

SOME THINGS TO CONSIDER WHEN FILING FOR CUSTODY OR VISITATION

MYTHS AND REALITIES

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

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

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

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

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

REALITY: Without a court order for custody, each parent has an equal right to have the child live with her/him and to make decisions about the child. A parent does not have legal custody of a child just because the child is living with her/him. Legal custody requires a custody order from a court. A custody order spells out specific rights and responsibilities about physical custody, visitation, and decision-making for the child. It is important for any custody agreement to be entered as a Court Order.

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

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

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

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

MYTH: *If one parent has custody of the child, that parent can deny visitation to the other parent if they want to.*

REALITY: Even though one parent may have primary custody, the other parent is granted visitation rights, unless there are unusual circumstances. Although many custodial parents often express their wish that the non-custodial parent be denied contact "because he's always drunk or high," or "because she's living with another man," such reasons alone will not be legally sufficient to eliminate a parent's right to be with her/his child. Only if it can be shown that a parent's addiction or tendency to physical violence or emotional instability will have or has had a harmful effect upon the child, will the non-custodial parent's rights be limited. Usually, expert professional evidence is required to justify such a determination. The courts do, however, have the discretion to place conditions upon a person's right to spend time with the child. If, indeed, the court has evidence that the non-custodial parent may harm the child or act improperly toward the child, the court may restrict the visitation to a supervised setting.

THE CUSTODY CONFERENCE

After you file the Custody Complaint and Order and Notice, a conference will be scheduled with the Hearing Officer. The Hearing Officer is an attorney who was appointed by the Court to try to settle custody matters.

YOU MUST ATTEND THE CONFERENCE. The children **do not** have to attend the conference. The Defendant may attend and has the right to ask the Hearing Officer either for custody, partial custody, or visitation.

The Hearing Officer will listen to both parties and try to work out an agreement. If you cannot reach an agreement, the Hearing Officer will enter a recommended temporary order, and likely make a referral to mediation. This process allows the parents to meet with a mediator and work toward a written resolution of custody issues. The mediator remains neutral while offering guidance and information. Depending upon your circumstances, the mediation process can last for two months or more. Costs for mediation may be assigned to either or both parties. (If you cannot afford the costs, you can file the self-help IFP Mediation packet, asking that the other side pay the costs.)

The Hearing Officer will mail the recommended Order, confirmed by a Judge's signature, to you and to the Defendant. That Order will either be a final Order, approving the agreement which you and the Defendant made; or it will be an "Interim Order" providing a temporary schedule until a hearing before the Judge. As long as this is the Order in effect, you must follow it. Even if you decide to take some further action, as described below, you must continue to follow the order until it is changed. If you strongly disagree with the Hearing Officer's Order, you may need to consult the Court Administrator about your right to do something to change the Order. You must act as soon as you receive papers from the Hearing Officer containing the Order. You may also want to consult an attorney, who can discuss with you the possibility of further proceedings before a Judge.

If the Order contains a schedule for visitation or partial custody, a person who intentionally violates the Order can be in contempt of court. Either party may be brought before the Court if they are in contempt of the Order. It is also a criminal offense in Pennsylvania to take a child in violation of a Court Order.

THE NEXT FEW PAGES CONTAIN HELPFUL INFORMATION. SOME OF IT MAY BE NEW TO YOU. IT MAY BE HELPFUL TO REFER TO THESE LISTS FROM TIME TO TIME.

In preparation for the Conference, you need to keep the following points in mind and be sure that you provide important information for the Hearing Officer.

1. How long have you and the other parent lived separately?
 - Since separation, where and with whom has the child primarily lived?
2. While you and the other parent lived together, who was primarily responsible for the care of the child?
 - Did you both share equally in the child's care?
3. If the child primarily lives with you, does the other parent have the child with him or her on a regular basis?
 - Have you been cooperative in arranging for the child to be with the other parent?
4. If the child primarily lives with the other parent, do you have the child with you on a regular basis?
 - _ If not, why not?
 - _ Has the other parent denied you contact with the child?
5. Does either parent have a history of alcoholism, drug abuse, violent crime, suicide attempts?
 - If so, have these problems affected the child, or might they affect the child or the parent--child relationship in the future?
6. Does either parent have a history of abuse of the child or an extremely difficult relationship with the child?
7. Does either parent do things to interfere with the child's relationship with the other parent?

IN ANY SITUATION WHERE PARENTS DO NOT LIVE TOGETHER, THEY HAVE EXTRA RESPONSIBILITIES TO THEIR CHILDREN. PLEASE TRY YOUR BEST TO FOLLOW THESE GUIDELINES:

DO:

1. Develop a plan to permit the child to have a regular schedule of time with each parent.
2. Spend time with your child regularly, so the child doesn't feel rejected or abandoned.
3. Be sure your child has a specific place that is his/her own, and room for toys and clothes, even if the child primarily lives with the other parent.
4. Allow the child to call the other parent while he/she is spending time with you.
5. Be sure the other parent always has your current address and phone number.
6. Have child ready on time to be picked up by other parent.
7. Be on time when you arrive to pick up the child.
8. Call the other parent immediately if an emergency keeps you from arriving on time.
9. Encourage your child to respect the other parent.
10. Put your child's interests first. Control your negative feelings toward the other parent, so that the two of you can discuss problems and information about the child without fighting.

DON'T:

1. Do not cancel your plans with your child, except in an emergency. If you must cancel, be sure to let your child know why it is necessary.
2. Do not make promises to your child which you suspect you will not be able to keep.
3. Do not pump child for information about the other parent.
4. Do not expect the other parent to do parenting tasks exactly the same as you would.
5. Do not use the child to carry messages to the other parent.
6. Do not talk with the child about child support disagreements.
7. Do not use child to deliver child support payments.
8. Do not argue with other parent or call other parent names when child is present.
9. Do not make derogatory comments, call names or discuss negative aspects of the other parent at any time when the child would hear you.
10. Do not ask the child where he/she wants to live.
11. Do not put the child in a position where he/she must take sides.
12. Do not use the child as a way to hurt the other parent.

If it later becomes necessary to change your Order, or you have problems with violations of the Order, we have other self-help materials you can request.