

ANSWER TO CUSTODY MODIFICATION INSTRUCTION PACKET



<https://courts.delaware.gov/family>

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ANSWER TO CUSTODY MODIFICATION INSTRUCTION PACKET

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

- You have been named as the Respondent in a Petition and Affidavit to Modify Custody.

If you and the Petitioner already agree how you want the custody arrangement to be handled, you may file a **Consent Order**. To file a Consent Order, you and the Petitioner write down how you want the custody 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 or the Petitioner must have filed all of the following forms: (Each form is described in detail in the **Custody Modification Instruction Packet** on the page number listed in parenthesis after it.) You or the Petitioner must file the **Petition to Modify Custody** (page 14), the **Custody Separate Statement** (page 16), the **Information Sheet** (page 17), the **Custody, Visitation & Guardianship Disclosure Report** (page 17) and the **Consent Order-Custody, Visitation** (page 18).

To make this Packet easier to read, it will explain Custody Modification as if the Petitioner wanted to file for Custody Modification of one child. If the Petitioner has more than one child with the other parent, the Petitioner may file for Custody Modification of **all of his/her children with the other parent** on the same Petition. Please note that if the children have different fathers or mothers, the Petitioner must file for Custody Modification on separate Petitions. For example, if two of the children have one father and one of the children has a different father, the Petitioner 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 an Answer to 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. **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 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.
 - The **RESPONDENT** is the person replying (responding) to the Petition, in other words, you.

- ✓ 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://delegalhelpink.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.

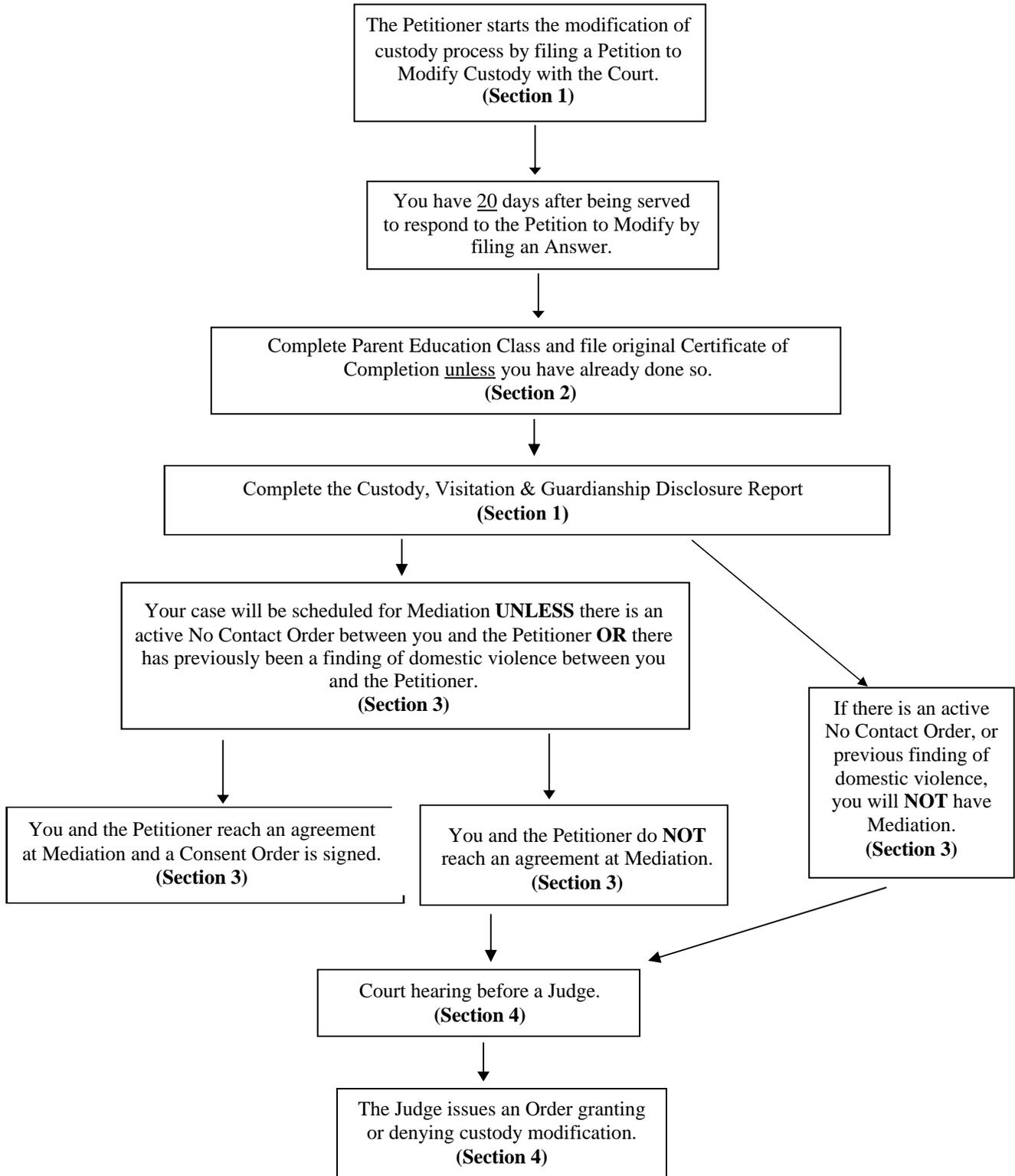
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

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.**

MODIFICATION OF CUSTODY PROCESS



SECTION 1

STARTING THE CUSTODY MODIFICATION PROCESS

 After the Petitioner files a Petition to Modify Custody, you will be **served** with notice of the Petition. This means that you will receive a **Summons** (a Court document explaining your rights and responsibilities) and **copies** of the Petition and any other paperwork the Petitioner filed. Service can be accomplished in the following ways:

- You can be personally served. This means that a person designated by the Court will hand the papers to you directly at your home or your job.
- You can be served by mail. This means the papers will be mailed to you by certified mail.
- You can be served by publication which means the Petitioner must publish notice of the Petition to Modify Custody in a local newspaper. If you read a notice in the newspaper naming you as a Respondent, you must come to Family Court and obtain copies of all the papers that have been filed by the Petitioner.

Regardless of how you receive notice of the petition, it is **VERY IMPORTANT** to read all documents **carefully** so you can properly respond to the allegations in the Petition to Modify Custody.

 The Petitioner can only file for custody modification if the following jurisdictional requirements are met. If the statements on the following page are not true, you should request that the Court dismiss the Petition to Modify Custody. Please see page 15 for information on how to file a Petition to Dismiss.

- There is a Custody Order in place in Delaware; **AND**
- The child or a parent had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition to Modify Custody. (There are exceptions to this 6 month requirement. If the parent or child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.);

-OR-

- There is a custody order in place in a state other than Delaware; **AND**
- The child has been living in Delaware **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed 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 in your situation.); **AND**
- The state that issued the Custody Order has given up jurisdiction.

FILING AN ANSWER IS YOUR WAY OF TELLING YOUR SIDE OF THE STORY TO THE COURT. The Court will use the information in your Answer when deciding whether or not the Petitioner should be granted a custody modification. If you **do not** file an Answer, the Court will not know how you feel regarding the Petition to Modify Custody. It is **VERY IMPORTANT** that you file an Answer, so the Court knows how you feel about the Petition to Modify.



To respond to the Petition to Modify Custody, you **MUST** file the **ORIGINAL** with the Court and mail **ONE (1) COPY** of each form below to the Petitioner **within 20** days of receiving the Petition:



Answer form. (file one original and mail one copy to the Petitioner)

- In your Answer you may do the following:
 - **Admit** (you agree the statement is true) or **deny** (you believe the statement is false) any statements made by the Petitioner in the Petition to Modify Custody. If the Petitioner numbered his/her statements, write down the number then state whether you admit or deny that statement. An example can be found on the Sample Answer on page 18. If the Petitioner did not number his/her statements, write down the statement itself then state whether you admit or deny that statement. If you deny the statement, explain to the Court **why** the Petitioner's statement is not true. **If you do not respond to a statement, the Court will assume you agree that the statement is true.** If you believe a statement is false, you **must deny** it.
- The standard that the Court uses to determine if custody should be modified is different based on the following situations:
 - If the original custody order that you want to change is a **consent order** (you and the Petitioner(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 AND** it has been **less than two years** since it was entered, the order can be changed only if the Court finds that continuing to enforce the prior 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 AND** it has been **more 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;
 - Each parent's compliance with the prior order; **AND**
 - The "best interest" of the child.
- When responding to the Petition to Modify Custody, you want to give the Court information so that it can decide why it is **NOT** in the child's "**best interest**" to modify the current custody arrangements. 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 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 in 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 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 continues to satisfy 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.

- If you need more space to write, you may attach additional pages to the Answer form. Be sure to state on the form that you have attached more pages, so the Court and the Petitioner will know to look for additional information. Also, number each additional page that you attach by writing the page number at the bottom of the page.
- You must sign your Answer in the presence of a notary public or authorized Court staff.

Required Form Prior to Mediation or First Court Appearance



Custody, Visitation and Guardianship Disclosure Report

- Sample form found on page 25.
- 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 the jurisdictional requirements have not been met, file:



Motion to Dismiss (*file original and one copy*)

- File this document only if one of the **jurisdictional requirements** described on page 8 has not been met.
- On this form, you will ask the Court to dismiss the Petition to Modify Custody. You **MUST** explain which **specific** jurisdictional requirement was not met. An example of a completed Motion to Dismiss is found on page 21.
- When you file the Motion to Dismiss, you must also file a **Notice of Motion** form and a blank **Order form**.

If you and the Petitioner agree on the custody modification, file:



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

- File this document only if **you and the Petitioner have already agreed** on how the custody modification matter should be decided.
- On this form you will describe for the Court the following things:
 - Which parent(s) will have custody of the child,
 - Whether that parent will have Joint Custody or Sole Custody (see page 32 for information about the types of custody),
 - Where the child will be living,
 - Which parent 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. 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 Petitioner to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Petitioner 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. For more information about visitation, please see page 33.

- You and the Petitioner must both sign and have notarized the Consent Order.
- Before you file the Consent Order, you and the Petitioner **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 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**.
- The Court will mail a copy of the signed order to you and the Petitioner.

If you, the Respondent, are in the military, file:



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

- **ONLY** file this form if you **ARE** in the military and would like to **WAIVE** your rights under the Servicemembers' Civil Relief Act.
- This Waiver allows the Court to proceed with the custody process if you are unavailable because of military duties.
- If you are in the military, you **MUST** file a Waiver of Rights under the Servicemembers' Civil Relief Act, an Affidavit of Appearance **OR** an Answer. If you do not file one of the above, the Court will not schedule your Custody Hearing until a Waiver of Rights under the Servicemembers' Civil Relief Act is filed **OR** an attorney is appointed for you.

 **BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure you respond to all of the Petitioner's allegations. **Remember**, that if you fail to respond to any allegation, the Court will assume you agree that the allegation is true. 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.**

- 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 One 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 papers by email. To file by email, you must send the papers to:
FC_CustodyVisitation@delaware.gov

If you are filing the papers by email, you must still mail a copy of the filed papers to the other parties.

For more information on filing by email, please review the Civil Filing by Email FAQ:
<https://courts.delaware.gov/family/faqs>

 **REMEMBER** to mail a copy of all the papers that you file with the Court to the Petitioner. You **MUST** fill out the **Affidavit of Mailing** on the bottom of the form telling the Court that you have mailed a copy of the papers you filed to the Petitioner or the Petitioner's attorney (if there is one). If you do not mail a copy of the Answer form to the Petitioner, the Court may not consider the information on that form. If there was more than one Respondent you **MUST ALSO** mail a copy of the Answer that you file to each of the Respondents and indicate you have done so on the Affidavit of Mailing.

ADDITIONAL INSTRUCTIONS FOR SECTION



AUTOMATIC COURT ORDER

- When the Petitioner filed the Petition to Modify Custody, Family Court immediately entered a **Preliminary Injunction** (an automatic **Court Order**) that applies to **BOTH YOU AND THE PETITIONER**. It became effective **upon the Petitioner as soon as he/she filed** the Petition to Modify Custody. The Preliminary Injunction becomes effective upon **YOU** at the time you are **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 PETITIONER 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.**

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

ANSWER TO Custody

Petitioner

v. Respondent

Name Anne C. Smith	D.O.B. 2/3/64	Name John D Smith	D.O.B. 7/13/65	File Number CK14-12111	
Street Address (including Apt) 101 Oak Street		Street Address (including Apt) 490 Pine Street			Petition Number
P.O. Box Number Apt. #123		P.O. Box Number			
City/State/Zip Code Dover, DE 19901		City/State/Zip Code Wilmington, DE 19899			
Attorney Name N/A		Attorney Name N/A			
Interpreter needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Interpreter needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Language		Language			

The respondent hereby answers the numbered paragraphs in the pleading as follows:

I agree the children should remain in the full custody of their mother.

This is where the Respondent Answers the allegations on the Petition.



Sign in the presence of a notary.

SWORN TO AND SUBSCRIBED before me this date: *March 22, 2014*

John D Smith

Respondent/Attorney

Signed by notary or court staff.

Jane Notary

Clerk of Court/Notary Public

A copy of this answer must be sent to the Petitioner, the Petitioner's attorney and any other Respondents. (Use a separate affidavit of mailing for each person a copy must be sent to.)

AFFIDAVIT OF MAILING

I affirm that a true and correct copy of this Answer was placed in the U.S. mail on this date, March 22, 2014 and sent to the Petitioner, Petitioner's Attorney, Respondent, Respondent's Attorney address listed on the petition being first class postage pre-paid.



Sign in the presence of a notary.

John D Smith

Respondent/Attorney

SWORN TO AND SUBSCRIBED before me on this date, March 22, 2014 .

Jane Notary

Clerk of Court/Notary Public

AFFIDAVIT OF MAILING

I affirm that a true and correct copy of this Answer was placed in the U.S. mail on this date, March 22, 2014 and sent to the Petitioner, Petitioner's Attorney, Respondent, Respondent's Attorney address listed on the petition being first class postage pre-paid.

John D Smith

Respondent/Attorney

SWORN TO AND SUBSCRIBED before me on this date, March 22, 2014 .

Jane Notary

Clerk of Court/Notary Public

Check the county in which you are filing.

Family Court of the State of Delaware

and For New Castle Kent Sussex County

MOTION FOR Visitation, Custody, Ancillaries, Dismissal....

Petitioner

Respondent

Name John D. Smith	Name Anne C. Smith	File Number CK14-12111
Street Address (include Apt) 490 Pine Street	Street Address (include Apt) 101 Oak Street	
P.O. Box Number	P.O. Box Number Apt. #123	Petition Number 14-42301
City/State/Zip Code Wilmington, DE 19801	City/State/Zip Code Dover, DE 19901	
Date of Birth 7/13/65	Date of Birth 2/3/64	Indicate here what the scheduled hearing is in reference to.
Attorney Name n/a	Attorney Name n/a	

A PROCEEDING involving Visitation or Custody, Ancillaries having been filed in this Court on March 4, 2014, Movant hereby moves the Court for a Continuance and, in support thereof, alleges the following facts:

Explain why you are unable to attend the scheduled hearing.

1. I cannot attend the Court Proceeding scheduled on 4/5/14 at 1:00pm due to: I am scheduled for surgery that day at 10:00am

Documentation must be attached. If you have a conflict with another case in this or any other Court, you need to attach a copy of that notice.

2. I have contacted the opposing party regarding this continuance request and the following is their position:
The Respondent agrees to reschedule

3. This case has been scheduled for a hearing 0 times previously.

SWORN TO AND SUBSCRIBED before me this date,

March 4, 2014

Only sign in the presence of a notary or court staff

John D. Smith
Movant/Attorney

Mariann Notary

Clerk of Court/ Notary Public

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date March 4, 2014, and sent to the other party or attorney at the address listed on the petition, being 101 Oak Street, Apt #123, Dover, DE 19901, first class postage pre-paid.

SWORN TO AND SUBSCRIBED before me this date,

March 4, 2014

John D. Smith
Movant/Attorney

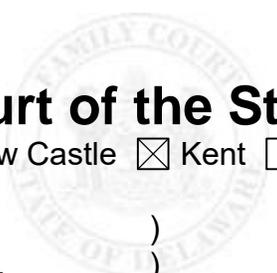
Mariann Notary

Clerk of Court/ Notary Public

A copy of this motion must be sent to the Respondent in this case.

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County



John D Smith,
Petitioner

v.

Anne C. Smith,
Respondent

File No.: CK04-12111

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.



John D Smith

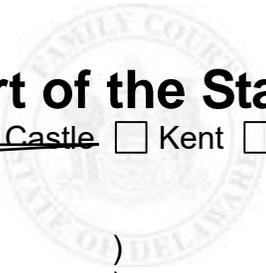
Movant/Attorney

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

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
 Other _____ DCSS FC.Appointed.Attorneys@state.de.us

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 – CUSTODY, 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 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) Doug A. Smith	Date of Birth 10/14/91	Name (Child #2) Mary J. Smith	Date of Birth 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:

Type of Custody: Joint Custody Sole Custody

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

Physical Placement with: **Anne C. Smith**

Relationship: **Mother**

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

Visitation Awarded to: **John D. Smith**

Relationship: **Father**

Address: **490 Pine Street**
Wilmington, DE 19899

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.

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

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 August. 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.

This agreement of the parties is subject to reievw of the parties' criminal histories by a hearing officer before entry as an order of the court.



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.



Anne C. Smith

Petitioner,

and

John D. Smith

Respondent,

File No.: CK04-12111

Petition No.: 04-36000

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE)

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; and
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and in doing so acknowledges that he/she, or his/her attorney, will be required to timely respond to and appear at all legal proceedings associated with the above captioned case.

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

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

John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2014

Ms. Marianne Notary

Notary Public or Clerk of Court

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. <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 is 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

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

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

Marianne Notary

Notary / Clerk of Court (Print)

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

Disclosure 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

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 17 day of March, 2019

Marianne Notary

Notary / Clerk of Court (Print)

Marianne Notary

Notary / Clerk of Court (Sign)

03/17/2019

Date

Section 2

PARENT EDUCATION CLASSES



IF YOU HAVE NOT ALREADY DONE SO, You **MUST** file the certificate below:



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

- 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** copy of the 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 rule against you based on your failure to attend the Parent Education Class.
- You should register 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 DESCRIBES WHAT
HAPPENS NEXT.**

Section 3

MEDIATION

 After you and any other Respondents have 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 Petitioner(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 Petitioner(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 Petitioner(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 Petitioner(s) reach an agreement, the Mediator will type your agreement into a document and you and the Petitioner(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 Petitioner(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 instructions in the order.
- If you **DO NOT** reach an agreement at mediation, the prior custody order will remain in effect 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 13-14.

- 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 about 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 Standard Visitation Guidelines accommodate you and the Petitioner'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 Petitioner can work together to establish a visitation schedule that works best for you, Petitioner(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 Petitioner(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 to the Petitioner*)

- 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 a Continuance, you must contact the Petitioner regarding the continuance and then **tell the Court in the Motion how the Petitioner feels about the continuance**. Because the law is very strict when it comes to rescheduling hearings, 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 your hearing, the Court can enter an order granting the Petitioner everything that he/she wants. You would not be given any say in how the custody arrangement would work.
- A sample Motion for Continuance can be found on page 21.

THE DAY OF THE HEARING



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Petitioner 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 is helpful to read this information before your scheduled hearing. This packet is available in the Resource Centers located in each courthouse, and on the Family Court Website.



At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is **NOT** in the child's best interest for the Court to grant the Petitioner what he/she is requesting in his/her Petition to Modify Custody. You must also prove why it is in the child's best interest for the Court to grant you what you are requesting. The best interest standard is explained on pages 13 & 14 of this Instruction Packet. Review that information before the hearing, so you are prepared to present your case to the Court. You should come to Court prepared to offer evidence regarding **Parental Duty and Responsibility, Placement, and Visitation**. For more information on these topics see page 32.

 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 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 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 the Court Order, in the mail.

Once the Court has entered a Custody Order, you and the Petitioner should follow the terms of the Order. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Petitioner can change the Order by filing the proper Petition.



**THIS IS THE END
OF THE ANSWER TO
CUSTODY MODIFICATION
INSTRUCTION
PACKET.**