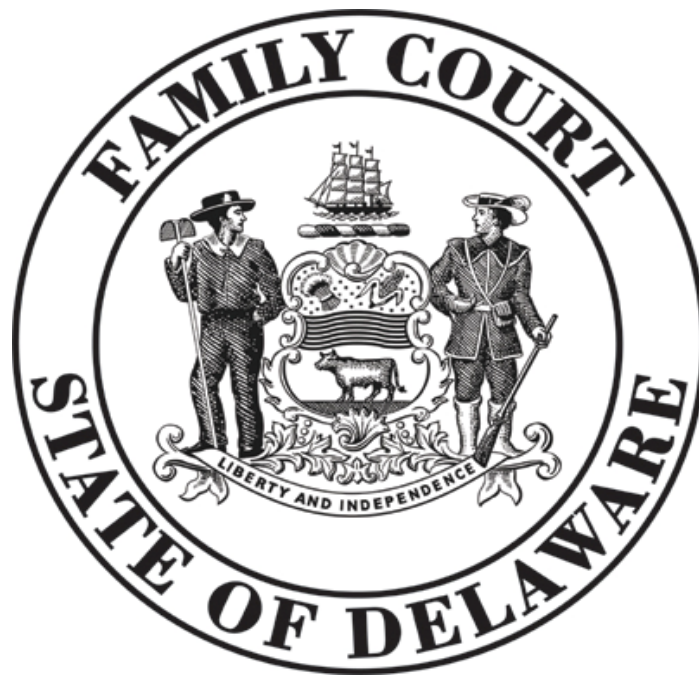


3rd PARTY/ GRANDPARENT VISITATION INSTRUCTION PACKET



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

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3RD PARTY/GRANDPARENT VISITATION

INSTRUCTION PACKET

Use the 3rd Party/Grandparent Visitation Instruction Packet **ONLY** when:

- ☞ You are not the parent of the child with whom you are seeking visitation (if you are the parent, please see the Parent Visitation Instruction Packet)
- ☐ You are a relative of the child **OR** you have a substantial and positive prior relationship with the child
- ☐ You would like to request visitation with a child. Visitation establishes a schedule of contact between you and a child. You do not receive any guardianship or custodial rights by filing for visitation. (For more information on filing for guardianship, please see the Guardianship Instruction Packet);
AND
- ☐ The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your petition. (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 and the Respondent(s) (parents or guardians of the child) already agree about how you want the visitation arrangement to be handled, you may file a **Consent Order**. To file a Consent Order, you and the Respondent(s) write down how you want the visitation arrangement to work and a Hearing Officer will sign your agreement and make it an order of the Court. To obtain a Consent Order, you must file all of the following forms. Each form is described in detail throughout this packet. You must file the **Petition for 3rd Party/Grandparent Visitation OR the Petition for Modification of Visitation**, the **Custody Separate Statement**, the **Information Sheet**, the **Custody, Visitation & Guardianship Disclosure Report** and the **Consent Order-Custody, Visitation**.

To make this Instruction Packet easier to read, it will explain Visitation as if you wanted to file for Visitation of one child. If you would like to have visitation with more than one child and all of the children have the same mother **AND** the same father, you may file for visitation of all of the children on the same petition. **Please note that if any of the children with whom you are seeking visitation have different fathers or mothers, you must file for visitation 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 for 3rd Party/Grandparent Visitation, 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. **ONLY 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 3rd Party/Grandparent Visitation, located in the Family Court Resource Centers or on the Family Court Website. They will help you better understand the Visitation process.
- ✓ Remember who is the Petitioner and who is the Respondent.
 - The **PETITIONER** is the person who filed the Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation, 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 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 government issued photo identification** with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.

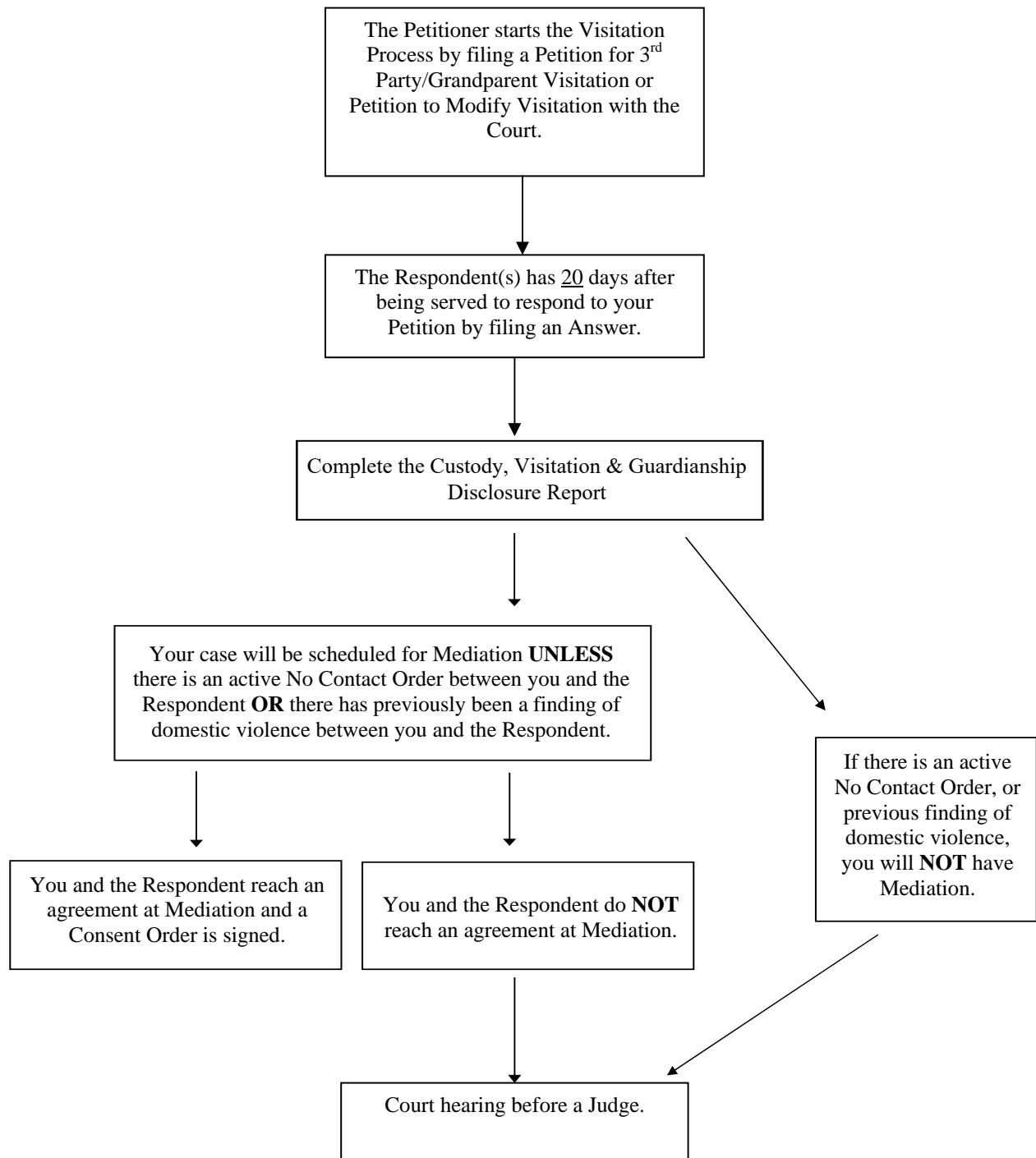
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

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 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 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 Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

3rd PARTY/GRANDPARENT VISITATION PROCESS



SECTION 1

STARTING THE 3RD PARTY/GRANDPARENT VISITATION

PROCESS



You **MUST** file the **ORIGINAL** and at least **ONE (1) COPY** 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 for 3rd Party/Grandparent Visitation or Petition to Modify Visitation

form. (*file the original and one copy one copy for each Respondent*).

- A sample form may be found on pages 21-25.
- Any adult person may file a Petition for 3rd Party/Grandparent Visitation if she or he:
 - Has a substantial and positive prior relationship with the child; **OR**
 - Is a grandparent, aunt, uncle, or adult sibling of the child.
- You only need to file **ONE** of the above petitions. The following information will help you to decide which petition to file.
 - If you and the other party have **never** had a court-ordered visitation schedule with the child, you **MUST** file a Petition for 3rd Party/Grandparent Visitation asking the Court to **enter an initial visitation order**.
 - If you and the other party **do** have a court-ordered visitation schedule with the child, you **MUST** file a Petition to Modify Visitation asking the Court to **change** the current visitation schedule.

- 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. As a 3rd party or grandparent filing for visitation you must name both parents as Respondents. You must also name any current guardian or custodian if that person is not the parent. If you fail to notify any of the necessary parties, your petition may be deficient and you may have to start the process over, including paying another filing fee.
- When alleging facts in your Petition for 3rd Party/Grandparent Visitation, you want to give the Court information so that it can decide what visitation arrangement is in the child's "**best interest.**" Generally, the child's "best interest" is the legal standard the Court must follow when deciding who should have visitation with a child. (See Title 13 of the Delaware Code, 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 wishes of the child's parents as to his/her custody and living arrangements;
2. The wishes of the child as to his/her custody and living arrangements;
3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home;
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 continues to satisfy their parental rights and responsibilities with respect to their children;

- | |
|--|
| <p>7. Evidence of <u>domestic violence</u>; and</p> <p>8. The <u>criminal history</u> of any party or adult member of a household, including guilty pleas, pleas of no contest and criminal convictions.</p> |
|--|

- To grant your Petition for 3rd Party/Grandparent Visitation, the Court must also determine that **one** of the following is true regarding each parent:
 - The parent consents to the visitation **OR**
 - The child is dependent, neglected or abused in the parent's care **OR**
 - The parent is deceased **OR**
 - The parent's objection is unreasonable and the visitation will not substantially interfere with the parent child relationship (this factor applies only when a parent objects to the visitation).

- If the child has two parents and the child is not dependent, neglected or abused in either parent's care, visitation **may not** be granted where both parents object.

- If you need more space to write, you may attach additional pages to the petition. Be sure to state on the petition that you have attached more pages, so the Court and the Respondent(s) will know to look for additional information.

- You must sign your Petition for 3rd Party/Grandparent Visitation in the presence of a notary public or authorized Court staff.



Custody Separate Statement form. (file the original and one copy for each Respondent).

- A sample form may be found on pages 26-28.
- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so the Court can determine if it has authority

to decide your petition. 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 mother and another child resided with the father, it would be necessary to file two Custody Separate Statements, explaining where each child lived.



Information Sheet form. (file the original).

- A sample form may be found on pages 29-30.
- You must file a separate information sheet for **each** Respondent.
- 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

- A sample form may be found on pages 31-33.
- 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.



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

- A sample form may be found on page 34.
- **ONLY** file this form if you do **NOT** know where the Respondent(s) lives.
- 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 18-19 for more information regarding Notice by Publication.




Consent Order- Visitation (*file one original*)

- A Sample form may be found on page 35-36.
- File this document only if **you and the Respondent(s) have already agreed** on what the visitation should be.
- On this form you will describe for the Court who will have visitation with the child and what the visitation schedule will be.
- You and the Respondent (s) must both **sign and have notarized** the Consent Order.
- Before you file the Consent Order, you and the Respondent(s) **may** have to meet with a court employee to review the terms of your agreement.

- Once you have filed your agreement with the Court, it will be forwarded to a Judge who will review your agreement. If the Judge finds that the agreement meets the grounds listed on pages 11-12, then he or she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Judge signs the Consent Order, it is a court order and you and the Respondent **MUST** follow the terms of the Order. The Court will mail a copy of the signed order to you and the Respondent(s).

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. You may want to avoid agreements that simply state that “visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Respondent to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Respondent be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future.

 **Waiver of Rights under the Servicemembers’ Civil Relief Act** (*file the original and one copy*). **Complete this section ONLY if the Respondent IS in the military.**

- A sample form may be found on page 37.
- If the Respondent(s) is in the military, the Respondent(s) must file an Answer, 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 visitation hearing until you complete this process.

- If there are multiple Respondents who are in the military, a separate form must be filed for each Respondent.



BE SPECIFIC WHEN COMPLETING THE FORMS and make sure you address **ALL** of the areas explained on pages 11 & 12, "best interest" of the child 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 lives**. If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure 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 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 10 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 for each petition that is filed. To find out what the filing fee is, you can look at the Family Court website or go to the Family Court Resource Centers. **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 15-16 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 **must receive** a copy of the Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation. The delivery of the petition 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 Lives in Delaware and You Know His/Her Address** If the Respondent 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 Does Not Live in Delaware and You Know His/Her Address**
If a Respondent(s) 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 14). The Court will notify you by mail if you need to publish notice in the newspaper.

□ **You Do Not Know Where the Respondent Lives or Works**

If you do **NOT** know where a Respondent lives or works and, therefore, the Process Server cannot deliver your petition to that Respondent, **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 14).



PUBLICATION

- Instructions on how to publish notice of a court action are available in the Resource Centers and on the Family Court website. It is important to carefully follow the instructions for publication. If you do not properly publish the notice, your Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation 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 you filed your petition, 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 for 3rd Party/Grandparent Visitation or Petition to Modify Visitation, each Respondent(s) has **20 days** from the date of service (the date the court papers are delivered to the Respondent(s)) to respond by filing an **Answer** to your petition. 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, 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.

**SECTION 2 BEGINS AFTER THE
SAMPLE FORMS FOR SECTION 1.**



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

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

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

PETITION FOR THIRD-PARTY/GRANDPARENT VISITATION

Check the county in which you are filing.

Petitioner

2nd Petitioner (if any)

Name Anne C. Smith	D.O.B.	Name	D.O.B.	File Number CK09-0056
Street Address 101 Oak Street		Street Address		
Apt. or P.O. Box Number Apt. #123		Apt. or P.O. Box Number		Petition Number
City Dover	State DE	Zip Code 19901	City State Zip Code	
Home Phone Number 302-777-1213	Work Phone Number n/a	Home Phone Number	Work Phone Number	
Relation to Child(ren) Paternal Grandmother		Relation to Child(ren)		

Respondent

2nd Respondent (if any)

Name John D. Smith	D.O.B.	Name Melissa Smith	D.O.B.	Remember to list both parents as Respondents.	
Street Address 490 Pine Street		Street Address 700 Maple Lane			
Apt. or P.O. Box Number		Apt. or P.O. Box Number			
City Dover	State DE	Zip Code 19901	City Dover	State DE	Zip Code 19901
Home Phone Number 302-111-2222	Work Phone Number 302-999-0099	Home Phone Number 302-555-6767	Work Phone Number n/a		
Relation to Children Father		Relation to Children Mother			

IN THE INTEREST OF THE FOLLOWING CHILD(REN): **(Complete the table below for each child with whom visitation is sought. Attach additional sheets if necessary.)**

Child's Name	Child's Date of Birth	Child's Place of Birth (City, State)	Child's Gender (Check one)
Douglas A. Smith		Newark, DE	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
Mary J. Smith		Newark, DE	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
			<input type="checkbox"/> Male <input type="checkbox"/> Female

1. Complete the table below regarding the child(ren)'s parents (individuals holding parental rights):

	NAME	Address	Date of Birth	Social Security Number
MOTHER	Melissa Smith	700 Maple Lane Dover, DE 19901		
FATHER	John D. Smith	490 Pine Street Dover, DE 19901		

2. If you do not know the name/address of the child(ren)'s mother and/or father, write in the space provided below what you have done to try to locate him/her/them.

Not applicable. The addresses are listed above.

➤ I have attached to this Petition the following affidavit in support of r tion 2:

Affidavit that a Party's Address is Unknown

Complete only if this applies to your situation.

3. I am eligible for visitation because:

- I have a substantial and positive relationship with the child; AND/OR
- I am a relative of the child; AND/OR
- I am a Guardian ad litem petitioning on behalf of a child against the child's parent. Guardian and/or DSCYF and the adult person with whom visitation is sought consents to visitation with the child and has a substantial and positive prior relationship with the child or is a relative of the child.
- I am a Guardian ad litem petitioning on behalf of a child seeking visitation with another child with whom they have at least one parent in common.

Check all that apply

4. Complete this section only if you are a parent or relative of a parent whose parental rights have been terminated.

- I am a parent or relative of a parent whose parental rights have been terminated and:
- More than 3 years have passed since the termination of parental rights order was entered and the child has not been adopted; or
 - The adoptive parents are agreeable; or
 - A notarized consent is attached to this petition.
 - The adoptive parents have previously entered into a written notarized agreement or court approved agreement for continued visitation
 - A copy of the agreement is attached to this petition.

You must check at least one for each parent

5. In support of my petition I allege the following:

- Third party visitation is in the best interest of the child(ren).
- At least one of the following is true as to each parent:

	Mother	Father
The parents consent to the visitation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The child is dependant, neglected or abused in the parent's care	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The parent is deceased	<input type="checkbox"/>	<input type="checkbox"/>
The parent objects to the visitation	<input type="checkbox"/>	<input type="checkbox"/>

6. If the parent objects to the visitation:

I allege that the visitation will not substantially interfere with the parent/child relationship and I understand that if the child has two parents and the child is not dependant, neglected or abused in either parent's care, visitation may not be granted where both parents object.

VERIFICATION

STATE OF DELAWARE)
) ss.:
COUNTY OF New Castle)

Anne C. Smith, being duly sworn, says:

I am the Petitioner in this action. I have read the above Petition and know to the best of my knowledge that the facts contained therein are true.

Anne C. Smith
Petitioner 1

Petitioner 2

Subscribed and sworn before me on this date,

November 9, 2009
Date

Donna King
Notary Public



Complete this portion in the presence of a notary public or court staff.

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 VISITATION

Petitioner			Respondent			File Number	
Name Anne C. Smith			Name John D. Smith			CK04-12111	
Street Address 101 Oak Street			Street Address 490 Pine Street			Petition Number	
Apt. or P.O. Box Number Apt. # 123			Apt. or P.O. Box Number				
City Dover	State DE	Zip Code 19901	City Wilmington	State DE	Zip Code 19899		
Social Security Number		Date of Birth	Social Security Number		Date of Birth		
Attorney Name and Phone Number n/a			Attorney Name and Phone Number n/a				

IN THE INTEREST OF the following child(ren):

Name Doug A. Smith	Date of Birth	Name Mary J. Smith	Date of Birth
Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

The said child(ren) live with (Name): John D. Smith

Relationship to child(ren): Father

490 Pine Street Wilmington DE 19901
(STREET ADDRESS) (CITY) (STATE) (ZIP CODE)

Petitioner requests the Court enter an order modifying a prior visitation order of Judge Howell, dated 9/15/03, and in support of the following

circumstances. (Please list in consecutively numbered paragraphs):

Look on the current visitation order to find the name of the judge that issued the order and the date the order was issued.

- The children have been living with Father and visiting with Paternal Grandmother every other weekend.
- Father has taken a new job that requires him to work both Saturday and Sunday of every week. Father is currently having to pay for child care for the weekends that Paternal Grandmother does not have visitation.
- It is the best interest of the children to have visitation with Paternal Grandmother every weekend instead of being left with a babysitter.

List your allegations in numbered paragraphs.

Petitioner requests that Visitation be as follows:

Paternal Grandmother will have visitation every weekend beginning after school on Fridays and lasting until 4 pm on Sunday afternoon when Father returns from work. Paternal Grandmother will ensure that the children attend any soccer games that are scheduled on the weekends. She will provide transportation to and from visitation. She will pick the children up at school on Friday afternoon and take them home on Sunday afternoons. All other provisions of the current visitation order shall remain the same.



Describe the visitation schedule you want to have in detail.

WHEREFORE, Petitioner prays that a Summons issue to Respondent and that the Court grant relief prayed for or such other relief as may be just.

SWORN TO AND SUBSCRIBED before me this date,

March 17, 2004



Sign in the presence of a notary or court staff.



Anne C. Smith
Petitioner/Attorney

Donna King



Signed by notary or court staff.

Clerk of Court/Notary Public

Address (if not stated above)

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



<i>Name</i> Anne C. Smith	<i>Name</i> 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	<i>Address where child(ren) <u>currently reside(s)</u></i>			<i>Date(s) Child(ren) lived here</i>		
	** 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.			1/28/2016 to present		
	<i>Address</i>		<i>City</i>	<i>State</i>	<i>Zip</i>	
	101 Oak Street, Apt 123		Dover	DE	19901	
	<i>People living in the household with the child(ren):</i>			<i>Date of Birth</i>	<i>Relationship to child(ren):</i>	
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	<i>Address where child(ren) previously resided</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
	10 Clayton Street		New Castle	DE	19720	
PRIOR ADDRESS	<i>Date(s) child(ren) lived there</i>	<i>Name of person(s) child(ren) lived with</i>		<i>Relationship to child(ren)</i>		
	2/14/2014 to 1/27/2016	Anne C. Smith & Mary A. White		Mother and Grandmother		
	<i>Person's current address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
PRIOR ADDRESS	101 Oak Street, Apt 123		Dover	DE	19901	
	<i>Address where child(ren) previously resided</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
	490 Pine Street		Wilmington	DE	19899	
	<i>Date(s) child(ren) lived there</i>	<i>Name of person(s) child(ren) lived with</i>		<i>Relationship to child(ren)</i>		
10/1/2010 to 2/14/2014		John V. Smith and Anne C. Smith		Father Mother		
PRIOR ADDRESS	<i>Person's current address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
	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.

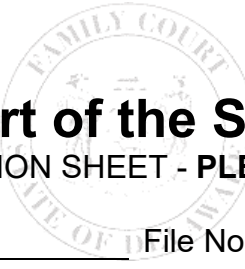
PERSON 1	Name of person(s) with physical custody, legal custody or visitation		Relationship to child(ren)		
	Person's current address	City	State	Zip Code	
PERSON 2	Name of person(s) with physical custody, legal custody or visitation		Relationship to child(ren)		
	Person's current address	City	State	Zip 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)	Person (who filed the action)		State
	Visitation	John V. Smith		DE
	Court	Case Number	Date Filed	
	Family Court	CK16-1122	10/2/2016	
	Result	Date of Order		
	Visitation granted	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		



Fill in the date you file the form.

The Family Court of the State of Delaware

INFORMATION SHEET - PLEASE PRINT

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/courtbox/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
<u>Douglas A. Harding</u>	<u>Nephew</u>	<u>M</u>	<u>White</u>	<u>10/14/2012</u>	<u>987-65-4321</u>	<u>Newark, DE</u>

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

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

You must complete a separate form for each Respondent.

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.

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: 7/13/1991
Address: 490 Pine Street
Dover, DE 19901

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. <u>Douglas A. Harding</u> | DOB: <u>10/14/2012</u> | 4. _____ | DOB: _____ |
| 2. _____ | DOB: _____ | 5. _____ | DOB: _____ |
| 3. _____ | DOB: _____ | 6. _____ | DOB: _____ |

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

- | | | |
|---------------------------|-----------------------|---|
| 1. <u>Nicole C. Smith</u> | DOB: <u>1/14/1991</u> | Relationship to Child(ren): <u>Aunt</u> |
| 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 it's 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 party 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

Date

Anne C. Smith

Print Name

Anne C. Smith

Signature

Sample Attorney, Esq.

Attorney Print Name

Sample Attorney

Attorney Signature

Only sign this form in the presence of a notary or court staff

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

Marianne Notary

Notary / Clerk of Court (Print)

Ms. Marianne Notary

Notary / Clerk of Court (Sign)

3/17/2019

Date

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

Affidavit of Exchange

The 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.

3/17/2014

Date

Anne C. Smith

Print Name

Anne C. Smith

Signature

Sample Attorney, Esq.

Attorney Print Name

Sample Attorney

Attorney Signature

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

Marianne Notary

Notary / Clerk of Court (Print)

Ms. Marianne Notary

Notary / Clerk of Court (Sign)

3/17/2019

Date

The Family Court of the State of Delaware

in and for New Castle Kent Sussex County

Check the county in which you are filing.

AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

Petitioner		
Last	First	MI
Smith	Anne	C.

vs.

Respondent		
Last	First	MI
Smith	John	D.

File No.
CPI No.

Fill in the county in which you are filing.

of Delaware)
)
 Kent County)

SS.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 17th day of March, 2004, personally appeared before me, a Notary Public for the State and County aforesaid, Anne C. 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 Anne C. 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 John D. Smith. I have contacted his/her (Please check as appropriate) Parent Spouse Employer Other: Respondent's Brother. His/Her last known address and telephone number were:

490 Pine Street
Wilmington, Delaware 19899

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

as of January 10, 2004.

3. I have had no contact with him/her since January 1, 2004.

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.

STOP Sign in the presence of a notary.

Anne C. Smith
 Affiant

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

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.

CONSENT ORDER - VISITATION

Petitioner

v. Respondent

Name Anne C. Smith	Name John D. Smith	File Number CK04-12111
Street Address 10 Oak Street	Street Address 490 Pine Street	Petition Number 04-42301
Apt. or P.O. Box Number Apt. #123	Apt. or P.O. Box Number	
City State Zip Code Dover DE 19901	City State Zip Code Wilmington DE 19901	
Attorney Name and Phone Number n/a	Attorney Name and Phone Number n/a	

List any additional Respondents on a separate page.

IN THE INTEREST OF the following child(ren):

Name (Child #1)	Date of Birth	Name (Child #2)	Date of Birth
Doug A. Smith		Mary J. Smith	
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:


Visitation Awarded to: **Anne C. Smith**

Relationship: **Paternal Grandmother**

Address: **101 Oak Street, Apartment #123**

 Dover, DE 19901

Describe the visitation schedule you have agreed on in detail.

Visitation shall be as follows: 

Grandmother shall have visitation with the children every other weekend beginning the first weekend in August. She will pick the children up from school on Friday afternoon and will have them with her until 4 p.m. on Sunday afternoon. Grandmother 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.

Grandmother shall also have visitation with the children every Wednesday evening from 6:30 to 8:30 p.m. She 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 her, then Tuesday evening may be substituted.

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 Order is entered pursuant to this Voluntary Agreement



Sign in the presence of a notary or court staff.

Anne C. Smith

John D. Smith

Petitioner

Respondent

State of Delaware

State of Delaware

County of Kent

County of Kent

Sworn to subscribed before me:

Sworn to subscribed before me:



Donna King

Donna King

Mediator/Notary Public

Mediator/Notary Public

Signed by notary or court staff.

Signed by Commissioner.

So Ordered this Date: _____



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.

IN RE THE MARRIAGE OF



Anne C. Smith

Petitioner,

and

John D. Smith

Respondent,

File No.: _____

Petition No.: _____

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE



Check the county in which you are filing.

Kent

COUNTY

ss.



Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 25, 2004, 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 Respondent in the above captioned case.
2. That Affiant is active duty in the United States military: a
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and so acknowledges that he/she, or his/her attorney, will be required to 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.



John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2004




Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

Section 2

MEDIATION

 After all of the Respondents have been served with the Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your visitation matter 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 visitation. 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 the child. Therefore, try your best to come with a “spirit of cooperation.”



CONSENT ORDERS

- If, at the end of Mediation, you and the other party reach an agreement, the Mediator will type your agreement into a document and you and the Respondent(s) will sign the agreement. The Mediator will also 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.
- Once a Consent Order is signed by a Judge, it is a court order and you and the Respondent(s) **MUST** follow the terms of the Order.



You should come to Mediation prepared to discuss how visitation should occur. At Mediation, you and the Respondent(s) can work together to establish a visitation schedule that works best for you, Respondent(s) and, **most importantly** the child.



Be realistic when asking for the terms of a visitation order. The focus is on what is in the **CHILD'S best interests**. Just because **YOU** do not want the person or grandparent to be involved in the child's life may not mean that is in your **CHILD'S** best interest. Therefore, at Mediation, be prepared and try to work together and establish a visitation schedule that is in the best interest of the child.



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

Section 3

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 the original and mail one copy to each Respondent*).

- Sample form found on page 45.
- If, once you receive your Notice, you cannot attend the scheduled pre-trial or evidentiary 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**. Because the law is very strict when it comes to rescheduling, these Motions are not always granted.

- 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 the hearing, the Court may dismiss your Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation and you will have to start the process again by filing a new petition and paying another filing fee.

THE DAY OF THE HEARING



If the Respondent (s) has not filed an answer or otherwise appeared in the 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 48.
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military.
- 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 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 on the Family Court website and in the Resource Centers located in each courthouse.



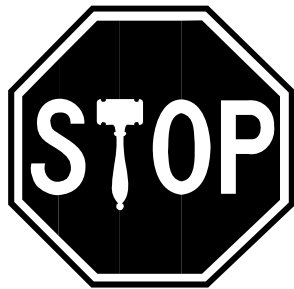
At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is in the child’s best interest for the Court to grant you what you are requesting in your Petition for 3rd Party/Grandparent Visitation or Petition to Modify Visitation and

that the grounds listed on pages 11-12 are met. Review that information before the hearing, so you are prepared to present your case to the Court.



After 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 visitation 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 visitation 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 Visitation Order, you and the Respondent(s) should follow the terms of 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.



**THIS IS THE END
OF THE 3rd
PARTY/GRANDPARENT
VISITATION INSTRUCTION
PACKET.**

The Family Court of the State of Delaware

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 Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. # 123		
City Dover	State DE	Zip Code 19901
Social Security Number [REDACTED]		Date of Birth [REDACTED]
Attorney Name and Phone Number n/a		

Name John D. Smith		
Street Address 490 Pine Street		
Apt. or P.O. Box Number		
City Wilmington	State DE	Zip Code 19899
Social Security Number [REDACTED]		Date of Birth [REDACTED]
Attorney Name n/a		

File Number CK04-12111
Petition Number

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 Visitation having been instituted 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' daughter, Mary Smith has suffered from severe tonsillitis. She is scheduled for surgery on November 30th, 2004, the date of the parties' custody hearing. I request that the Court grant a continuance so that I can be with my daughter while she is in surgery. I have contacted the Respondent and he 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,

November 10, 2004



Sign in the presence of a notary.

Anne C. 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 11/10/2004 by John D. Smith at the address listed on the petition, being _____, 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,

November 28, 2004



Sign in the presence of a notary.

Anne C. Smith
Movant/Attorney

Donna King

Notary Public/Clerk of Court

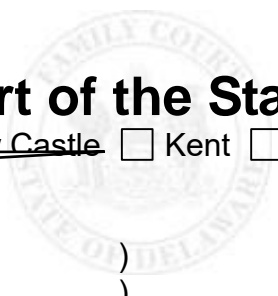


Signed by notary or court staff.

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

v.

Anne C. Smith,
Respondent

File No.: CK14-12111

Petition No.: 14-42301

In Re: Visitation, Custody, Ancillaries.....

Fill in your name.

Indicate here what the proceeding was in reference to.

ORDER

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

IT IS SO ORDERED, this date: _____

That

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

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

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. #123		
City Dover	State DE	Zip Code 19901
Social Security Number [REDACTED]	Date of Birth [REDACTED]	
Attorney Name and Phone Number n/a		

Respondent

Name John D. Smith		
Street Address 490 Pine Street		
Apt. or P.O. Box Number		
City Wilmington	State DE	Zip Code 19899
Social Security Number [REDACTED]	Date of Birth [REDACTED]	
Attorney Name and Phone Number n/a		

File Number CK04-12111
Petition Number 04-42301

The section below is to be completed by and signed in the presence of a Notary Public/Clerk of Court on the day of your Hearing.

Fill in the county where you are filing,

AFFIDAVIT OF NON-MILITARY SERVICE



STATE OF DELAWARE)

Kent COUNTY)

SS.)

Fill in the date you have the form notarized.



BE IT REMEMBERED, that on this date, November 30, 2004, 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 Petitioner in the above captioned civil action;
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 § 3931 of the Servicemembers Civil Relief Act (50 U.S.C.A. § 3931).

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



Anne C. Smith

Petitioner

SWORN TO AND SUBSCRIBED before me this date, November 30, 2004



Signed by notary or court staff.

Donna King

Notary Public or Clerk of Court