ALL THE OPTIONS BEFORE CHECKING ANY BOXES

BOX AA@ SECTION

Check box (a) if the mother lives in _____ County.

Check box (1) if the mother **will admit** receiving a copy of your Petition for Custody by signing an **Acknowledgment of Service** form. If you and the mother have an agreement for custody that you want the court to accept, check the box beneath this paragraph and then attach the original signed agreement to your petition. **(For more information see "Acknowledgment of Service" section in the Service Packet.)**

Check box (2) if the mother **will not admit** to receiving a copy of your petition and lives in _____ County. You must have the sheriff serve the mother with a copy of your Petition for Custody. Write her home address in the space provided. **(For more information see "Personal Service" section in the Service Packet.)**

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Check box (3) if the mother will not agree to you having custody and lives in _____ County, and you do not know where she lives; but, you do know where she works. Write in the space provided the mother's work address. If her work address is not in _____ County then check the box below this paragraph and write in the space provided the county where her work address is located. The sheriff in the county where she works must serve the mother with a copy of your Petition for Custody. This is called serving a person by "second original". **(For more information see "Personal Service" section in the Service Packet.)**

Check box (4) if the mother is a resident of _____ County, but you do not know where she lives or works. You will have to do what is called "service by publication". **(For more information see "Publication" section in the Service Packet.)**

BOX AB@ SECTION

Check box (b) if the Respondent is not a resident of Georgia, but you are a resident of _____ County and the child(ren) have lived with you in Georgia for at least six months.

Check box (1) if the mother will not consent to this action and does not live in Georgia and you know where she lives, then either:

\$ Check box (a) if the mother was formerly a resident of the State of Georgia. Circle whether the mother will be served at home or work.

Write that address in the space provided. You will have to have the mother served in the county where she lives. Please note that you will have to inform the clerk that you are having your petition served by "second original". **(For more information see "Personal Service by second original" section in the Service Packet.)**

\$ Check box (b) if the mother has never lived in Georgia, but you know where she lives. Write in the space provided the state where the mother is currently living. Then circle whether the mother will be served at home or work. Write that address in the space provided. You must have the mother personally served by second original. However, because the mother has never lived in Georgia, you must first get a court order from the presiding judge stating that the mother can be personally served by second original. You must complete a **"Motion to Have Respondent Personally Served by Second Original"** and attach an **Affidavit Where Respondent is Nonresident**. Then take your Motion, Affidavit, and proposed order to the presiding judge to get signed. If signed, file this

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Motion, Affidavit, and Order with your Petition for Custody. Then follow the instructions in the *Service Packet for Personal Service by Second Original*. Your petition will be limited to the issue of custody of the child(ren). The Court cannot address any other issue (such as child support) because Georgia does not have personal jurisdiction over the mother.

Check box (2) if the mother does not live in Georgia and you do not know where she lives or works. You will have to do what is called "service by publication". If you know the county or city where she lives, you must publish the notice in that city/county's legal newspaper as well as in your county's legal newspaper. **(For more information see "Publication" section in the Service Packet.)**

Check box (3) if the mother does not live in Georgia and will admit receiving the papers from you by signing an **Acknowledgment of Service and a Waiver of Venue** form. You will need to attach the signed Acknowledgment and Waiver to this petition. If you and the mother have an agreement for custody that you want the court to accept, check the box beneath this paragraph and then attach the original signed agreement to your petition. **(For more information see "Acknowledgment of Service" section in the Service Packet.)**

BOX AC@ SECTION

Check box (c) if the mother lives in another county in Georgia and agrees to your Petition for Custody being filed in _____ County. Write in the space provided the county where the Mother lives. If you and the mother have an agreement for custody that you want the court to accept, check the box beneath this paragraph and then attach the original signed agreement to your petition. **(For more information see "Acknowledgment of Service" section in the Service Packet.)**

BOX AD= SECTION

Check box (d) if you have no idea where the mother lives but you live in _____ County. If you know that the mother lives in another county in Georgia, and you know which county, you must file in that county. You must have searched thoroughly for her address. You must attach an **Affidavit of Diligent Search** stating what efforts you have made to locate the mother. See the "How to Serve" packet for complete instructions. Your petition will be limited to the issue of custody of the child(ren). The court cannot address any other issue (such as child support) because the mother will not be personally served with a copy of the petition.

If the Respondent lives in another county in Georgia and does not agree to the case being brought in _____ County, then you must file in the county where the Respondent lives.

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Paragraph 3: Request for Custody

Check box (3) if you want to get legal or physical custody of your child.

There are two types of custody: physical and legal. Please review the definitions for each.

Physical Custody:

- 1) **Joint**-You and the other parent share physical custody of the child with the child living half of the time with one parent and the other half with the other parent. This arrangement can work where the parties live close to one another.
- 2) **Sole physical**- The child lives with one parent exclusively and visits with the other parent.
- 3) **Primary physical**-One parent has physical custody of the child the majority of the time. You should state when you want to have the child with you.
- 4) **Secondary physical**-One parent has physical custody of the child for lesser time than the other parent, typically during the summer time and alternating weekends. You should state when you want to have the child with you.

Legal Custody

- 1) **Joint legal** -Both parents consult with each other on major decisions affecting the child. In some cases, the judge may decide that one parent is the final decision maker if the parents do not agree on an issue.
- 2) **Sole legal**- One parent makes all decisions concerning the child and does not have to consult the other parent.

Check the boxes which state what type of custody you are seeking.

Paragraph 4: Visitation

Check box (4) if you want to get visitation rights to your child(ren) and no visitation was granted in your legitimation. A sample visitation is attached as "Exhibit C". If you were granted visitation in your legitimation, but you now want to change your visitation, you must file a Petition of Change of Visitation. (This form is available in the Family Law Information Center.)

Paragraph 5: Addresses of the Child(ren)

Write in the space provided the address of where the child(ren) currently live and the

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person with whom they are living. Then list each address where the child(ren) has/have lived for the past five years and state with whom the child(ren) were living for each address.

Paragraph 6: Other Custody Actions

Check box (a) if there has never been any other custody action concerning your child(ren) other than the original order for legitimation.

Check box (b) if there has ever been or is presently another custody action concerning your child(ren). Write in the space provided the location of the custody action, the type of action, and what happened with that custody action.

Paragraph 7: Other Persons with Claims to Child(ren)

Check box (a) if no one other person or entity than you or the other party has a court order stating what legal rights they have to your child(ren). This means that there is no court order granting anyone else custody or guardianship of your child. If the child(ren) is/are in the physical custody of another person other than you or the mother, then you should check box (b) and write that person's name in the space provided.

Check box (b) if someone other than you or the other party has any legal rights to your child(ren). Write in the space provided the name of the person or entity, and what legal rights that person or entity has to your child(ren). If your child(ren) is/are in the physical custody of another person, then you should list that person also.

Paragraph 8: Child Support

Write in the space provided the name of your employer and your gross (***before taxes***) monthly income.

Check box (a) if you are in need of financial assistance from the mother for the support of the minor child(ren).

Check box (b) if the mother is able to support the minor child(ren). Then write the name of the mother's employer and her gross (***before taxes***) monthly income.

Check box (c) if service is by publication, or the mother has never resided in Georgia. Georgia does not have personal jurisdiction over the mother. ***Please note that you cannot get an order for child support if Georgia does not have personal jurisdiction over the mother.***

Paragraph 9: Health Insurance

Check box (a) if you desire that the mother obtain health insurance for the child(ren).

Check box (b) if you want the mother to maintain health insurance for the minor child(ren) and to split any uncovered expenses.

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Check box (c) if service is by publication, or the mother has never resided in Georgia. Georgia does not have personal jurisdiction over the mother. ***Please note that you cannot get an order for health insurance if Georgia does not have personal jurisdiction over the mother.***

Paragraph 10. Life Insurance

Check box (a) if you want the mother to carry life insurance with the child(ren) as beneficiaries.

Check box (b) if service is by publication, or the mother has never resided in Georgia. Georgia does not have personal jurisdiction over the mother. ***Please note that you cannot get an order for life insurance if Georgia does not have personal jurisdiction over the mother.***

Summary of Requests in Custody Action

Check everything that you want the court to grant you.

A Rule Nisi is a temporary hearing. You would check box (a) if you want the judge to make a temporary ruling on your case until the final hearing date is set.

You should always check box (j).

Signature

Date and sign the petition. Then write your name, address and telephone number in the space provided.

STEP 2: MOTHER'S CONSENT TO CHANGE OF CUSTODY:

If the mother agrees to you having custody of the child(ren), she needs to fill out this form. Here are the detailed instructions for the mother:

Paragraph 1: In the first blank, write your relationship to the child(ren)

Paragraph 2: Check all the boxes that apply.

Date the consent form. ***WAIT TO SIGN THE FORM IN FRONT OF A NOTARY PUBLIC.*** Most libraries and banks have a notary on staff and will notarize your document for a fee. A notary is also available in the Family Law Information Center who will notarize your documents free of charge.

STEP 3: VERIFICATION

Complete the Verification form. Write your name as the Petitioner and the opposing party's name as the Respondent. Do not fill in the section where it says "Civil Action File No.". The clerk will assign a number to your case when you file your petition. Then write your name after the word *At*. Fill in the date where indicated. Then write

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your name, address and telephone number in the spaces provided. **WAIT TO SIGN THE VERIFICATION FORM IN FRONT OF THE NOTARY PUBLIC.** Most libraries and banks have a notary on staff and will notarize your document for a fee. A notary is also available in the Family Law Information Center who will notarize your documents free of charge.

STEP 4: OTHER COURT DOCUMENTS

In addition to the **Petition for Custody** and **Verification** form, you will need to attach the following forms:

You **MUST** have these forms attached to your petition. If the mother does **NOT** agree that you should have custody of the child(ren),

1. Two (2) Original Summons
2. Completed Financial Affidavit
3. Sheriff's Entry of Service
4. Domestic Intake Worksheet
5. Civil Case Initiation Form
6. Copy of your Legitimation Order

If the mother agrees that you should have custody, you may need to attach the following:

1. Acknowledgment of Service
2. Waiver of Venue or Jurisdiction
3. Consent to Custody
4. Custody Agreement

STEP 5: FEES

The filing fee is **\$65.00***. The cost for a sheriff to serve your petition on the other side is **\$25.00*** for each address where the sheriff attempts service. If you must serve the other side by publication, the cost is **\$80.00*** in addition to the \$65.00* filing fee. You must pay these fees to the clerk when you file your petition. If you are unable to pay these fees, you can try get a judge to waive the fees by filling out a **Poverty Affidavit**. ***Please note that by filling out a Poverty Affidavit, you are swearing under oath that you are financially unable to pay, not just unwilling to pay.***

***Fees may be subject to change. Please check with the Superior Court Clerk's Office.**

STEP 6: FILING YOUR FORMS

You should make two (2) copies of all of your documents. Attach one (1) original **Summons** to your original documents. Attach one (1) original **Summons** and **Sheriff's**

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Entry of Service to one of your copies. Give the clerk your original document and copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp your documents to show that your petition has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to the sheriff to have served on the opposing party unless he/she signed an **Acknowledgment of Service** or it is being served by publication.

STEP 7: SERVICE

Personal service is generally required. See paragraph 2 “Venue and Service”.

STEP 8: HEARING

You will be notified of the date of your hearing/conference. The Clerk of Court will let you know if your case has been assigned to the Family Division. **If your case has not been assigned to the Family Division, you may request a Rule Nisi hearing.** Forms to request a Rule Nisi hearing are available in the Family Law Information Center. A Rule Nisi is a temporary hearing to have the judge make decisions about your petition on a temporary basis before your case is set for a final hearing. You will need to prepare to present your case before the judge before you attend any hearing.