

The Basic Custody Process



This Section is intended as a brief overview, and is not intended as a guide to performing your own custody case. Because a custody case can permanently affect your rights to your child, you should consult an attorney. If you do not qualify for Legal Services representation, you may contact the Volunteer Lawyer Program or Lawyer Referral Services to find an attorney you can afford.

A miscellaneous petition or complaint for custody is filed by submitting to the family clerk the following documents: the complaint for custody, a dr6, the family services counseling form, the summons, and the filing fee. If you cannot pay the filing fee, you should file for in forma pauperis status. If the court grants you in forma pauperis status, the court will waive the filing fee.

The clerk will give your case a docket number and a first court date and will give you back the summons, complaint, and information packet to be served on the Defendant. Read the section on The Basic Divorce Process for more information on service. Once you have served the Defendant, make sure that you file the completed summons with the clerks' office.

If the Defendant answers the case, and there is not a restraining order between the parties, a court mediator will call the parties to set up an appointment. Read the section on Try Mediation. If the mediator helps the parties come up with a memorandum of understanding, the mediator will put the memorandum in the court's file. The judge will then have a copy at the next court date and can make it into a court order. You should consult your own attorney to make sure that the memorandum of understanding is in your best interest.

If the parties do not try mediation or fail at mediation, the parties, through their attorneys, can request a conference with the judge at the first court date. The judge can make suggestions that might help to resolve the case.

The judge can also order a homestudy or ask that a guardian ad litem be appointed to represent the child. A homestudy is a report made by an investigator at the Family Court Investigating Unit, after that investigator has interviewed the parties, the children, any professionals involved with the children, visited the home, and performed any other investigation necessary to give the judge a good picture of what is going on in the child's life. A homestudy can also be ordered within a divorce. A guardian ad litem is an attorney or other qualified professional who is appointed to represent the child's best interest. The guardian is usually paid for by the parties. The guardian does all of the same research that a homestudy investigator would do, but also acts as the child's attorney. A guardian ad litem can also be appointed in a divorce. If the parties are ultimately unable to come to an agreement, the case will go to hearing. Each side will have to present evidence and convince the judge that the orders he/she seeks should be granted. In a custody case, the most important thing to the judge is the "best interest of the child". The judge will consider all of the evidence and will try to make a decision that is in the "best interest of the child".

Some of the factors the judge will consider are: the wishes of the parents, the wishes of the child if the child is old and smart enough to have a reasonable preference, the relationship the child has with each parent and with brothers and sisters, the child's adjustment to home, school, and other involvement in the community, the mental and physical health of the parties and the child, the stability of each home environment, the moral fitness of each parent, and the willingness of each parent to encourage a relationship between the child and the other parent.

Custody and visitation issues are always reviewable by the court until a child turns 18 or becomes emancipated. To change a court decision, you will have to show a

substantial change of circumstances from when that decision was entered, and you will have to show that the new court order is in the child's best interest. After a court makes a decision, or once parties come to an agreement regarding custody, visitation, and child support, the agreement must be made into a court order, signed by a judge, and entered by a clerk. Each party should have a signed, certified copy of the order. The child's daycare or school should also be given a copy of the order if it is anticipated that there might be trouble with a parent taking a child from school when they should not. The police will need to see a certified order so that they may help enforce the order if there is a problem.

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