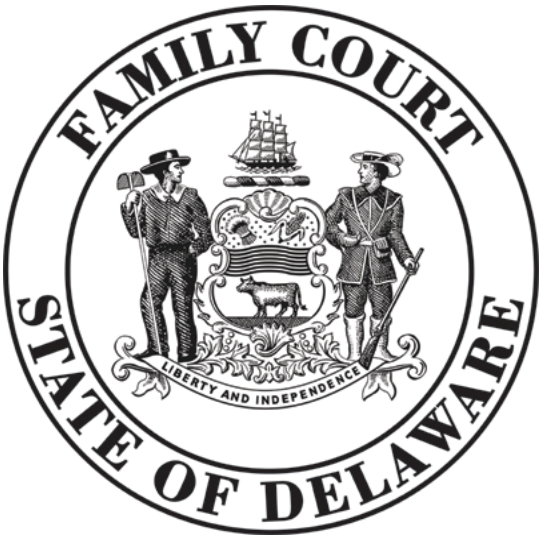
CUSTODY MODIFICATION INSTRUCTION PACKET



https://courts.state.de.us/family

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CUSTODY MODIFICATION
INSTRUCTION PACKET

Use the Custody Modification Packet **ONLY** when:

- There **IS** a Custody Order in place in Delaware. **AND**
- You want to change the terms of the current order; **AND**
- The child, a parent or a person acting as a parent continues to reside in Delaware. (There are exceptions to this requirement. If none of the above people live in Delaware, talk to an attorney to see if an exception applies to your situation).

--OR—

- There **IS** a Custody Order in place from a state *other* than Delaware. **AND**
- You want to change the terms of the current order; **AND**
- The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing the Petition to Modify Custody. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months talk to an attorney to see if an exception applies to your situation. If you are unable to retain an attorney, please refer to the Delaware Code, Title 13, Chapter 19); **AND**
- **The Court that issued the Custody Order has given up jurisdiction** (you need to contact that Court to find out how this is done).

Note: If a state agency has custody, you must file to rescind custody, not to modify custody.

If you and the Respondent already agree about how you want the custody arrangement to be modified, you may file a **Consent Order**. When you file a

Consent Order, you and the Respondent write down how you want the custody arrangement to work and a Hearing Officer will review your agreement and make it an order of the Court if appropriate. To obtain a Consent Order, you must file all of the following forms: the **Petition to Modify Custody**, the **Custody Separate Statement**, the **Information Sheet**, the C**ustody, Visitation & Guardianship Disclosure Report** and the **Consent Order-Custody, Visitation**.

To make this Instruction Packet easier to read, it will explain Custody Modification as if you wanted to file to modify custody of one child. If more than one child was included on the custody order, you may file to modify custody of **all of the children** on the same petition. Please note that if the children have different fathers or mothers, you must file to modify custody on separate petitions. For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

HOW TO USE THE PACKET

This packet contains general information about the process of filing a Petition to Modify Custody, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand or typed. **COMPLETE AND FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The sample forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE. For example, you do not have to file the forms in Section 2 at the same time as

the forms in Section 1. Read the information carefully to ensure that you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.

READ THIS SECTION CAREFULLY

THIS DOCUMENT MUST BE FILED

FILL IN THE BLANKS OR WRITE INFORMATION HERE

YOU DO NOT HAVE TO TAKE THESE STEPS NOW.

TIPS AND REMINDERS …

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Custody. They will help you to better understand the Custody process.

- ✓ Remember who is the Petitioner and who is the Respondent.
  - ➢ The **PETITIONER** is the person who filed the Petition to Modify Custody, in other words, you.
  - ➢ The **RESPONDENT** is the person replying (responding) to the Petition.

- ✓ Remember that just because you fill out the forms correctly does not necessarily mean that the Court will give you (grant) what you want. It is up to *you* at the court hearing to prove why the Court should give you what you want.

- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**

- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE.** Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

- ✓ If you would like assistance finding an attorney, or to see if you qualify for free legal assistance, you can visit the Delaware Volunteer Legal Services website at https://delegalhelplink.org.

- ✓ Always bring your photo identification with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.

- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE**.

PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have "clocked-in." Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND "certified mail, return receipt requested" so that you have proof that the other party received the envelope. If you cannot afford to pay for "certified mail" we suggest you get a "certificate of mailing" at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

FREQUENTLY ASKED QUESTIONS ABOUT CUSTODY MODIFICATION

Who Can Petition To Modify Custody?

The biological mother, biological father or the de facto or adoptive parent of a child may petition to modify custody of the child. If a state agency has custody, you must file to rescind custody, not to modify custody.

What are the Types of Custody?

Joint Custody: parents share the duties and responsibilities of raising the child. Each parent must care for, support, discipline and make decisions about the child's medical, educational, religious, health and social needs. Parents are expected to share information, discuss and decide together major issues regarding the child.

Sole Custody: an arrangement where the non-custodial parent does not actively share in the duties and responsibilities of raising the child.

-The non-custodial parent still has the right to request information concerning the child's progress in school, medical treatment, significant developments in the child's life, school activities and conferences, special religious events and other activities in which the parent may wish to participate. The non-custodial parent still has the right to reasonable access to the child by telephone and mail.

- Sole custody is not a termination of the non-custodial parent's rights. For information on Termination of Parental Rights, please see the Termination of Parental Rights Instruction Packet.

What is Placement?

Placement is the aspect of the Custody Order that involves where the child will live most of the time. The Custody Order will state whether the child should live primarily with one parent or live equally with both parents. If the Court determines the child should live mostly with one parent, that parent has *primary placement* of the child.

What is Visitation?

Visitation is the means by which the parent who does not have primary placement spends time with the child. Visitation establishes a schedule of contact with the child. Generally when the Court addresses custody, it also addresses visitation. The Family Court Standard Visitation Guidelines provide a general idea of visitation arrangements.

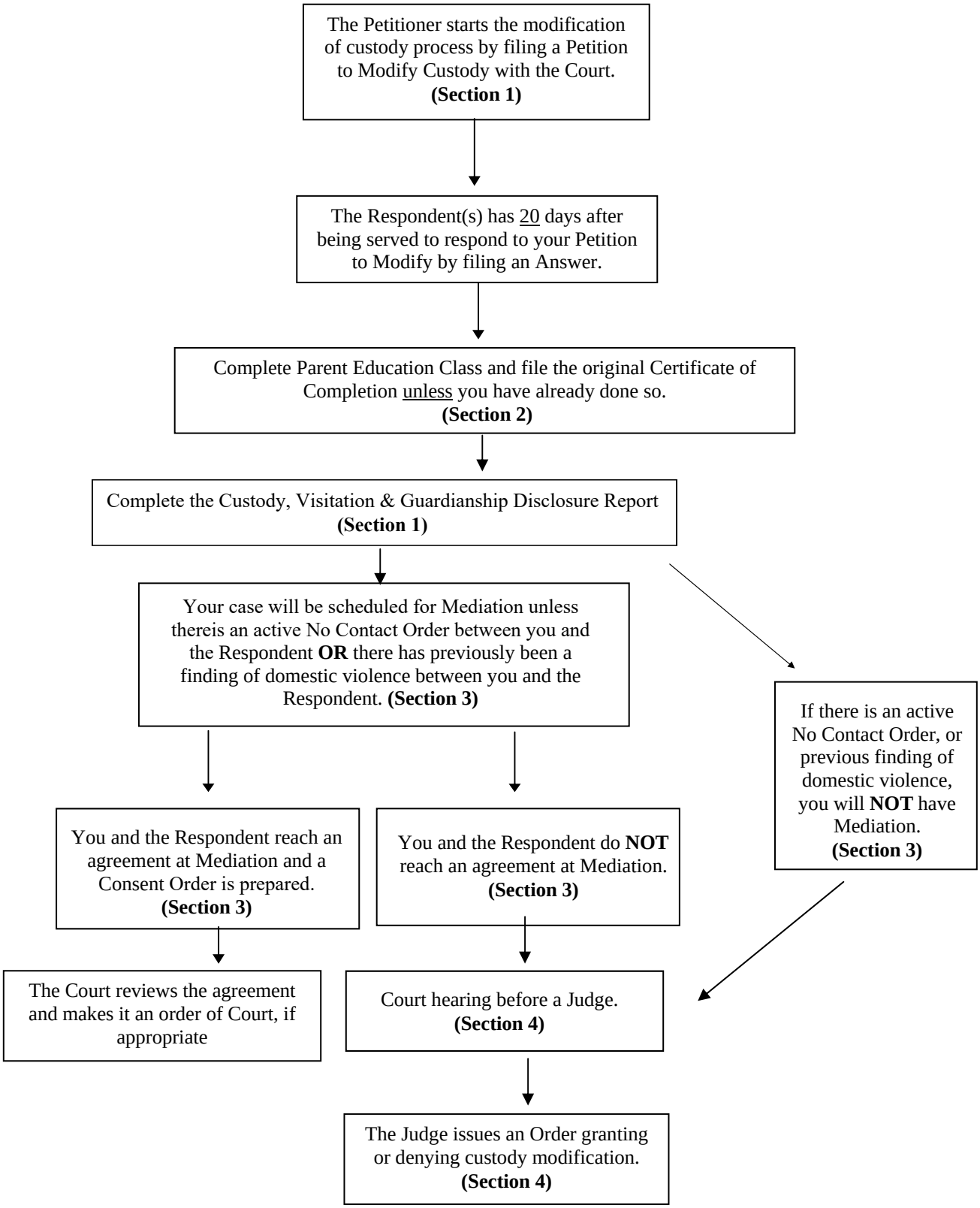
How does the Court make a decision regarding custody modification?

A custody order can only be modified in certain situations:

- If the original custody order that you want to change is a **consent order** (you and the Respondent(s) agreed to the custody arrangement), then it can be modified anytime the Court finds that it is in the "best interest" of the child.
- If the original custody order was **entered by the Court after a full hearing <u>AND</u>** it has been **<u>less</u> than two years** since it was entered, the order can be changed only if the Court finds that continuing to enforce the order would endanger the child's physical health or significantly impair the child's emotional development.
- If the order was **entered by the Court after a full hearing <u>AND</u>** if has been **<u>more</u> than two years** since it was entered, the order can be changed only after the Court considers the following factors:

- Whether any harm caused by changing the order is outweighed by the benefit of changing the order; **AND**
- Each parent's compliance with the prior order; **AND**
- The "best interest" of the child.

MODIFICATION OF CUSTODY PROCESS



SECTION 1

STARTING THE CUSTODY MODIFICATION PROCESS

You **MUST** file the **ORIGINAL** and **ONE (1) COPY FOR EACH RESPONDENT** of each form below with the Court.

- Make a copy of each completed form for your records.
- Have your set of copies "clocked-in" for your file. Having a paper "clocked-in" means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.

Petition to Modify Custody form. *(file the original and one copy)*.

- Sample form found on page 25.
- You may only file to change custody if a custody order **has already been issued by the Court**. If you have never been to the Court before regarding custody, please see the Custody Instruction Packet instead of this packet.
- The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him/her of the petition. When filing a Petition to Modify Custody, you must include all of the other parties listed on the original Petition for Custody as Respondents. **Always** include the natural or adoptive parents of a child as Respondents. If you fail to notify any of the necessary parties, the petition may be deficient and you may have to start the process over, including paying another filing fee.
- A custody order can be modified only in certain situations.
  - If the original custody order that you want to change is a **consent order** (you and the Respondent(s) agreed to the custody arrangement), then it can be modified anytime the Court finds that it is in the "best interest" of the child.

- If the original custody order was **entered by the Court after a full hearing <u>AND</u>** it has been **<u>less</u> than two years** since it was entered, the order can be changed only if the Court finds that continuing to enforce the order would endanger the child's physical health or significantly impair the child's emotional development.
- If the order was **entered by the Court after a full hearing <u>AND</u>** if has been **<u>more</u> than two years** since it was entered, the order can be changed only after the Court considers the following factors:
  - Whether any harm caused by changing the order is outweighed by the benefit of changing the order; **AND**
  - Each parent's compliance with the prior order; **AND**
  - The "best interest" of the child.

➢ When alleging facts in your Petition to Modify Custody, you want to tell the Court why the order can be modified (see above) and give the Court information so that it can decide why it is in the child's **"best interest"** to change the current custody arrangement. The child's "best interest" is the legal standard the Court must follow when deciding who should have custody of a child. (See Title 13 of the <u>Delaware Code</u>, Section 722.) The Court will want to know about the following things when deciding what is in the child's "best interest." Explain to the Court how the following things apply to your situation.

1. The <u>wishes of the child's parents</u> as to his/her Custody and living arrangements;
2. The <u>wishes of the child</u> as to his/her Custody and living arrangements;
3. The <u>interaction</u> of the child with his/her parents, brothers and sisters, grandparents and any people

living in the child's home or affecting the child's best interest;

4. The child's adjustment to his/her home, school and community;
5. The mental and physical health of all individuals involved;
6. How well each parent has in the past and currently satisfies their parental rights and responsibilities with respect to their children;
7. Evidence of domestic violence; and
8. The criminal history of any party or adult member of a household, including guilty pleas, pleas of no contest and criminal convictions.

- When writing down your allegations, you should list each point you want to make in its own **numbered paragraph**. This will make it easier for the Court and the Respondent(s) to understand why you think the custody order should be changed. An example of numbered paragraphs can be found on the Sample Petition to Modify Custody found at the end of this section (see page 25).
- If you need more space to write, you may attach additional pages to the Petition to Modify. Be sure to state on the Petition that you have attached more pages, so that the Court and the Respondent(s) will know to look for additional information.
- You must sign your Petition to Modify Custody in the presence of a notary public or authorized Court staff.

Custody Separate Statement form. *(file the original and one copy)*.

- Sample form found on page 26.
- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so that the Court can

determine if it has authority to decide your Petition to Modify Custody. If all of the children have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. **However, if the children have lived apart from each other sometime during the past five years, you must complete a separate form for each child.** For example, if last year, one child resided with you and another child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.

Information Sheet form. *(file the original and one copy).*

- Sample form found on page 29.
- This form provides the Court with general information about the parties that allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.

Required Form Prior to Mediation or First Court Appearance

Custody, Visitation and Guardianship Disclosure Report

- Sample form found on page 31.
- Prior to mediation, each party is required to fill out the Custody, Visitation and Guardianship Disclosure Report. Each party shall bring the completed form to mediation. If mediation is bypassed, each party must complete and exchange with the opposing party or attorney a Custody, Visitation, and Guardianship Disclosure Report at least 7 calendar days prior to the first court appearance additionally filing a copy of the Report with the Court at least 7 calendar days prior to the first court appearance.

BELOW ARE OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.

If you do not know where a Respondent(s) lives, file:

Affidavit that a Party's Address is Unknown form. *(file the original and one copy)*.

- Sample form found on page 34.
- You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **try to locate** him or her. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If after looking for the Respondent(s) you cannot find his/her current address, you must complete this form. **Do not complete** this form until you have made an effort to locate the Respondent(s).
- You must complete this form before you publish notice of the matter in the newspaper. Please see pages 22-23 for more information regarding Notice by Publication.

If you and the Respondent(s) have agreed on the custody modification, file:

Consent Order-Custody, Visitation *(file one original)*.

- Sample form found on page 35.
- On this form you will describe for the Court the following things:
  - Who will have custody of the child,
  - Whether the parent(s) will have Joint Custody or Sole Custody,
  - Where the child will be living,

- Who will have visitation with the child, and
- What the visitation schedule will be.

➢ When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations. For more information about visitation, please refer to the Visitation Instruction Packet.

➢ You and the Respondent(s) must both sign and have notarized the Consent Order.

➢ Once you have filed your agreement with the Court, it will be forwarded to a Hearing Officer who will review your agreement. If the Hearing Officer finds that the agreement is in the best interest of the child, then he/she will sign the agreement and it will become a court order, called a **Consent Order**.

➢ Once the Hearing Officer signs the Consent Order, the Court will mail a copy of the signed order to you and the Respondent(s).

If Respondent is in the military, file:

Waiver of Rights under the Servicemembers' Civil Relief Act *(file the original and one copy)*.

➢ Sample form found on page 37.

➢ If the Respondent(s) is in the military, the Respondent(s) must file an Answer or an Affidavit of Appearance or **YOU** must have the Respondent(s) sign a Waiver of Rights under the Servicemembers' Civil Relief Act. If the Respondent(s) does not file one of these documents, you must file a **Motion to Appoint an Attorney**. You should start this process as soon as possible because it takes time. The Court will not schedule your custody hearing until you complete this process.

➢ If there are multiple Respondents who are in the Military you must file a separate form for each Respondent.

BE SPECIFIC WHEN COMPLETING THE FORMS and make sure that you address **ALL** of the areas explained on pages 15-16 in your petition. When you complete a form, write in blue or black ink **AND** write neatly.

File the forms at the Family Court **in the County where the child currently resides**. If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure that the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at the Resource Center on lower level 1 (LL1) of the Leonard L. Williams Justice Center.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed.

FILING BY EMAIL

You may also file your petition and required forms by email. The required forms are those referenced beginning on page 14 in this packet.
To file by email, you must send the petition and required forms to: FC_CustodyVisitation@delaware.gov. For more information on filing by email, please review the Civil Filing by Email FAQ: https://courts.delaware.gov/family/faqs

A filing fee is charged to file this Petition. **If filing in person**, the filing fee can be paid in cash, by credit card, by check or by money order made payable to "Family Court." **If you are filing by email**, you may only pay by credit card. Family Court staff will call you for credit card information. It is important that you include your phone number in the email communication to the Court. **Your petition will not be considered filed until the filing fee is paid.** If you are unable to pay by credit card, you may file by mail enclosing a check or money order with your petition. **If you are filing by mail**, you may only pay by check or money order. There are additional costs if you must publish notice of this action. (See pages 21-23 for more information of when publication is necessary.)

- **Can the fee sometimes be waived?**

You may be able to have the filing fees waived by the Court if your financial situation makes it difficult for you to pay the costs. If you are indigent, fill out an Affidavit in support of Application to Proceed In Forma Pauperis (fee waiver). Form 257P. This is a detailed financial information form, which requires supporting documentation of your financial situation.

ADDITIONAL INSTRUCTIONS FOR SECTION 1

SERVICE OF PROCESS

Each Respondent(s) **must receive** a copy of the Petition to Modify Custody. The delivery of the Petition to Modify Custody and any other forms you file is called **Service of Process**. The way that you accomplish Service of Process depends on how much information you can provide the Court about where the Respondent(s) lives. Determine from the following options how Service of Process should be accomplished in your case.

- **The Respondent(s) Lives in Delaware and You Know His/Her Address**

  If the Respondent(s) lives in Delaware **AND** you know his/her address, a **Process Server** (someone whose job involves delivering Court papers) will give a copy of your petition and other papers to the Respondent(s). This is called **Personal Service**. You do not need to fill out any additional paperwork.

- **The Respondent(s) Does Not Live in Delaware and You Know His/ Her Address**

  If a Respondent does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s). If delivery of the certified mail is unsuccessful, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent(s) lives. This is referred to as **Service of Process by Mail and Publication**. You must also complete an Affidavit that Address is Unknown form (see page 18).

- **You Do Not Know Where the Respondent(s) Lives or Works**

  If you do **NOT** know where a Respondent(s) lives or works so that the Process Server can deliver your petition to that Respondent(s), **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent's last known address was located. You must also complete an Affidavit that Address is Unknown form (see page 12).

PUBLICATION

- Instructions on how to publish notice of a court action are available in the Resource Centers. It is important to carefully follow the instructions for publication. If you do not publish the notice properly, your Petition to Modify Custody could be dismissed.
- You must publish the notice **in the county where the Respondent(s) resides or in the county where the Respondent's last known address was located**. You are responsible for contacting the newspaper and paying the necessary publication fee to the newspaper.
- If you must publish the notice, **YOU** must provide **PROOF** to the Court that you published the notice. If the Court does **NOT** receive satisfactory proof of publication **WITHIN 30 DAYS** from the date that you filed your Petition to Modify Custody, the Court may dismiss your case and you will have to start all over again, including paying another filing fee.
- You may publish in the following **approved Delaware newspapers** depending on where the Respondent(s) resides.

  - **New Castle County**
    News Journal
    950 W. Basin Road
    New Castle, Delaware 19720
    (302) 324-2500

- **Kent County**
  Delaware State News
  421 Webb's Lane
  Dover, Delaware 19903
  (302) 674-3600

- **Sussex County**
  Sussex Countian
  P.O. Box 40 (13 South Front Street)
  Georgetown, Delaware 19947
  (302) 855-7400

➢ If you must publish in an out-of-state newspaper, you should select a newspaper that is widely distributed in the area where the Respondent(s) lives (or last lived if you do not know the address) **AND** the newspaper should be one which the Respondent(s) would most likely read.

THE ANSWER

➢ Once the Respondent(s) has been served with the Petition to Modify Custody, each Respondent has **20 days** from the date of service (the date that the court papers are delivered to the Respondent(s)) to respond by filing an **Answer** to your Petition to Modify Custody. If there is more than one Respondent in your case, each Respondent must file his/her own separate Answer. You should receive a copy of the Respondent's Answer in the mail.

➢ On the Answer to your Petition to Modify Custody, the Respondent(s) must **admit** (agree with) or **deny** (disagree with) each of the statements you made in your petition. The Respondent(s) may explain why he/she disagrees with the statement.

AUTOMATIC COURT ORDER

➢ When you file a Petition to Modify Custody, Family Court immediately enters a **Preliminary Injunction** (an automatic **Court Order**) that applies to **BOTH YOU AND THE RESPONDENT(S).** It

becomes effective **UPON YOU** **as soon as you file** the Petition to Modify Custody. You will receive a copy of the Preliminary Injunction when you file. The Preliminary Injunction becomes effective upon the Respondent(s) at the time that person **is served** with the petition.

- The Preliminary Injunction contains language that prohibits any party from removing a child from the jurisdiction of the Delaware Family Court without receiving permission from the other party or the Court.
- The purpose of the Preliminary Injunction is to prevent a person from **permanently** removing the child from Delaware, or from removing the child for a period of time that would interfere with the other person's right to spend time with the child and participate in the child's life. **NEITHER YOU NOR THE RESPONDENT MAY RELOCATE (MOVE) THE CHILD TO ANOTHER STATE OR TAKE THE CHILD OUT OF DELAWARE FOR A PERIOD OF TIME THAT WOULD CAUSE FAMILY COURT TO LOSE LEGAL AUTHORITY (JURISDICTION) TO DETERMINE THE CUSTODY CASE.** If you have questions regarding the relocation of a child, you should contact an attorney.

SECTION 2 BEGINS AFTER THE SAMPLE FORMS FOR SECTION 1.

***Each sample form may list information from individual cases and not all parties will match.**

YOU SHOULD BEGIN SECTION 2 ONCE YOU HAVE FILED THE FORMS IN SECTION 1.

This packet is intended to be a guideline and may not contain the most recent version of each form. Please obtain forms from the Resource Center or at this link: https://courts.delaware.gov/family/

Form 348

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

PETITION TO MODIFY CUSTODY ORDER

Pursuant to 13 Del. Code, Chapter 7

Petitioner	**v. Respondent**	
Name: John D. Smith	Name: Anne C. Smith	File Number: CN04-73021
Street Address: 49 Pine Street	Street Address: 101 Oak Street	
Apt. or P.O. Box Number:	Apt. or P.O. Box Number: Apt. #123	Petition Number:
City: Dover State: DE Zip Code: 19901	City: Dover State: DE Zip Code: 19901	
Attorney Name and Phone Number: n/a	Attorney Name and Phone Number: n/a	

IN THE INTEREST OF the following child(ren):

Name	Date of Birth	Name	Date of Birth
Douglas A. Smith	10/14/1991	Mary J. Smith	4/17/1996
Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

The above named Petitioner was: ☐ Petitioner ☒ Respondent ☐ Other in the action that resulted in the order you seek to modify.

Check if you were the Petitioner or Respondent in the prior Custody Order.

If "Other" give name and relationship to child(ren):

Name _____ _____

The Petitioner hereby moves the Court for an Order modifying a prior Custody Order of this Court dated 12/30/2004, and in support thereof alleges the following:

Fill in the date the prior Custody Order was entered.

1) The prior custody order was entered by consent on December 30, 2004.
2) It is now in the best interests of both children to live with Father.
3) Mother has recently had mental health problems and substance abuse problems. While continuing to reside with her, the children's grades have dropped and they have both been sick often.
4) If the children reside with Father, Father will continue to have them enrolled in their current school. The children will also be closer to most of their extended family.
5) Father has been compliant with the previous custody order.
6) The parties were involved in a PFA hearing in December 2004. This was resolved by consent and there have been no issues of domestic violence since that time.

List your allegations in numbered paragraphs.

WHEREFORE, the Petitioner prays that the Court will enter an Order reopening the prior proceeding. And thereafter enter an Order modifying the prior order and grant Custody of the above child(ren) to John D. Smith and enter such other Orders as may be in the best interest of the child(ren).

Sign in the presence of a notary.

SWORN TO AND SUBSCRIBED
Before me this date,

January 10, 2006

STOP

John D. Smith
Petitioner

Signed by notary or court staff.

Donna King
Notary Public

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

CUSTODY SEPARATE STATEMENT

Petitioner	*v.*	*Respondent*	
Name Anne C. Smith		*Name* John D. Smith	File Number CK04-1211

1. What type of petition are you filing? FILL IN PETITION TYPE (E.g. Petition for Custody)

2. Who is the child(ren) named in your petition? (*Please provide full name and date of birth*)

Child's Name	Date of Birth (mm/dd/yyyy)	Place of Birth (City, State)
Doug A. Smith	10/15/2010	Dover, DE
Mary J. Smith	4/22/2013	Dover, DE

3. Have all the children listed above continually resided with one another? ☒ Yes ☐ No

If you answered "No," the children have not continually resided with one another; please complete a Custody Separate Statement for each child.

CURRENT ADDRESS

Address where child(ren) ***currently reside(s)*** ***** If the address where the child(ren) currently resides is a confidential address in Family Court, DO NOT provide the address on this form. Instead, please mark the fields as CONFIDENTIAL.***			*Date(s) Child(ren) lived here* 1/28/2016 to present
Address 101 Oak Street, Apt 123	*City* Dover	*State* DE	*Zip* 19901
People living in the household with the child(ren):	*Date of Birth*	*Relationship to child(ren):*	
Anne C. Smith	12/26/1985	Mother	
Mary A. White	4/28/1959	Grandmother	

4. During the **past five years**, where has/have the child(ren) lived? *List addresses from the most recent to the oldest. If the child(ren) is under the age of five years old, end with the first address where the child lived.*

PRIOR ADDRESS

Address where child(ren) previously resided	*City*	*State*	*Zip Code*
10 Clayton Street	New Castle	DE	19720
Date(s) child(ren) lived there	*Name of person(s) child(ren) lived with*	*Relationship to child(ren)*	
2/14/2014 to 1/27/2016	Anne C. Smith & Mary A. White	Mother and Grandmother	
Person's current address	*City*	*State*	*Zip Code*
101 Oak Street, Apt 123	Dover	DE	19901

PRIOR ADDRESS

Address where child(ren) previously resided	*City*	*State*	*Zip Code*
490 Pine Street	Wilmington	DE	19899
Date(s) child(ren) lived there	*Name of person(s) child(ren) lived with*	*Relationship to child(ren)*	
10/1/2010 to 2/14/2014	John V. Smith and Anne C. Smith	Father Mother	
Person's current address	*City*	*State*	*Zip Code*
Unknown (John Smith) 101 Oak Street, Apt 123	Dover	DE	19901

PRIOR ADDRESS	*Address where child(ren) previously resided*	*City*	*State*	*Zip Code*
	Date(s) child(ren) lived there to	*Name of person(s) child(ren) lived with*	*Relationship to child(ren)*	
	Person's current address	*City*	*State*	*Zip Code*
PRIOR ADDRESS	*Address where child(ren) previously resided*	*City*	*State*	*Zip Code*
	Date(s) child(ren) lived there to	*Name of person(s) child(ren) lived with*	*Relationship to child(ren)*	
	Person's current address	*City*	*State*	*Zip Code*

5. Check **ONE** and complete as directed.

☒ No one other than the parties have physical custody, legal custody or visitation rights with the child(ren).

☐ *A person(s) other than the parties have physical custody, legal custody or visitation rights with the child(ren). If you check this box, complete the information below. Attach additional sheets if necessary.*

PERSON 1	*Name of person(s) with physical custody, legal custody or visitation*		*Relationship to child(ren)*	
	Person's current address	*City*	*State*	*Zip Code*
PERSON 2	*Name of person(s) with physical custody, legal custody or visitation*		*Relationship to child(ren)*	
	Person's current address	*City*	*State*	*Zip Code*

6. Select all that apply and complete as directed.

☐ I have not been involved in any other court action for custody and/or visitation of this child(ren).

☒ I have been involved in another court action for custody and/or visitation of this child(ren). *If you check this box, complete the information below. Attach additional sheets if necessary.*

ACTION 1	*Type of Action (e.g. Custody, Visitation, Other)* Visitation	*Person (who filed the action)* John V. Smith		*State* DE
	Court Family Court	*Case Number* CK16-1122	*Date Filed* 10/2/2016	
	Result Visitation granted		*Date of Order* 12/15/2016	
ACTION 2	*Type of Action (e.g. Custody, Visitation, Other)*	*Person (who filed the action)*		*State*
	Court	*Case Number*	*Date Filed*	
	Result		*Date of Order*	
ACTION 3	*Type of Action (e.g. Custody, Visitation, Other)*	*Person (who filed the action)*		*State*
	Court	*Case Number*	*Date Filed*	
	Result		*Date of Order*	

7. Check **ONE** and complete as directed.

☐ I do not know of any other court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship, Adoption or Paternity involving myself, the other party or the child(ren) that could affect this petition.

☒ I, the other party or the child(ren) have been and/or are currently involved in another court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship or Adoption, that could affect this petition. *If you check this box, complete the information below. Attach additional sheets if necessary.*

ACTION 1	*Type of Action (e.g. PFA, TPR, Guardianship, Other)* PFA	*Person (who filed the action)* Anne C. Smith		*State* DE
	Court Family Court	*Case Number* CK04-12111	*Date Filed* 8/11/2017	
ACTION 2	*Type of Action(e.g. PFA, TPR, Guardianship, Other)*	*Person (who filed the action)*		*State*
	Court	*Case Number*	*Date Filed*	

STOP — Sign in the presence of a notary or court staff.

Anne C. Smith
Petitioner

Sworn to and subscribed before me this 18th day of September, 2017.

STOP — Signed by notary or court staff.

Donna King
Clerk of Court/Notary Public

Form 240

The Family Court of the State of Delaware

INFORMATION SHEET - **PLEASE PRINT**

Fill in the date you file the form.

If you know your case file number, put it; if not, leave blank.

Date: 12/13/2017 File No.: CN17-99999

Please fill in A to K pertaining to you the Applicant/Petitioner. (For additional petitioners use additional sheets)

Each Petitioner must complete a separate form

A. Name: Anne C. Smith

B. Address: 101 Oak Street, Apartment #123

City/State/Zip: Dover, DE 19901

C. Phone – Home: (302) 555-1111 Work: (302) 555-9999 Cell: (302) 999-8888

D. Employer & Address: ABC Child Care Center
500 Pine Street
Dover, DE 19904

Hours/Shift 7:30 to 4:30 Monday-Friday

E. Social Security No.: 000-00-0000 F. Date of Birth: 2/3/1986

G. Place of Birth (City & State): Wilmington, DE

H. Sex: F Race: White Height: 5'4" Weight: 135 lbs Hair: Blond Eyes: Brown

Marks/Scars/Tattoos: None

I. Type of motor vehicle operated by you: 2010 Honda Accord

J. Driver's License No.: 9999999 State of Issue: DE Expiration Date: 2/3/2020

K. Your relationship to the Defendant/Respondent: Spouse

L. Attorney: None

Entering your email address on this line authorizes the Court to send you notices by email. If you choose this option, you will not receive notices in regular mail.

☒ I authorize Family Court to deliver court orders in my case(s) to my email address instead of to my mailing address. My email address is: Anne.C.Smith@example.com .

*Please note that if you provide an email address, all orders in your pending civil cases in Family Court will be sent in an encrypted email via Egress to the email address provided and will not be mailed to your physical address. For information on how to receive encrypted emails through Egress, please visit https://judicial.state.de.us/courtdox/Download.aspx?id=94888&court=readonly.

Please fill out the information below in reference to the child(ren) who are involved.

Children

Name	Relationship	Sex	Race	D.O.B.	SSN	Birthplace City & State
Douglas A. Harding	Nephew	M	White	10/14/2012	987-65-4321	Newark, DE

OVER

Please fill in L to Y pertaining to the Defendant/Respondent. (For additional respondents use additional sheets)

M. Defendant/Respondent is a: (Check One) ☒ **ADULT** ☐ **JUVENILE**

N. Name: Michelle Jones

You must complete a separate form for each Respondent.

O. Address: 490 Pine Street

City/State/Zip: Dover, DE 19901

P. Phone – Home: (302) 333-3333 Work: (302) 222-2222 Cell: (302) 111-1111

Q. Employer & Address: XYZ Corporation
67 Walnut Avenue
Dover, DE 19901

Hours/Shift 9:00 AM to 5:00 PM, Monday-Friday

R. Social Security No.: 888-88-8888 S. Date of Birth: 7/13/1991

T. Place of Birth (City & State): Wilmington, DE

U. Relationship to Child: ☐ Not Applicable ☒ Mother ☐ Father ☐ Relative ☐ Non-Relative

☐ Other (Please Describe)

V. Sex: F Race: White Height: 5'4" Weight: 140 lbs Hair: Black Eyes: Brown

Marks/Scars/Tattoos: Tattoo of a heart on right shoulder

W. Driver's License State & No.: DE 1111111

X. Type of vehicle operated by Defendant/Respondent: 2009 Chevy Impala

Y. Parent's Name (if a juvenile):

Z. Time when Respondent is usually home: 7:00 PM to 6:30 AM, Monday-Friday; mornings on weekends

List places where the Respondent spends time other than at home or

AA. ~~Additional~~ information about Respondent that may aid the process server in locating him/her to serve petition:

If you are unable to locate the Respondent at her place of residence or her place of employment, she spends a lot of time at her brother's house, which is located at 775 Spruce Lane, Dover, DE 19901.

Write directions to each address listed on this form to make sure that the process server can locate the Respondent.

DIRECTIONS TO RESPONDENT'S RESIDENCE

Home: Go West on 8th Street until you reach Pine Street. Turn right and go 3 and one-half blocks. The Respondent's house is on the right and is white with blue shutters.

Work: Go North on Route 13 and take the first right onto Cherry Drive. Go about a mile and a half and turn left onto Walnut Avenue. XYZ Corporation is on your left.

Brother's Residence: Go two blocks past Respondent's home to 10th Street. Turn left and go one block to Spruce Lane. Turn right. It is the second house on the right. The house is green.

SAMPLE Form 364

Check the county in which you are filing

The Family Court of the State of Delaware

In and For ☐ New Castle County ☒ Kent County ☐ Sussex County

CUSTODY, VISITATION, AND GUARDIANSHIP DISCLOSURE REPORT

Name: Anne C. Smith
Relationship to the child(ren): Mother
Date of Birth: 07/31/991
Address: 490 Pine Street
Dover, DE

File Number: CN17-99999
Petition Number: 19-99999
Home Phone Number: 302-333-3333
Work Phone Number: 302-222-2222
Cell Phone Number: 302-111-1111

Names and dates of birth of any child(ren) involved in this proceeding:

1. Douglas A. Harding DOB: 10/14/2012
2. DOB:
3. DOB:
4. DOB:
5. DOB:
6. DOB:

Names and dates of birth of all persons living in your household, and relationship to the child (ren):

1. Nicole C. Smith DOB: 1/14/1991 Relationship to Child(ren): Aunt
2. DOB: Relationship to Child ren):
3. DOB: Relationship to Child(ren):
4. DOB: Relationship to Child(ren):
5. DOB: Relationship to Child(ren):
6. DOB: Relationship to Child(ren):

1. What contact schedule do you have now with the child(ren) noting how often the child(ren) live(s) with you or visit(s) with you? The children are in my household on average 8 overnights a month.

2. This schedule is by: ☐ court order or ☒ by agreement

3. What contact schedule are you requesting for yourself with the child(ren)?
   - ☒ Primary residency, with visitation with the other party **OR**
   - ☐ Shared Placement
   - ☐ Visitation, with primary residency with the other party

If you want primary residency, what visitation schedule do you want the visiting party to have with the child(ren)?
In a safe environment John D. Smith may have him on the weekends or as the court deems fit.

If you want shared residency, how would you like to share the time with the other party?
N/A

If you are seeking visitation or a change in visitation, what visitation schedule are your requesting?
N/A

4. **Legal custody** refers to a parent's right to make decisions regarding the child, not where the child primarily lives. **Joint legal custody** means that the parents share the duties and responsibilities of raising the child and are expected to share information and decide major issues about the child together. **Sole legal custody** means that one parent has decision-making authority although both parents have access to the child and the right to request information about the child.

   ☒ **Requesting Joint Legal Custody**

   ☐ **Requesting Sole Legal Custody**

   If you are requesting sole legal custody, explain why.

   N/A

5. Where do you work and what is your work schedule? XYZ Corporation 9:00 AM to 5:00 PM, Monday- Friday

6. How many miles do you live from the other party? 15

7. How many miles do you live from the child(ren)'s school? 5

8. In which school district do you live? Capital

9. How many miles does the other party live from the child(ren)'s school? 20

10. In what school district does the other party live? Smyrna

11. Do you have any history of drug or alcohol abuse? ☐ Yes ☒ No

    If yes, describe:

12. Does the other party have any history of drug or alcohol abuse? ☒ Yes ☐ No

    If yes, describe: Previously marijuana, not 100% certain if he still does.

13. Do you have any concerns about your physical or mental health? ☐ Yes ☒ No

    If yes, describe concerns:

14. Do you have any concerns about the physical or mental health of the child(ren)? ☒ Yes ☐ No

    If yes, describe concerns: I just want to make sure wherever Douglas will be is a a safe environment without any dangerous conditions.

15. Do you have any concerns about the physical or mental health of the other party? ☐ Yes ☒ No

    If yes, describe concerns:

16. List all of your criminal convictions, including DUIs. The Court is required to check criminal histories of all parties and members of the household: NONE

17. List all criminal convictions of the other party of which you are aware, including DUIs:

    Marijuana possession, speeding.

18. Do you intend to offer evidence of domestic violence at trial?

    Not at this time.

19. Have you or the other party ever been investigated by the Division of Family Services or a child welfare agency in another state? ☐ Yes ☒ No

    If yes, explain:

20. Do you or the other party have a finding of child abuse or neglect by the Division of Family Services or a child welfare agency in another state? ☐ Yes ☒ No

If yes, explain: _____

21. Has the child(ren) ever lived with anyone other than you or the other party? ☒ Yes ☐ No

If yes, with whom did the child(ren) live and what were the dates: Maternal grandmother November-December 2012

Any other information that you believe is relevant to this proceeding: I have the financial ability, maturity, and help to be able to care for Douglas whereas the opposing part in my belief is not quite there yet.

There is a duty to supplement and/or update this report. As such, parties are free to amend without leave of the Court.

3/17/2019	Anne C. Smith	*Anne C. Smith*
Date	Print Name	Signature
	Sample Attorney, Esq	*Sample Attorney*
	Attorney Print Name	Attorney Signature

Only sign this form in the presence of a notary or

Sworn to and subscribed before me this 17th day of March , 2019

Marianne Notary	*Marianne Notary*	3/17/2019
Notary / Clerk of Court (Print)	Notary / Clerk of Court (Sign)	Date

This Affidavit of Exchange must be signed in the presence of a notary or court staff.

Affidavit of Exchange

ure Report must be exchanged with the other party.

Please check one of the following boxes indicating how this exchange occurred.

☒ I affirm that this Custody, Visitation, and Guardianship Disclosure Report was filed with my petition and was therefore served by the Court upon the other party.

☐ I affirm that this Custody, Visitation, and Guardianship Disclosure Report was filed with the Court after the filing of the petition. I further affirm that a true and correct copy of this Disclosure Report was placed in the U.S. mail on the _____ day of _____ , _____ and sent to the other party or attorney at the address listed on the petition, first class postage pre-paid.

☐ I affirm that this Custody, Visitation, and Guardianship Disclosure Report was brought to the Family Court mediation conference on the _____ day of _____ , _____ with a true and correct copy given to the other party.

☐ I have filed with the Court an Affidavit that a Party's Address is Unknown (Form 241) and have been unable to exchange this Custody, Visitation, and Guardianship Disclosure Report.

3/17/2019	Anne C. Smith	*Anne C. Smith*
Date	Print Name	Signature
	Sample Attorney, Esq.	*Sample Attorney*
	Attorney Print Name	Attorney Signature

Sworn to and subscribed before me this 17 day of March , 2019

Marianne Notary	*Marianne Notary*	03/17/2019
Notary / Clerk of Court (Print)	Notary / Clerk of Court (Sign)	Date

Form 241

The Family Court of the State of Delaware

in and for New Castle X Kent Sussex County

Check the county in which you are filing.

AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

Petitioner Last	First	MI		Respondent Last	First	MI	File No.
Smith	John	D.	vs.	Smith	Anne	C.	CPI No.

Fill in the county in which you are filing.

State of Delaware)
) SS.
Kent County)

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 17th day of March, 2006, personally appeared before me, a Notary Public for the State and County aforesaid, John D. Smith, ("Affiant"), who, being by me duly sworn according to law did depose and say:

The person filling out the form is the "Affiant" and his/her name goes here.

1. My name is John D. Smith

2. I do not know the current address and/or telephone number, nor do I know anyone who could provide me with the current address and/or telephone number of Anne C. Smith. I have contacted his/her (Please check as appropriate) ☐ Parent ☐ Spouse ☐ Employer X Other: Respondent's Brother.
His/Her last known address and telephone number were:

490 Pine Street
Wilmington, Delaware 19899

as of January 10, 2006.

Fill in the date that the Respondent last lived at the above addresss.

3. I have had no contact with him/her since January 1, 2006.

4. I have been informed of my responsibility to accomplish publication and my failure to do so will result in the petition being dismissed.

5. The information contained herein is true and correct to the best of my knowledge and belief.

Sign in the presence of a notary.

John D. Smith
Affiant

SWORN TO AND SUBSCRIBED before me the day a

Signed by notary or court staff.

Donna King
Notary Public

The Family Court of the State of Delaware

In and For ☐ New Castle X Kent ☐ Sussex County

Check the county in which you are filing.

CONSENT ORDER – CUSTODY, VISITATION

Petitioner	*v. Respondent*	
Name: John D. Smith	Name: Anne C. Smith	File Number: CK04-12111
Street Address: 49 Pine Street	Street Address: 101 Oak Street	
Apt. or P.O. Box Number: Apt. #123	Apt. or P.O. Box Number:	Petition Number: 04-42301
City: Dover State: DE Zip Code: 19901	City: Wilmington State: DE Zip Code: 19899	
Attorney Name and Phone Number: n/a	Attorney Name and Phone Number: n/a	

IN THE INTEREST OF the following child(ren):

Name (Child #1)	Date of Birth	Name (Child #2)	Date of Birth
Doug A. Smith	10/14/91	Mary J. Smith	4/17/96
Name (Child #3)	Date of Birth	Name (Child #4)	Date of Birth
Name (Child #5)	Date of Birth	Name (Child #6)	Date of Birth

The parties in the above-entitled case hereby agree upon the following arrangement and do consent to the entry of an Order providing for the same:

Check which type of custody you have agreed upon. If you check Joint Custody, you must list both parents on the next line. If you check Sole Custody list only one of the parents on the next line.

Type of Custody: X Joint Custody ☐ Sole Custody

Custody Awarded to: Anne C. Smith and John D. Smith

Physical Placement with: Anne C. Smith

Relationship: Mother

Fill in the name of the parent that the child is going to live with most of the time.

Address: 10 Oak Street, Apt. #123
Dover, DE 19901

Visitation Awarded to: John D. Smith

Relationship: Father

Address: 490 Pine Street
Wilmington, DE 19899

OVER

Describe the visitation schedule you have agreed on in detail.

Visitation shall be as follows:

Father shall have visitation with the children every other weekend beginning the first weekend in February. Father will pick the children up from school on Friday afternoon and will have them with him until 4 p.m. on Sunday afternoon. Mother and Father will meet at the McDonald's in Middletown to exchange the children at 4pm on Sunday afternoons. Both parties will try to be on time, but if one is running late, he/she will call the other's cell phone and let him/her know of the delay.

Father shall have visitation with the children every Wednesday evening from 6:30 to 8:30 p.m. Father will pick the children up at Mother's house and will drop them off at Mother's house. If there is a school activity on Wednesday evening so that the child(ren) cannot visit with Father, then Tuesday evening may be substituted.

Father and Mother will follow the visitation schedule set forth in the Standard Visitation Guidelines regarding holidays except for Christmas. Mother will have the holidays in Column 1 on odd years and the holidays in Column 2 on even years. Father will have the holidays in Column 1 on even years and the holidays in Column 2 on odd years. The children will spend all of Christmas Eve with Mother every year and all of Christmas Day with Father every year. Mother will drop the children off at Father's home at 9pm on Christmas Eve and Father will keep the children until 4pm the afternoon before school resumes after Winter Break. Father will drop the children off at Mother's house that afternoon.

Mother will have the children for all of Spring Break.

Fill in the date you have the form notarized.

Affidavit of Consent

Be it remembered that on July 20, 2004, the above named petitioner and respondent personally came before me, the subscriber, a Notary Public for the State and County listed below, who being duly sworn to law did depose and say: I, the undersigned hereby agree upon the following custodial/visitation agreement for the above-named child(ren). I have signed this consent agreement voluntarily and of my own free will.

We hereby waive our right to a Review of a Commissioner's s Order is entered pursuant to this Voluntary Agreement

Sign in the presence of a notary or court staff.

STOP

John D. Smith

Petitioner

Anne C. Smith

Respondent

State of Delaware

County of Kent

Sworn to subscribed before me:

STOP

Donna King

Mediator/Notary Public

Signed by notary or court staff.

State of Delaware

County of Kent

Sworn to subscribed before me:

Donna King

Mediator/Notary Public

So Ordered this Date:

STOP

Signed by Commissioner.

Judge/Commissioner

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

John D. Smith Petitioner,	)	File No.: _____
and	)	
Anne C. Smith Respondent,	)	No.: _____

You must file a separate form for each Respondent

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE)
Kent COUNTY) ss.

Write the county in which you are filing.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 15, 2006, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, Anne C. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned civil proc
2. That Affiant is active duty in the United States military: and
3. The Affiant waives his/her rights under the "Servicemember so acknowledges that he/she, or his/her attorney, will be quir d appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.

Sign in the presence of a notary or court staff.

Anne C. Smith
Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, *December 15, 2005*

Signed by notary or court staff.

Donna Young
Notary Public or Clerk of Court

Section 2

PARENT EDUCATION CLASSES

IF YOU HAVE NOT <u>ALREADY</u> DONE SO, you **MUST** file the certificate below:

Certificate(s) of Completion of Parent Education Class *(file original(s))*

- All parents with children up to the age of 17 must take a Parent Education Class. A listing of available classes is available at the Family Court Resource Centers. Once you have completed the Parent Education Class, a Certificate(s) of Completion of Parent Education Class will be given to you.
- You must file the **ORIGINAL** signed Certificate of Completion of Parent Education Class with the Family Court. If you have already taken the Parent Education Class, an original copy(ies) of the Certificate of Completion should be in your file.
- Be aware, if you fail to attend the Parent Education Class or do not file your Certificate of Completion with the Court, the Court will take your failure to do so into consideration when deciding who should have custody. The Court may dismiss your petition based on your failure to attend the class.
- You should <u>register</u> for the Parent Education Class **AS SOON AS POSSIBLE** because the classes tend to fill quickly and you may be placed on a waiting list.

Section 3

MEDIATION

After all of the Respondents have been served with the Petition to Modify Custody and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your Custody Modification for **Mediation**. **ALL PARTIES are required to attend**.

- The Court will **NOT** schedule Mediation if there is an active **No Contact Order** involving you and the Respondent(s) or there has been a previous finding of domestic violence such as the following:
  - A Protection from Abuse Order, **OR**
  - An adjudication of criminal charges.

  If there is an active No Contact Order involving you and the Respondent(s), you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.
- The Court will **NOT** schedule mediation if one of the parties is a sex offender as defined by Delaware law. If one of the parties is a sex offender as defined by Delaware law, you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.
- Mediation is **NOT** a Court Hearing. At Mediation, a Mediator (a neutral third party) will **try to help** you and the Respondent(s) reach an agreement about custody. The Mediator will ask you and the other party to tell how you both think the matter should be resolved and will work with you to find a solution that is agreeable to both of you. In other words, the Mediator is there to help you and the other party work together in deciding what arrangement is best for your child. Therefore, try your best to come with a "spirit of cooperation."

CONSENT ORDERS

- If, at the end of Mediation, you and the Respondent(s) reach an agreement, the Mediator will type your agreement into a document and you and the Respondent(s) will sign the agreement. The Mediator also will sign the agreement. Then, you will be allowed to leave and the Mediator will give your signed agreement to a Judge. The Judge will decide whether your agreement should become a court order**,** called a **Consent Order.**
- If the Judge decides your agreement should become a Consent Order, the Judge will sign the agreement and the Consent Order will be mailed to you and the Respondent(s). You will **NOT** have to go to a hearing with a Judge. Most often, the Judge will sign a Consent Order proposed by a Mediator.
- Once a Consent Order is signed by a Judge, it is a Court Order and you and the Respondent(s) **MUST** follow the instructions in the order.
- If you **DO NOT** reach an agreement at mediation, the prior custody order <u>will remain in effect</u> until you have a hearing with a Judge.

Come to mediation prepared to discuss why the Custody Order should be changed. Keep the following information in mind as you prepare for mediation.

- **PARENTAL DUTY AND RESPONSIBILITY**
  - The Court generally orders **Joint Custody**, in which parents share the duties and responsibilities of raising the child. If you want to

change the prior order so that you have **Sole Custody**, an arrangement where the other parent does not actively share in the duties and responsibilities of raising the child, you must demonstrate that such an arrangement is in the child's best interest. (For more information on the best interest of a child see pages 15-16)

- It is usually in the best interest of the child to have both parents active in his/her life. Regardless of who is awarded custody, generally each parent will have the right to request information concerning the child's progress in school, medical treatment, significant developments in the child's life, school activities and conferences, special religious events and other activities in which the parent may wish to participate. Also, each parent will have the right to reasonable access to the child by telephone or mail.

- **PLACEMENT**
  - Often parties do not want to change the type of custody (joint or sole) that they have. Instead, the parties want the Court to change the **placement** of the child, in other words, change where the child will live most of the time. Placement is determined according to what is in the **CHILD'S** best interest, not the parent's or the custodian's best interest.

- **VISITATION**
  - Generally, when the Court addresses Custody, it will also address Visitation to enable the party not given primary placement to spend time with the child. Visitation establishes a schedule of contact with the child. For more information on visitation, please read the Visitation Instruction Packet.
  - You should review the Family Court's **Standard Visitation Guidelines** to get a general idea about visitation arrangements. The Standard Visitation Guidelines are on the Family Court website

(https://courts.state.de.us/family). Consider whether the Contact Guidelines accommodate you and the Respondent's schedule as well as the schedule of the child. You are not required to follow the Standard Visitation Guidelines. At Mediation, you and the Respondent can work together to establish a visitation schedule that works best for you, Respondent(s), and most importantly your child.

Be realistic when asking for the terms of a custody order. The law says that it is better for a child to have at least some contact with both parents unless that contact would endanger the child's physical health or significantly impair his or her emotional development. The focus is on what is in the **CHILD'S best interests**. Just because **YOU** do not want the parent to be involved in the child's life may not mean that that is in your **CHILD'S** best interests. Therefore, at Mediation, be prepared and try to work with the Respondent(s) to accommodate the parent's right to a continuing relationship with the child.

IF YOU REACHED AN AGREEMENT AT MEDIATION, THIS IS THE *END* OF THE PACKET. OTHERWISE, GO TO SECTION 4.

Section 4

HEARING WITH A JUDGE

SCHEDULING THE HEARING

A **Court Hearing** will be scheduled by the Court **ONLY** if:

- The Mediation was unsuccessful (no agreement or a temporary agreement was reached) **OR** Mediation was not required.

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing.**

Some judges may schedule a **case management conference** or a **pre-trial hearing**. The purpose of these proceedings is to discuss the status of your case prior to scheduling a full evidentiary hearing where you will present evidence and call witnesses.

If you cannot attend the scheduled hearing you must file the following form:

Motion for Continuance *(file one original and mail one copy to the Respondent).*

- Sample form found on page 47.
- If, once you receive your Notice, you cannot attend the scheduled hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance.** **DO NOT** call the Court. On this Motion, you must state **very specific reasons** why you cannot attend the

hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for Continuance, you must contact the Respondent(s) regarding the continuance and then **tell the Court in your motion how the Respondent(s) feels about the continuance**. These Motions are not always granted. Please review Family Court Rule of Civil Procedure 40 for more information.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING**. If you fail to appear at your hearing, the Court may dismiss your petition.

THE DAY OF THE HEARING

If the Respondent(s) has not filed an answer or otherwise appeared in the custody modification matter, complete the following form and bring it to Court with you on the day of your hearing.

Affidavit of Non-Military Service form.

- Sample form found on page 50.
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this custody modification matter.

If there is more than one Respondent, you must complete a separate form for each person.

The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Respondent(s) will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so that you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story**.**

Family Court has developed an instructional packet entitled **"Preparing for Your Court Hearing"** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. It will be helpful to read this information before your scheduled hearing. This packet is available in the Resource Centers and on the Family Court website.

At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is in the child's best interest for the Court to change the prior Custody Order. The best interest standard is explained on pages 15-16 of this Instruction Packet. Review

that information before the hearing, so that you are prepared to present your case to the Court.

Once both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the custody arrangement is **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during the hearing and issues a written order explaining the new custody arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or Court Order, in the mail.

Once the Court has entered a Custody Order, you and the Respondent(s) should follow the instructions in the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Respondent(s) can change the Order by filing the proper petition.

Form 191

The Family Court of the State of Delaw

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Continuance

Fill in the title of the motion that you are filing.

Petitioner	*Respondent*	
Name: John D. Smith	Name: Anne C. Smith	File Number: CK04-12111
Street Address: 49 Pine Street	Street Address: 101 Oak Street	
Apt. or P.O. Box Number:	Apt. or P.O. Box Number: Apt. #123	Petition Number:
City: Dover State: DE Zip Code: 19901	City: Wilmington State: DE Zip Code: 19899	
Social Security Number: 111-22-333 Date of Birth: 2/3/64	Social Security: 787-98	
Attorney Name and Phone Number: n/a	Attorney Nam: n/a	

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving Custody Modification having been filed heretofore in this Court,

Movant hereby moves the Court for a continuance and, in support thereof, alleges the following facts:

Explain what you would like the court to order.

The parties' doughter, Mary Smith has suffered from severe tonsilitis. She is scheduled for surgery on March 30th, 2006, the date of the parties' cusotdy hearing. I request that the Court grant a continuance so that I can be with my daugheter while she is in surgery. I have contacted the Respondent and she agrees that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED before me this date,

Sign in the presence of a notary.

November 10, 2005

John D. Smith
Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date 11/10/2005 and addressed to the Respondent's attorney at the address listed on the petition, being Anne C. Smith, first class postage pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED before me this date,

Sign in the presence of a notary.

November 10, 2005

John D. Smith
Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

John D Smith, Petitioner	)	
v.	)	File No.: CK04-12111
Anne C. Smith, Respondent	)	Petition No.: 04-42301

NOTICE OF MOTION

TO: Anne C Smith
101 Oak Street, Apt #123
Dover, DE 19901

Name and address of the Respondent in this case.

Indicate here what your motion is pertaining to. What action are you requesting from the Court?

PLEASE TAKE NOTICE that the attached Motion for Continuance, Dismissal, Visitation, ……. is herewith presented to the Court for consideration. If you are opposed to this motion, you must file a written response with the Court within ten (10) days of the service of this motion. If no response is timely filed, the motion may be decided without further opportunity for you to be heard on the matter. Family Court Rules, Rule 7(b)(2).

Dated: March 4, 2014

Only sign in the presence of a notary or court staff.

STOP

John D Smith
Movant/Attorney

Name and address of Movant or Attorney
John D Smith
Street Address (including Apt)
490 Pine Street
P.O. Box Number
City/State/ Zip Code
Wilmington, DE 19801

The Family Court of the State of Delaware

Check the county in which you are filing.

In and For ☐ New Castle ☐ Kent ☐ Sussex County

John D. Smith, Petitioner	)	File No.: CK14-12111
v.	)	Petition No.: 14-42301
Anne C. Smith, Respondent	)	In Re: Visitation, Custody, Ancillaries…..

Indicate here what the proceeding was in reference to.

Fill in your name.

ORDER

Having considered the request of the movant, John D. Smith,

IT IS SO ORDERED, this date: _____

The Hearing Officer will fill in the date the Order is approved.

That

Fill in the relief that you are seeking here. Remember that it is possible the Hearing Officer will sign this form that you draft; therefore, it is important to write exactly what you want to happen.

The Hearing Officer may sign this Order, make changes to it, or draft a new Order completely.

Leave this blank for the Hearing Officer to sign.

_____

Judge/Commissioner

CC: ☐ Petitioner ☐ Respondent ☐ Petitioner Attorney ☐ Respondent Attorney ☐ DAG
☐ PD ☐ Fiscal Services ☐ DCSS ☐ FC.Appointed.Attorneys@state.de.us
☐ Other _____

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

Petitioner	Respondent	
Name: John D. Smith	Name: Anne C. Smith	File Number: CK04-12111
Street Address: 49 Pine Street	Street Address: 101 Oak Street	
Apt. or P.O. Box Number:	Apt. or P.O. Box Number: Apt. #123	Petition Number: 04-42301
City: Dover State: DE Zip Code: 19901	City: Wilmington State: DE Zip Code: 19899	
Social Security Number: 111-22-3333 Date of Birth: 2/3/64	Social Security Number: 787-98-6767 Date of Birth: 7/13/65	
Attorney Name and Phone Number: n/a	Attorney Name and Phone Number: n/a	

Fill in the county where you are filing,

AFFIDAVIT OF NON-MILITARY SERVICE

STATE OF DELAWARE)
) ss.
Kent COUNTY)

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, November 30, 2005, personally appeared Before me, a Notary Public for the State of Delaware in the County declared above, John D. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Petitioner in the above captioned civil proceeding;
2. That Respondent is not in the military service of the United States of America; and
3. That Affiant has made this Affidavit pursuant to the provisions of § 200 of the Act of Congress entitled "Soldiers and Sailors Civil Relief Act of 1940" (50 U.S.C.A. App. 520) approved October 17, 1940.

STOP

Sign in the presence of a notary or court staff on the day of your hearing.

John D. Smith
Petitioner

SWORN TO AND SUBSCRIBED before me this date, *November 30, 2005*

STOP

Signed by notary or court staff.

Donna King
Notary Public or Clerk of Court