

Custody Education Program



Materials Developed By:

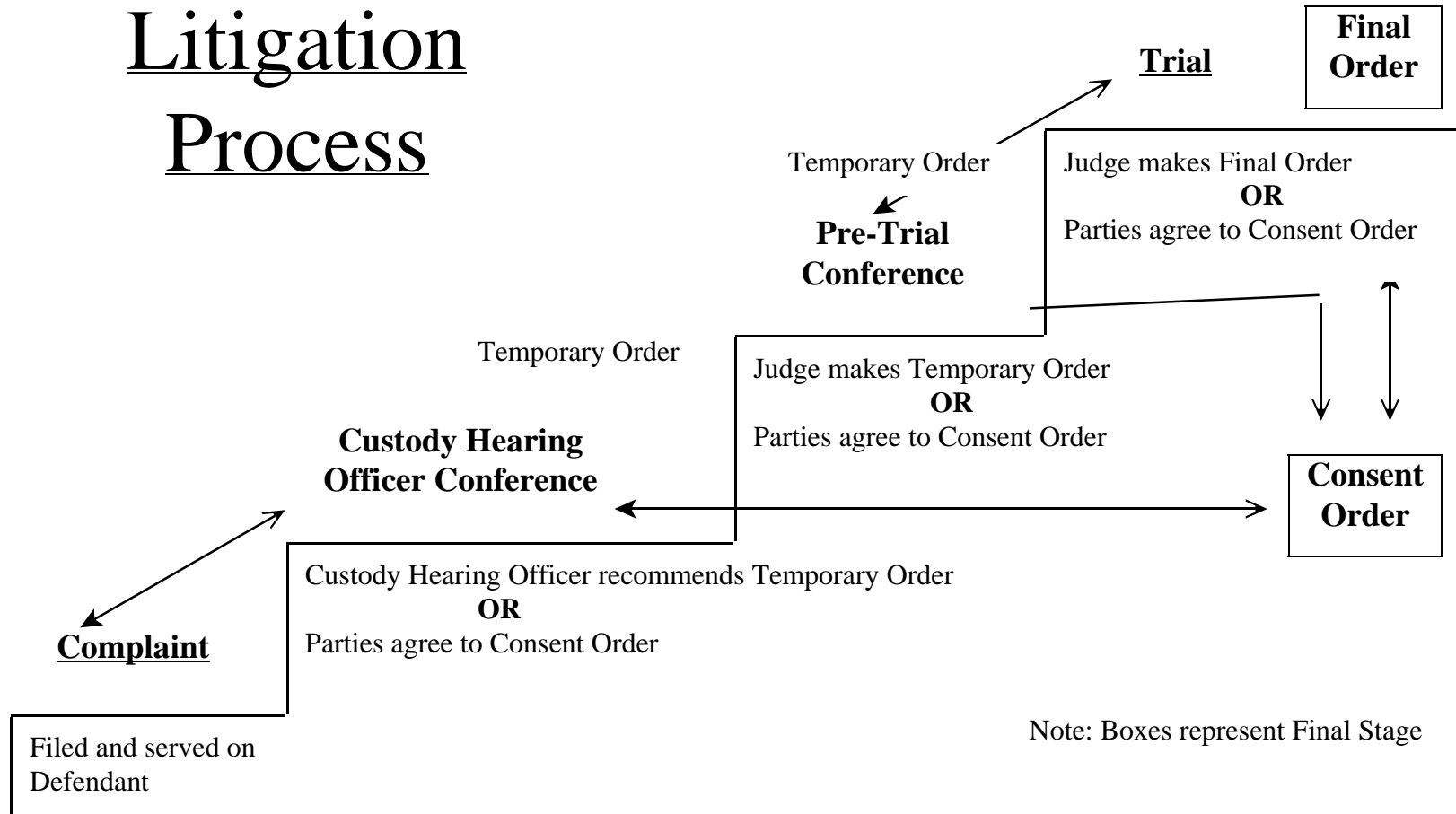
**LAUREL LEGAL SERVICES, INC.
306 South Pennsylvania Avenue
Greensburg, PA 15601**

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Custody Litigation Process



THE CUSTODY PROCESS MYTHS AND REALITIES

MYTH: Getting married means living happily ever after.

REALITY: Approximately one in three American marriages end in divorce. Between 1950 and 1989, the divorce rate doubled: 1.16 million couples split up each year. Following a divorce, more and more people are remarrying, creating many step-families, and the problems that go with trying to become a cohesive step-family.

MYTH: Having a baby is a planned, joyful experience for the mother and father.

REALITY: Every 67 seconds, a teenager has a baby. The percentage of never-married women raising children while fathers are absent had risen to 2.6 million by 1988 (an increase of 600,000 in 2 years). Approximately 1/3 of mothers living without the fathers of their children live in poverty, and 41% have no court award of child support. Reports of child abuse have soared from 600,000 in 1979 to 2.4 million in 1989. Every 47 seconds, a child is abused or neglected. It is estimated that the cost of school-based sex education, per pupil per year, is \$135. It is estimated that the cost of public assistance to a child born of a teenage parent for 20 years is \$50,000.

MYTH: The father is the parent responsible for supporting the child.

REALITY: The law states that both parents have an equal obligation to support their children; however, the amount of support obligation depends on many factors. The most important factor is the income of each parent. If the parties fail to agree to the amount of support each shall pay, the court, after taking evidence to a hearing officer, will make a recommendation. Child support orders may always be modified. If either party suffers a substantial change in his/her financial or employment status, the court will review the parties' situation and may enter a new order which could increase or decrease either parties' obligation. A child's right to support is an important legal right and should be protected vigorously.

MYTH: If a parent does not pay child support, then that parent does not have a right to visit with the child.

REALITY: It is important for parents to understand that child support and the parental rights of custody are generally viewed as separate issues by the court. Where support payments are not being made because visitation is being withheld, the child is the one to suffer. A parent should not deny the non-custodial parent the right of visitation because they are behind in their support payments. The court cannot prohibit a parent from seeing a child just because the parent has not made support payments.

MYTH: If the child is living with the mother, and the mother and father have never been married, the mother has legal custody of the child and the father cannot take the child.

REALITY: Without court-ordered child custody, each parent has equal rights to have the child live with her/him and to make decisions about the child. A parent does not have legal custody of a child just because the child is living with her/him. Legal custody requires a custody order from a court giving the person the right to make decisions about the child. A custody order spells out specific rights and responsibilities about physical custody, visitation, and decision making for the child. There are various types of custody, including: legal custody, physical custody (actual physical possession and control of the child), partial custody (the right to take the child away from the custodial parent for a period of time), and visitation (the right to visit the child, usually under supervision). It is essential that any custody agreement be entered as a court order.

MYTH: The mother will always be given custody of the young child, even if it is up to the court to decide.

REALITY: The court will award custody to either the mother or father after considering what is in the “best interests of the child.” Courts do not care about how angry or bitter the parents are at each other. The court determines the custody award based on what is in the best interests of the child.

MYTH: Once a court order is obtained regarding custody, it can never be changed.

REALITY: A court decision about custody may be changed by the court at any time if one of the parents petitions to modify the court order, and there is some reason to do so.

MYTH: If one parent has custody of the child, the parent can deny visitation to the other parent if they so desire.

REALITY: Even though one parent may have primary custody, the other parent is granted, except under unusual circumstances, partial custody rights, that is, the opportunity to spend time with the child. Although many custodial parents often express their desires that the non-custodial parent be denied access rights, “because he’s always drunk and high,” or, “because she’s living with another man,” such reasons alone will not be legally sufficient to prohibit a parent’s right to be with her/his child. Only if it can be shown that a parent’s addiction or tendency to physical violence or emotional instability will have or has had a gravely harmful effect upon the child, will the non-custodial parent’s rights be curtailed. Usually, expert professional evidence is required to justify such a determination. The courts do, however, have the discretion to place conditions upon a person’s right of access to the child. If, indeed, the court believes that the non-custodial parent may harm the child or act improperly toward the child, the court may restrict the visitation to a supervised environment.

Custody Terms

- Custody: the legal right to keep, control, guard, care for, and preserve a child and includes the terms “legal custody,” “physical custody,” and “shared custody.”
- Legal Custody: the legal right to make major decisions affecting the best interests of a minor child, including but not limited to medical, religious, and educational decisions.
- Partial Custody: the right to take possession of a child away from the custodial person for a certain period of time.
- Physical Custody: actual physical possession and control of a child.
- Shared Custody: shared legal or shared physical custody or both of a child in such a way as to assure the child of frequent and continuing contact, including physical access, to both parents.
- Visitation: the right to visit a child, but does not include the right to remove the child from the custodial person’s control.

The definitions of the terms “legal custody,” “physical custody,” and “shared custody” are taken from 23 Pa. C.S.A. sec. 5302.

STARTING A PRIVATE CUSTODY ACTION

I. The Complaint.

The process of establishing custody by court order begins when someone files a Complaint for Custody in the Court of Common Pleas. The Complaint states the name of the party seeking custody, called the plaintiff, and the party or parties the plaintiff is bringing the action against, called the defendant. Usually the plaintiff is a natural parent of the child, and the defendant is the other parent, although sometimes a third person may sue both natural parents for custody of the child. The plaintiff may already have the child in his or her physical custody and may only want the court to state in a custody order what is already the practice between the two parties. In other cases the plaintiff may have the child in his or her home for only brief periods or may be denied any contact with the child by the parent who has the child in his or her possession. The complaint will explain who has physical custody of the child and what custody arrangement the plaintiff wants the court to order.

II. Filing and Serving the Complaint.

Before the custody complaint is filed with the Prothonotary (or court clerk) of the Court of Common Pleas, the plaintiff or his or her attorney must present a Complaint and Custody Scheduling Order to the Custody Office in the Family Court on the fourth floor of the Courthouse Annex. The Order will set a date for the first hearing in the custody process, called the Custody Conciliation Conference and dates for the parties to attend the CHILD program. The Order will direct both the plaintiff and defendant to come to the conference and to bring the child. Then the Order is filed in the Office of the Prothonotary, officially beginning the case. The plaintiff must then serve a copy of the Complaint and Order, along with the CHILD registration form and Parent Information Forms that are given to you when you get the conference date, on the defendant or defendant's attorney by having a competent adult, other than the plaintiff, hand the Complaint and Order to the defendant or by mailing the Complaint, Order and other forms to the defendant by registered mail, restricted delivery. You must file verification that you have properly served the complaint and other documents.

III. The Custody Conciliation Conference.

The Custody Conciliation Conference is conducted by one of the Court's custody hearing officer, Bruce Tobin, on the Fourth Floor of the Courthouse Annex in the Greensburg courthouse. Mr. Tobin is an attorney experienced in family law who has been appointed by the Court to listen to custody cases. The job of the hearing officer is to listen to the point of view of both plaintiff and defendant and to help the plaintiff and defendant to decide upon a custody, partial custody, and visitation arrangement which will be acceptable to both parties and which will serve the child well.

The conference with hearing officer is informal. Both plaintiff and defendant may be sworn to tell the truth, but they do not testify as they would in court. Each talks rather informally with the hearing

officer, explaining his or her desires regarding custody, and answers any questions that the other party or her/his attorney may ask or any questions that the hearing officer may ask. It is rare for any other “witnesses” to appear at this conference for either the plaintiff or defendant although sometimes the hearing officer will listen to a witness who has important information about why one parent’s access to the child should be restricted because the parent is dangerous or immoral or neglectful of the child’s needs.

If the plaintiff and defendant agree upon an arrangement at the Custody Conciliation Conference, the hearing officer will write down the arrangement in the form of a Consent Order of Court. Both parties and the hearing officer will sign the Order. The judge will then sign the Order and make it a “final” Order of Court. In reality, a “final” Order regarding custody is never final until the child reaches age 18, because either party can file an action to modify, or change, a “final” Court Order and try to convince the court to issue some new Order. The custody case is then concluded, and there are no further hearings.

If the parties cannot agree regarding custody, the hearing officer writes a report of what was said at the conference and makes a recommendation to the judge for a temporary order. The judge then issues a Temporary Order of Court. Both parties must follow the Temporary Order of Court until any new Order is entered after some further hearing.

The Conference Officer may also require the parties to submit to a Custody Evaluation by Family Assessment Services of Westmoreland Regional Hospital, Excelsa Health. The cost of the evaluation is charged to the parties in proportion to their respective incomes. If the Conference Officer does not require the evaluations, either party may request evaluations.

IV. The Pre-Trial Conference.

If a Temporary Order of Court is issued, the next step in the custody process is the Pre-Trial Conference. Two or three months may go by between the Custody Conciliation Conference and the Pre-Trial Conference. Both plaintiff and defendant will receive an Order from the Court directing them and the child to appear for a Pre-Trial Conference. This conference is held before one of the Family Court judges of the Court of Common Pleas (See the list of judges and their case assignments of the final page of this booklet.) The judge discusses with the parties how the temporary arrangement has worked and any ideas each party has for a compromise to settle the case. If an evaluation has been ordered, the judge will listen to the report of the Comprehensive Counseling Center representative. The judge explains to the parties which of their concerns will be important at a custody trial and which concerns or objections will not be likely to influence the judge’s final decision about custody. The judge makes suggestions for a final Order and attempts to help the parties arrive at a mutually acceptable agreement on custody, partial custody, and visitation. The judge will rarely if ever change the temporary order unless the parties agree to a temporary change while awaiting a custody trial or agree to settle the case by signing a final Consent Order of Court.

If no previous evaluation has been ordered, the judge may order that before the trial the home of one or both parties be inspected by the Family Assessment Services of Westmoreland Hospital or some other court-appointed agency or that the parents and child be evaluated by a psychologist or psychiatrist although it is more likely that such orders will result from a motion or one of the parties after the Custody Conciliation Conference or after the Pre-Trial Conference.

If the parties agree to a final Consent Order of Court, the Order is prepared at the Pre-Trial Conference. Both parties sign it. The judge signs it, and it becomes the final Order, ending the case at that stage. If the parties do not agree, the temporary order remains in effect, and the case is scheduled for a full custody trial.

V. The Custody Trial.

If the parties have not yet been able to reach an agreement during the long process described above the case will go to trial, probably four to six months or longer after the case began. A trial may last one hour or several days, depending on the number of witnesses and the issues raised by the parties. At the trial, the plaintiff will take an oath to tell the truth and will sit on the witness stand and give testimony. The plaintiff's attorney will ask the plaintiff questions. Then the defendant's attorney will cross-examine the plaintiff, asking questions that tend to support the defendant's view of the facts.

Next, the plaintiff's attorney will call each of the plaintiff's witnesses to the stand to testify and be cross-examined. When all of plaintiff's witnesses have testified, the defendant's attorney will repeat the process by calling all of the defendant's witnesses to testify. At some point in the trial, one or both parties will ask the judge to talk with the child in the judge's chambers, if the child is old enough to express some opinion about the parent or the issues. Even if neither party wants the child to see the judge, the judge will want to talk with the child.

The judge will not allow the parents to be present when the child testifies. If the parties have attorneys although he recognizes the right of each party to have his or her attorney present when the judge questions the child and to have his or her attorney ask the child questions. If one party has an attorney and the other party is representing himself or herself, the judge will ask the parents to let him question the child in private, but the common law of Pennsylvania gives the parent the right to be present and to ask questions if the parent insists. Children are usually very nervous about appearing before a judge and find it very emotionally upsetting to testify for or against either parent. This is perhaps the worst aspect of a custody trial and one good reason to try to settle the case without going to trial.

The judge usually does not make or announce his decision at the conclusion of the custody trial. Some time after the trial, rarely more than two to three weeks, the judge will mail to each party or his or her attorney his opinion and final order. The Order of Court ends the custody case. The Order must be followed by the parties and the child. Either party may appeal the case to the Superior Court of Pennsylvania, but in the meantime the Order must be obeyed unless the judge or the Superior Court grants a special motion to the contrary. An appeal must be based on a claim that the judge

misapplied the law or made other legal errors in the conduct of the trial; it is not properly based on an argument that the judge made a “bad” decision or did not believe the right party.

The main thing to remember about custody trials is that they are traumatic for both parents and the child. They are expensive in time, money and feelings. They usually create bad feelings. They also remove from the parents and the child the opportunity to control their own lives. When the court decides a custody case, the court dictates where the child will live and when, and often neither party likes what the court orders. Contrary to popular belief, the judge may not award custody to the parent the child says he or she prefers to live with. If both parents are reasonable and fair and put the child’s welfare above their own desires and disagreements, it is usually better to reach an agreement than to take the case to trial. Your case is rarely as good as you think it is, and the law often does not recognize as important many of the arguments you will want to make.

The custody case is the most common way to get a custody order from a court. A custody order may also be issued as a part of a divorce action if either parent includes a “count” for custody in a complaint or counterclaim in the divorce action. Temporary custody may be awarded by court order – for up to one year – as a part of the Protection From Abuse (PFA) action. Sometimes custody is awarded to one parent against the other or to a state agency for placement with a foster family if the Children’s Bureau brings an action against the parent(s) for abuse or neglect of the child.

NOTE: This pamphlet describes the process in Westmoreland County, Pennsylvania. If your case is filed in another county, this process may not be the same.

A sample custody complaint follows:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
 Plaintiff)
))
 vs) No.
))
Defendant's name,)
 Defendant)

Type of Pleading:

COMPLAINT FOR CUSTODY
AND SCHEDULING ORDER OF COURT

By:

Address:

Telephone #

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)	
Plaintiff)	
)	
vs)	No.
)	
Defendant's name,)	
Defendant)	

CUSTODY SCHEDULING ORDER

You, Defendant's name, (Defendant) (Respondent), have been sued in Court to (obtain) (modify) custody, partial custody or visitation of the child(ren):

Name	Date of Birth

- (2) The Plaintiff is ORDERED to attend the mandatory Children Hurt In Loss through Divorce/Separation (CHILD) Program on _____, 2002, at ____ M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724) 832-4581. The Plaintiff is also ORDERED to prepay the \$50.00 program registration fee using the CHILD Program Registration Form. (No money will be accepted at the session). The Plaintiff is further ORDERED to serve a copy of the CHILD Program Registration Form on the Defendant.

- (3) The Defendant is ORDERED to attend the mandatory Children Hurt in Loss through Divorce/Separation (CHILD) Program on _____, 2002, at ____ M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724) 832-4581. The Defendant is also ORDERED to prepay the \$50.00 program registration fee using the CHILD Program Registration Form. (No Money will be accepted at the session).

- (4) Non-resident parents must attend a program similar to the CHILD Program which has been certified or approved by the local Court. A Certification of Successful Completion must be presented at the time of the Conciliation Conference.

- (5) Should the moving party fail to pay fees or fail to appear for the CHILD Program, the Custody Action shall be dismissed without prejudice, and any fees paid by such party shall be forfeited.

- (6) Should the responding party fail to pay fees or fail to appear for the CHILD Program, an immediate Rule to Show Cause why such party should not be held contempt shall be issued by the Court.
- (7) Each party is hereby ORDERED to submit to the Family Court Administrator (Custody Office), pursuant to Westmoreland County Rule of Civil Procedure W1915.4-3, a completed Parent Information Form and a copy of your most recent Federal Income Tax Return within 30 days of the date of filing this Custody Action. An Election to Proceed Through Mediation or a Consent Agreement may also be filed with the Family Court Administrator at that time. The Plaintiff is hereby Ordered to serve a copy of the Parent Information Form on the Defendant.
- (8) You are hereby ORDERED to appear in person on _____, 200 , at M. for a Custody Conciliation Conference in the Family Court Custody Office on the fourth floor of the Westmoreland County Courthouse Annex, 2 North Main Street, Greensburg Pa. 15601.

CHILD(REN) MUST ATTEND UNLESS OTHERWISE ORDERED

If you fail to appear for the Custody Conciliation Conference as provided by this Order, an Order for custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

YOU SHOULD TAKE THIS ORDER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW.

If You Cannot Afford a Lawyer
 Laurel Legal Services, Inc.
 306 S. Pennsylvania Avenue
 Greensburg, Pa. 15601
 (724) 836-2211

If You Do Not Have a Lawyer
 Westmoreland Lawyer Referral
 144 N. Pennsylvania Avenue
 Greensburg, Pa. 15601
 (724) 834-8490

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Westmoreland County complies with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact (724) 830-3665. All arrangements must be made at least three working days prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

BY THE COURT:

Date: _____ J.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

COMPLAINT FOR CUSTODY

1. The Plaintiff is Plaintiff's name, residing at Plaintiff's Address including county.
2. The Defendant is Defendant's name, residing at Defendant's address.
3. Plaintiff seeks custody of age , who resides at child(ren)'s address
 - a. The child/ren was/were born in wedlock.
 - b. The child/ren is/are presently in the custody of (person who has the children), who resides at \$address\$.
 - c. During the past five (5) years, the child/ren has/have resided with the following persons and at the following places:
 - d. The mother of the child/ren is mother, who resides at mother's address. She is married/single.
 - e. The father of the child/ren is father, who resides at father's address. He is married/single.

The relationship of Plaintiff to the child/ren is that of natural . The Plaintiff currently resides with the following persons:

The relationship of Defendant to the child/ren is that of natural . The Defendant currently resides with the following persons.

Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child/ren in this or another court.

Plaintiff has no information of a custody proceeding concerning the child/ren pending in a Court of this Commonwealth.

Plaintiff does not know of a person not a party to the proceedings who has physical custody of the child/ren or claims to have custody or visitation rights with respect to the child/ren.

The best interest and permanent welfare of the child/ren will be served by granting the relief requested because

Each parent whose parental rights to the child/ren have not been terminated and the person who has physical custody of the child/ren have been named as parties to this action. All other persons, who are known to have or claim a right to custody or visitation of the child/ren have been given notice of the pendency of this action and the right to intervene.

WHEREFORE, Plaintiff requests the Court to grant to her custody of the child/ren.

by_____

Type your name

VERIFICATION

I verify that the statements made in this Complaint for Custody are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Plaintiff's name

RESTRICTED DELIVERY

DATE

Defendant's name
and address

RE: Plaintiff's name vs. Defendant's name

Dear Defendant's name:

Enclosed, please find a certified true and correct copy of a Custody Scheduling Order and Complaint for Custody which have been filed against you by Plaintiff's name. You will note that a Custody Conciliation Conference has been scheduled for DATE, Fourth Floor, Courthouse Square, Greensburg, Pennsylvania. The purpose of this conference is to attempt to resolve this case without further litigation and it is the best opportunity for us to sit down in the same room and discuss a settlement without emotional and lengthy litigation. Of course, should you wish to have this matter litigated, a court hearing will be scheduled if the conference is unsuccessful.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE WESTMORELAND LAWYER REFERRAL SERVICE, 144 NORTH PENNSYLVANIA AVENUE, GREENSBURG, PENNSYLVANIA 15601; (724) 834-8490.

Sincerely,

Your Name

Enclosure

Contempt Proceedings

If the other parent is not obeying a current court order and there is no good reason for him or her to be doing so, you can file a Petition for A Finding of Contempt and ask the court for appropriate relief. Appropriate relief could be something like additional time for you, less time for the other parent, an admonition from the court. This procedure is not to be used against the parent who is late picking up or bringing back the child. It is a procedure to compensate you with extra time if the custodial parent refuses to give you the child(ren) on your weekend or for a holiday or for some other time that you were given in the custody order.

Unfortunately the court will not require the other parent to take advantage of the time he or she has been given in the court order. If the other parent does not take the child for a weekend or skips the partial custody for long periods of time, the court is unlikely to find him or her in contempt, no matter how much you have been depending on him or her to take custody of the child(ren) and no matter how disappointed the child is. The court might consider such behavior in a request to modify the current order.

The following Petition is a sample of the kind of petition you would file to ask the court for a finding of Contempt. After you get a court date, you must send the petition to the other parent.

A sample petition follows. Please type a petition that follows this example but specifies the facts of your case.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)	
Plaintiff)	
)	
vs)	No.
)	
Defendant's name,)	
Defendant)	

Type of Pleading:

PETITION FOR CONTEMPT

Submitted By:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

PETITION FOR CONTEMPT

1. Plaintiff is Plaintiff's name, residing at .
2. Defendant is Defendant's name, residing at .

An Order of Court was entered on \$DATE\$, a copy of said Order is attached hereto as Exhibit "A".

Defendant has willfully refused to comply with this Order, resulting in the Plaintiff not having had visitation for the past several months.

Plaintiff has contacted Defendant to obtain visitation, but the Defendant has refused to permit said visitation.

The Defendant has refused comply with the visitation Order of Court on several prior occasions.

WHEREFORE, Plaintiff requests that Your Honorable Court find the Defendant in Contempt of the Consent Order of Court entered \$DATE\$.

Respectfully submitted,

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - LAW (CUSTODY)

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

ORDER OF COURT

Legal proceedings have been brought against you alleging you have willfully disobeyed an Order of Court for visitation.

If you wish to defend against the claims set forth in the following pages, you may but are not required to file in writing with the Court your defenses or objections.

Whether or not you file in writing with the Court your defenses or objections, you must appear in person in court on _____, the _____ day of _____, 2002, at _____ o'clock __.M., at the Westmoreland County Courthouse, Greensburg, Pennsylvania, before Judge _____.

YOU ARE HEREBY ALSO ORDERED to bring with you the minor child, .

IF YOU DO NOT APPEAR IN PERSON, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND YOU MAY BE COMMITTED TO JAIL.

If the Court finds that you have willfully failed to comply with its Order for Custody, you may be found to be in contempt of court and committed to jail, fined, or both.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
129 N. Pennsylvania Avenue
Greensburg Pennsylvania 15601
724-834-8490

BY THE COURT:

DATED: _____ J.

VERIFICATION

I verify that the statements made in this Petition for Contempt are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Modification of Custody

Either parent may wish to ask the court for a modification of the existing order.

The procedure for modification is the same as a first complaint for custody. The petitioner must file a petition to modify the order. The petition should include the original caption, a scheduling order, a statement of the reasons for the modification, a request for relief and a verification of the facts. If the parties have already attended the CHILD program tell the custody office secretary that fact when you request a date for the custody conciliation conference. You will not be required to attend the CHILD program if you have already attended and received the certificate. Follow the same steps as outlined above for the first complaint for custody.

The following is a sample Petition for Modification

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)	
Plaintiff)	
)	
vs)	No.
)	
Defendant's name,)	
Defendant)	

CUSTODY SCHEDULING ORDER

You, Respondent's name, Respondent, have been sued in Court to modify custody, partial custody or visitation of the child(ren):

Name	Date of Birth

- d. The Plaintiff is ORDERED to attend the mandatory Children Hurt In Loss through Divorce/Separation (CHILD) Program on _____, 2002, at M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724) 832-4581. The Plaintiff is also ORDERED to prepay the \$50.00 program registration fee using the CHILD Program Registration Form. (No money will be accepted at the session). The Plaintiff is further ORDERED to serve a copy of the CHILD Program Registration Form on the Defendant.

- e. The Defendant is ORDERED to attend the mandatory Children Hurt in Loss through Divorce/Separation (CHILD) Program on _____, 2002, at _____ M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724) 832-4581. The Defendant is also ORDERED to prepay the \$50.00 program registration fee using the CHILD Program Registration Form. (No Money will be accepted at the session).

- f. Non-resident parents must attend a program similar to the CHILD Program which has been certified or approved by the local Court. A Certification of Successful Completion must be presented at the time of the Conciliation Conference.

- g. Should the moving party fail to pay fees or fail to appear for the CHILD Program, the Custody Action shall be dismissed without prejudice, and any fees paid by such party shall be forfeited.

- h. Should the responding party fail to pay fees or fail to appear for the CHILD Program, an immediate Rule to Show Cause why such party should not be held contempt shall be issued by the Court.
- i. Each party is hereby ORDERED to submit to the Family Court Administrator (Custody Office), pursuant to Westmoreland County Rule of Civil Procedure W1915.4-3, a completed Parent Information Form and a copy of your most recent Federal Income Tax Return within 30 days of the date of filing this Custody Action. An Election to Proceed Through Mediation or a Consent Agreement may also be filed with the Family Court Administrator at that time. The Plaintiff is hereby Ordered to serve a copy of the Parent Information Form on the Defendant.
- j. You are hereby ORDERED to appear in person on _____, 200 , at ___M. for a Custody Conciliation Conference in the Family Court Custody Office on the fourth floor of the Westmoreland County Courthouse Annex, 2 North Main Street, Greensburg Pa. 15601.

CHILD(REN) MUST ATTEND UNLESS OTHERWISE ORDERED

If you fail to appear for the Custody Conciliation Conference as provided by this Order, an Order for custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

YOU SHOULD TAKE THIS ORDER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW.

If You Cannot Afford a Lawyer
 Laurel Legal Services, Inc.
 306 S. Pennsylvania Avenue
 Greensburg, Pa. 15601
 (724) 836-2211

If You Do Not Have a Lawyer
 Westmoreland Lawyer Referral
 144 N. Pennsylvania Avenue
 Greensburg, Pa. 15601
 (724) 834-8490

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Westmoreland County complies with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact (724) 830-3665. All arrangements must be made at least three working days prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

BY THE COURT:

Date: _____

_____ J.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION – LAW (CUSTODY)

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

PETITION FOR MODIFICATION

Petitioner is "your name" who is the Plaintiff/Defendant in this case. Petitioner currently resides at . Petitioner is the (mother/father/grandparent?) of the children.

Respondent is Other Party's Name, who is the Plaintiff/Defendant in this case. Respondent currently resides at . Respondent is the mother/father/grandparent? of the children.

The children are: (children's names). The are currently residing at with

An Order of Court dated Date of latest order was issued in this case. A copy of the Order is attached and labeled "Exhibit A."

Since the entry of the Order circumstances have changed, namely

The Order should be changed because

WHEREFORE, Petitioner respectfully requests the court to enter an Order modifying the current custody arrangement.

Petitioner's Name

VERIFICATION

I verify that the statements made in this Complaint for Custody are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Petitioner's Name

Relocation

If either parent wants to move his permanent residence outside of Westmoreland County and take the child with him or her, he or she must file a petition to relocate and ask for a hearing. The parent must explain to the court why the move is necessary, what benefit will accrue to the parent and to the child, how the child will be able to continue with regular contact with the other parent, and that the move is not being made just to thwart the other parent's custody rights. The Petition will be heard by the judge in charge of the case. The petition should be taken to that judge to schedule a hearing.

A Sample Petition to Relocate follows; please substitute the facts of your case.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

PETITION FOR RELOCATION

By:

Petitioner's Name
Pro Se

Address:

Telephone No.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
Plaintiff)
vs) No.
Defendant's name,)
Defendant)

Caption

NOTICE OF PRESENTATION

TO:

Kindly take notice that the within DOCUMENT will be presented to the Honorable JUDGE of the Court of Common Pleas of Westmoreland County, Pennsylvania, at TIME o'clock A/P.M. on the DAY day of MONTH, YEAR, or as soon thereafter as the Court pleases.

Certificate of Service

I hereby certify that a true and correct copy of the within DOCUMENT has been served by first class mail to the above-named parties at the address set forth above on the date herein below set forth.

Date: _____

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name,)
 Plaintiff)
))
 vs) No.
))
Defendant's name,)
 Defendant)

ORDER OF COURT

AND NOW, this ____ day of _____, it is hereby Ordered that a hearing on
the Petition to Relocate is scheduled for _____
in the courtroom of the undersigned. All parties and their counsel are ordered to attend.

BY THE COURT:

_____ **J.**

WHAT IS THE RELATIONSHIP BETWEEN CHILD CUSTODY, WELFARE GRANTS, AND CHILD SUPPORT?

If you are seeking a cash grant from the Department of Public Welfare which will include your minor child as one of the recipients of the grant, you must have custody of that child during the month for which you are seeking benefits. The case assistance grants are figured on a monthly basis. If you have full or primary physical custody during that month and you qualify for the grant based on income and resources, you will be able to receive a cash grant that will include the child. If you have shared or will be able to receive shared custody for the month in question (with physical custody for example, every other week), either parent, but not both parents, may receive benefits for the month directly from the Department of Public Welfare.

In the situation where one parent has more than 50% custody, the parent who has custody the majority of the month may receive TANF cash assistance for the children. If each parent receives custody one-half of the time, either parent will qualify for the cash grant, but only one parent will receive the grant. That one parent may get the cash grant for the month and is supposed to split it with the other parent if the other parent would also have qualified for welfare if he or she had applied for cash assistance.

In negotiating a shared custody arrangement, both parents should keep in mind that medical assistance goes along with cash assistance. If the parties cannot afford to pay for medical treatment for the child, it is best that one parent qualify for cash assistance in order to get the medical assistance for the child to ensure the child's access to health care.

If there is a 50/50 shared custody arrangement where one parent has the child in one month and the other parent has the child in the next month, the parent who has the child in any one month can receive cash assistance for himself or herself and the child during that month and for himself or herself alone during the following month. During the month when the parent has the child, the parent would be receiving TANF cash benefits. During the month when the parent does not have the child, the parent would be receiving general assistance cash benefits and would be entitled to those benefits for a full year and not just the three-month period applicable to many general assistance cash grantees.

As a general rule, only the parent who has the child in his or her custody has the right to file a child support action against the non-custodial parent. The law makes non-custodial parent equally responsible for the costs of raising the child. If one parent files an application for welfare benefits, the Department of Public Welfare will make that parent sue the other parent for child support unless the parent can explain some very good reason why it is not in the child's best interest to force the non-custodial parent to pay child support. For example, if the absent parent has threatened physical harm to the caretaker parent or the child because of a desire not to pay child support, the County Assistance Office may determine that it is not necessary for the caretaker parent to sue the absent parent for child support. Once the child support obligation of the non-custodial parent has been determined, the custodial parent will continue to receive benefits from the Department of Welfare plus up to \$50.00 of the total amount of child support paid by the non-custodial parent.

The right to collect child support for the child is not determined in the same way as the right to receive welfare benefits. For example, if one parent has custody of the child during the school year and the other parent has custody of the child for two or three months during the summer, the parent having custody for the majority of the year will be entitled to a child support order, and the parent having custody during the summer will likely not be entitled to any child support order. If the parties exchange the child from month to month, each parent can sue the other parent for child support. The court would then determine, based on the income of each parent, how much one parent owes the other just as though each had the child full time. If one parent owes the other parent more support, the parent owing the greater amount of support will have to pay the other parent what he or she owes minus what the other parent owes to him or her. The parent owing the lesser amount of child support will not pay anything to the other parent but will receive a reduced amount from the other parent so what he or she owes the other parent will be subtracted from what the other parent owes him or her.

If one parent clearly has primary custody, and the other parent has partial custody but not shared or joint custody, the parent who has primary custody will be entitled to a child support award. The parent who has partial custody will not get credit for any food, clothing, shelter, or other expenses made on the child's behalf while the child is in the parent's partial custody. They will get credit for medical insurance premiums paid to keep the child covered. The theory behind this ruling is that the parent who has primary responsibility for the child will have to maintain the household and the wardrobe and other ongoing benefits for the child even while the child is with the other parent. For ongoing expenses, the parent with primary custody will get some financial help from the other parent. If the non-custodial parent has physical custody of the child 40% of the time or more, he or she can get a small reduction in the amount of support paid to the primary custodial parent.

In rare cases, the court has awarded some child support to parents who do not have primary physical custody. One parent who had physical custody of the children during the daytime (when the children were eating) and had the obligation to transport the children to school and to the other parent's home and, in addition, had significantly less income than the custodial parent was awarded an amount of child support to cover the cost of meals and transportation.

WHAT THE COURT WILL WANT TO KNOW
ABOUT YOU AS A PARENT

1. Why do you want custody of your child?
2. What kind of relationship do you have with your children?
3. Have you been the main caretaker for your child up to now?
4. What are the good and bad things about the home where you live? (Location, size, bedrooms, neatness, school district, play areas, and children in the neighborhood for your child to play with, etc.)
5. Are you a good role model for your child? (Do you have a good character? Good work habits? Goals? Ambitions for your child?)
6. Which parent will encourage and help the child by example and by teaching, to do well in school, to get along with others, to be a productive citizen, to obey school norms?
7. Which parent has a more stable lifestyle? (stable residence, regular schedule, close family ties, stable and close family relationships)
8. Does either parent have a history of alcoholism, drug abuse, emotional disorders, violent crime, or suicide attempt? Have these problems affected the child in any way or might they affect the child or the parent-child relationship in the future?
9. Does either parent have a history of an abusive or unhappy relationship with the child?
10. Which parent can provide more structure, support, and supervision for the child?
11. Which parent is more likely to encourage regular contact between the child and the other parent?
12. Are there any special needs (for example, medical problems) of the child that one parent can meet better than the other?
13. How is the child doing now in school performance and social and emotional development, and is the child healthy? If there are any problems in these areas, can they be traced to failings of either parent or the parent's home environment?
14. Are the parents fighting over the child and custody arrangements because they are angry at each other or just to get even or to avoid child support obligations? Which parent really wants what is best for the child?

QUESTIONS A JUDGE/ATTORNEY/CUSTODY HEARING OFFICER MAY ASK YOUR CHILDREN

Questions for Children:

1. What's different being with mother? Father?
2. What will happen to mother (father) if you go to live with father (mother)?
3. What do you do that makes mommy (daddy) happy? Sad? Angry?
4. What did you do yesterday that was fun?
5. What are some things that make you feel happy? Sad? Angry? Afraid?
6. What do you like about yourself? Dislike?
7. What's a good mommy?
8. What's a good daddy?
9. What are your household responsibilities?

Questions for Older Children:

1. How well does each parent meet your needs:
 - a. food, clothing, supervision?
 - b. aware of your activities?
 - c. available to listen to your concerns?
4. How does each parent handle discipline:
 - a. for what?
 - b. how?
3. What do you do that upsets mother? Father?

PARENTS' RESPONSIBILITIES

DO:

1. Develop a workable plan that gives children access to both parents.
2. Keep ongoing contact with the children so they don't feel rejected or abandoned.
3. Reassure children they can still count on both parents.
4. Rarely cancel plans with children, and if you do need to cancel, be sure to let the children know why you have to do so.
5. Establish a home for the children with a place for their belongings (toys, clothes, etc.), regardless of who has primary custody of the children.
6. Allow the children telephone access to the other parent when the children are in your custody.
7. Be sure that the other parent always has your current address and telephone number.
8. Have children ready on time for the other parent.
9. Be home to receive the children on time.
10. Call the other parent when it is necessary to be late, and give as much advance notice as possible.
11. Encourage your children to respect both parents.

DO NOT:

1. Do not pump children for information about the other parent.
2. Do not try to control the other parent.
3. Do not use the children to carry angry messages back and forth.
4. Do not talk about child support disagreements with the children, or ask the children to testify at child support hearings.
5. Do not use children to deliver child support payments.
6. Do not argue or fight in front of the children.

7. Do not speak badly about the other parent.
8. Do not ask the children with whom they want to live.
9. Do not put the children in the position of having to take sides.
10. Do not use the children as weapons to hurt the other parent.

Adapted from materials of the Counseling Office, Common Pleas Court of Allegheny County, Family Division.

Consent Agreements

The court will always favor agreements between parties and will make them into enforceable court orders if the parties make that request. If the parents know how they want to handle custody or a modification they can submit a signed consent agreement to the judge that is handling the case by taking the Consent Order to the judge's chambers and leaving the order with his or her secretary. Once the judge has signed the order you should make two copies. File the original with all of the signatures at the office of the Prothonotary and give one copy to each of the parents. The following is a sample Consent Agreement.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL ACTION - CUSTODY

Plaintiff's name)
Plaintiff)
)
 v.) No.
)
Defendant's name)
Defendant)

CUSTODY CONSENT ORDER

We have agreed to the following parenting plan for the custody of our children:

1. The parents shall share the physical and legal custody of the following children: Name the children and give their birthdates.
2. The children shall reside with
3. The parents agree that the time arrangements between Mother and Father with the children are as follows:
 - a. Weekdays (specify where the children will be during the weekdays)
 - b. Weekends (specify where the children will be during the weekends)
 - c. Summer/vacation periods: (specify summer arrangement and what provisions are being made for vacations)
 - d. Holidays: (specify how the children will spend their holidays e.g. shared or alternated with either parent)
 - i. Thanksgiving
 - ii. Christmas Eve/Christmas
 - iii. New Year's Eve/New Year's Day
 - iv. Easter
 - v. Other holidays
4. Transportation terms
5. The children shall be with mother for Mother's Day and with father for Father's Day.
6. The children's birthdays will be spent with the parent scheduled to have the child on that day.
7. Each parent shall keep the other informed of the children's health, progress in school, school activities and general welfare and shall consult the other parent concerning major decisions affecting the children.
8. Each parent is entitled to receive directly from the school, healthcare provider, or other relevant sources, information concerning their children.
9. Neither parent shall engage in conduct which present to the children a negative or hostile view of the other parent.
10. Each parent shall encourage the children to comply with the parenting agreement and foster in the children a positive view of the other parent.

11. The parties may decide different time arrangements other than those provided for in the Consent Agreement and make decisions for the children whenever they mutually agree to do so. Nothing in this agreement is understood to limit or restrict the ability of the parties to mutually agree on alternative parenting arrangements. If for any reason the parties cannot agree, the terms of this agreement will be followed.
12. As long as proper notice is given to the other parent, vacations supersede the regular schedule, and holidays always supersede any other time arrangement unless the parties mutually agree to do otherwise.
13. Violation of this Order by any person may result in civil and criminal penalties including prosecution pursuant to Section 2904 of the Pennsylvania Crimes Code, Interference with Custody of Children.
14. Jurisdiction of the children shall remain with the Court of Common Pleas of Westmoreland County Pennsylvania, unless or until jurisdiction would change under the Uniform Child Custody Jurisdiction Enforcement Act.
15. We agree to abide by the agreement adopted this _____ day of _____, and submit it to the Court of Common Pleas to be formalized into an Order of Court.

Mother

Father

BY THE COURT:

J.

**If the Defendant's Last
Name begins with**

**Your case will be assigned
to**

A-Fa

Judge Anthony G. Marsili

Fb-K

Judge Alfred B. Bell

L-RI

**Judge Christopher A.
Feliciani**

Rj-Z

Judge John J. Driscoll

Places to get assistance from a lawyer

Lawyer Referral Service
724-834-8490

Pro Bono Office
724-837-5539

Laurel Legal Services, Inc.
724-836-2211