

## **INSTRUCTIONS FOR CUSTODY BY A THIRD PARTY**

YOU MAY NEED AN ATTORNEY IF:

1. The case is contested and your opponent has a lawyer.
2. You cannot find your opponent to serve him or her with your papers.
3. You might lose custody of the children.
4. You think you will have difficulty getting information and documents from your opponent regarding income, retirement funds, etc.
5. The children and the legal custodian are not in Georgia.

**Even if it is a friendly action, you should talk to a lawyer before you sign any settlement papers or file anything in Court.**

If you want to change custody only in order to enable the child(ren) to attend a different school, a Judge is extremely unlikely to find a material change in circumstances which makes a change of custody in the child's best interests.

### **DETAILED INSTRUCTIONS:**

#### **STEP 1: Complete the Filing Information and Final Disposition Forms**

These forms are required by Georgia Law, at O.C.G.A. § 9-1 1-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the Court system more efficiently for you.

#### The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a custody modification action, you will check "Modification Custody and/or Visitation." If you are also changing the amount of

child support, you will also check “Modification—Child Support.”

- e. In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

### The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a Final Order from the Judge.
- b. Leave the second line, “Docket #,” blank. The clerk will assign this number.
- c. Write your name where it says “Reporting party.”
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner’s Attorney, you will check the box which says Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

### **STEP 2: Complete the Complaint for Change of Custody.**

Fill in your full name as the Plaintiff and the Defendant’s full name. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name and the Defendant’s names in the space provided just before paragraph one (1).

#### Paragraph 1: Jurisdiction and venue

Check line a) if the Defendant lives in the county where you are filing. In the blank provided, fill in the Defendant’s address.

Check line b) if the Defendant has signed an Acknowledgement of Service.

Check line c) if the Defendant lives in a different State.

**If the custodial parent and the children live in another state, the rules of jurisdiction and venue are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is quite complicated. The UCCJEA has been adopted by forty-four states. You may read Georgia's version of this law at O.C.G.A. § 19-9-40 through § 19-9-104. In this situation, you are strongly encouraged to get an attorney.**

Paragraph 2: Plaintiff's relationship to the children

Check line a) if you are related to the children in one of the categories listed in O.C.G.A. § 19-7-1(b.1) (grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, sibling, adoptive parent). Check one of the lines to indicate exactly how you are related to the children.

Check line b) if you are not related to the children in one of the categories listed in O.C.G.A. § 19-7-1(b.1). Check the line to show whether you are related to the children. In the blank provided, explain how you know the children. For example, you might be their cousin, step-parent, or neighbor.

Paragraph 3: Children affected by this action

Check the line beside paragraph three. In the blank provided, write down how many children is/are the subject(s) of this custody lawsuit. In the additional blanks provided, list the names and dates of birth of the child(ren).

Paragraph 4: Current custody arrangement

Check line a) if the Defendant has legal custody of the children as a result of a Divorce. In the blanks provided, list the names and ages of the children, the civil action file number of the divorce case, the date on which the final judgment was entered, and the county in which the divorce took place.

Check line b) if the Defendant has legal custody of the children as a result of a Final Order of Legitimation. In the blanks provided, list the names and ages of the children, the civil action file number of the legitimation case, the date on which the final judgment was entered, and the county in which the legitimation took place.

Check line c) if the Defendant mother has legal custody of the minor children because they were born out-of-wedlock, and the father never legitimated the children in Court following the requirements of O.C.G.A. § 19-7-22. In the blanks provided, list the names and ages of the children.

#### Paragraph 5: Children's Mother

In the blank provided, write down the name of the child(ren)'s mother. Check the line to indicate whether she is still living or is deceased. Check the line to indicate whether she still has parental rights or has lost them in a court case. If applicable, in the blank provided, write the case number of the court action which terminated her parental rights.

Check the lines to indicate whether she is paying child support or visiting the child(ren). In the blank provided, write down the mother's address.

#### Paragraph 6: Children's Father

In the blank provided, write down the name of the child(ren)'s father. Check the line to indicate whether he is still living or is deceased. Check the line to indicate whether he was married to the child(ren)'s mother. If he never married the mother, check the line to show whether he legitimated the children in Court following the requirements of O.C.G.A. § 19-7-22. **Signing the birth certificate does NOT legitimate out-of-wedlock children in Georgia.** Check the line to indicate whether he still has parental rights or has lost them in a court case. If applicable, in the blank provided, write the case number of the court action which terminated his parental rights. Check the lines to indicate whether he is paying child support or visiting the child(ren). In the blank provided, write down the father's address.

#### Paragraph 7: Children's past living arrangements

The Court is required by O.C.G.A. § 19-9-69 to find out with whom the children have been living for the past five years. In the blanks provided, list each address where the child(ren) has/have lived, along with the approximate dates at each place and the names of the adults with whom the child(ren) lived.

#### Paragraph 8: Other actions affecting the children

Choose paragraph a) if there have been no other court cases concerning the custody of the child(ren). The Court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption.

Choose paragraph b) if there have been previous court cases concerning the custody of the child(ren). The Court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption. Fill in the county, state and court, as well as the

type of action, the date filed, and the current status of the case.

Paragraph 9: Other parties with a custody action

Choose paragraph a) if the parties in this case are the only people who have a custody and/or visitation claim with respect to the minor child(ren).

Choose paragraph b) if there are others who have custody and/or visitation claims. List each person's name as well as the type of claim they have.

Paragraph 10: Why plaintiff seeks custody of the child(ren)

Choose paragraph a) ONLY if you are related to the children in one of the categories listed in one of the categories listed in O.C.G.A. §19-7-1(b.1): grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, sibling, adoptive parent. In this situation, the Judge will make a decision based on the best interests of the children. In the blanks provided, explain how it is in the children's best interests to be in your custody.

Choose paragraph b) if you are NOT in one of the categories listed in O.C.G.A. § 19-7- 1(b.1): grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, sibling, adoptive parent AND the parents have already lost parental control by operation of law (O.C.G.A. § 19-7-1(b)).

Choose paragraph c) if you are NOT in one of the categories listed in O.C.G.A. §19-7- 1(b.1): grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, sibling, adoptive parent AND you can prove that the parent(s) are unfit. In the blanks provided, explain how the parents are unfit.

Paragraph 11: Existence of a custody modification agreement

Choose paragraph a) if you and the parent(s) have signed a custody modification agreement.

Choose paragraph b) if you and the parent(s) have not signed a custody modification agreement.

Paragraph 12: Child support amount

In order to arrive at the appropriate amount of child support, you must go to <http://csconlinecalc.georgiacourts.gov/frontend/web/index.php> and complete the downloadable electronic worksheet (which has accompanying instructions). When you file your papers, you must include the Child Support Worksheet and accompanying schedules.

If you do not do this step, your papers will not be accepted for filing by the Clerk of Court. This is true even if you already have an order for child support through Georgia's Child Support Enforcement agency. At the top of the webpage, there is a tab which says "training materials." If you click on this tab, you can find more information about how to correctly fill out these worksheets and schedules.

Check the line beside paragraph 12. In the blank provided, fill in the name(s) of the person(s) who are responsible for paying child support. Then fill in the amount, and check the lines to indicate how often the payments should be received. In the blanks provided, explain how the child support will be reduced as each child is no longer eligible for child support.

#### Paragraph 13: Child support method of payment

Choose paragraph a) if you want the child support to come directly to the Plaintiff.

Choose paragraph b) if you want the child support to be paid to the Plaintiff by the parent(s) employer(s) via an Income Deduction Order.

Choose paragraph c) if you want the child support to go to the Plaintiff through Georgia's Child Support Enforcement Agency.

#### Paragraph 14: Health Insurance

This paragraph allows you to designate which party will cover the minor children under a health insurance policy, and to divide up any medical expenses which are not covered by health insurance. Check the line beside paragraph 14. In the blank provided, fill in the name(s) of the party(ies) who should maintain health insurance policy(ies) for the benefit of the child(ren). In the blanks provided, explain how you intend to divide up medical expenses which are not covered by health insurance. In the blank provided, fill in the name(s) of the party(ies) who should provide you with an insurance card.

#### Prayer for Relief

After the prayer for relief, which begins with WHEREFORE, sign your name, and fill in your address and telephone number(s).

#### **STEP 3: Verification**

By completing the Verification form, you are swearing that everything you said

in your complaint is true. Insert your name as Plaintiff and your spouse's name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

#### **STEP 4: Complete the Affidavit(s).**

This packet includes two affidavits. The Plaintiff's Affidavit is REQUIRED by O.C.G.A. § 19-9-69. The second affidavit, entitled "Election \_\_\_\_\_, a Minor Child" is designed to allow a minor child between the ages of eleven (11) and seventeen (17) to indicate the party with whom s/he wants to live.

#### **Plaintiff's Affidavit Required by O.C.G.A. § 19-9-69**

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

The introductory paragraph: Fill in the name of the County in which you are filing. Fill in the Plaintiff's name.

Paragraph 1: Insert the Plaintiff's name into the blank.

Paragraph 2: List the name, birth date, and gender of each child.

Paragraph 3: Write down the address where the child(ren) currently live(s).

Paragraph 4: Write down the child(ren)'s past addresses for the previous five years. Indicate the dates when the child(ren) lived at those addresses, and the names of the people with whom the child(ren) lived.

Paragraph 5: Write down the name of the person(s) with whom the children currently live(s).

Paragraph 6: Other Cases Concerning the Child(ren)

**The Court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption.**

Choose paragraph a) if there have been no other court cases concerning the custody of the child(ren).

Choose paragraph b) if there have been previous court cases concerning the custody of the child(ren). Fill in the county, state and court, as well as the type of action, the date filed, and the current status of the case.

Paragraph 7: Others with a Custody/Visitation Claim

Choose paragraph a) if the parties in this case are the only people who have a custody and/or visitation claim with respect to the minor child(ren).

Choose paragraph b) if there are others who have custody and/or visitation claims. List each person's name as well as the type of claim they have.

Signature Block: Sign the Affidavit IN THE PRESENCE OF a notary public. The notary public will sign and date the Affidavit after s/he watches you sign.

**Election of \_\_\_\_\_, a minor child (this affidavit is optional)**

This document can be filled out by children between the ages of 11 and 17 in order to show their wishes regarding custody. If you need more than one, you may make copies.

The Caption: Fill in the name of the county in which the case is being filed. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

Title: Fill in the name of the minor child who is giving this affidavit.

Introductory paragraph: Fill in the name of the minor child who is giving this affidavit.

Paragraph 1: Fill in the name of the child who is giving the affidavit. Check the appropriate sex, and insert the names of the parents. Write down the date of birth and the current age of the child.

Paragraph 2: Check the lines to indicate whether the child is choosing his or her mother, father, or other relative. Insert that person's name in the blanks provided.

Paragraph 3: This paragraph shows that the child intends for the non-custodial parent(s) to have reasonable visitation. Check the line beside the paragraph. Write down whether the non-custodial parent(s) will be your mother or father or both.

Paragraph 4: Check the line beside this paragraph to show that you are making this statement honestly and under oath.

Paragraph 5: Check the line beside this paragraph to show that you are making this choice of your own free will, with no pressure from anyone else.

Signature Block: Sign the Affidavit IN THE PRESENCE OF a notary public. The notary public will sign and date the Affidavit after s/he watches you sign. You can find a notary public in your local bank, office supply store, or the Probate Court. Call before you go to inquire about any fee that may be required. The Probate Court charges \$2 per signature.

**STEP 5: Complete the custody agreement, if possible.**

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

Introductory paragraph: insert the names of the Plaintiff, the father (if living) and the mother of the child(ren) (if living).

Paragraph 1: Non-interference with parental relationships

Check the line to indicate your intentions to encourage a positive relationship between each parent and the child(ren).

Paragraph 2: Legal and Physical Custody

Legal custody means the authority to make decisions about the children. Physical custody means the physical care of the children—who are the children living with. There are three ways to divide up custody:

Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.

Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about

a decision, one parent will be the “tie-breaker.”

Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

Check line a) if you intend for the Plaintiff to have sole legal and physical custody.

Check line b) if you intend for the Plaintiff and the parent(s) to share legal custody, but for the Plaintiff to have sole physical custody. In the blanks provided, explain any details of your arrangement for primary physical custody. If you want for one party to have secondary physical custody, check the line and explain the details of your arrangement.

Check line c) if you intend for the Plaintiff and the parent(s) to share both legal and physical custody. In the blanks provided, explain the details of your arrangement for sharing physical custody. If you want to have a tie-breaker in the event of a disagreement, check the lines to indicate who the tie-breaker will be. If you want to limit the tie-breaker provision only to certain issues, write down what those issues are.

### Paragraph 3: Visitation

Choose a) if you want to draft your own visitation schedule. Check the line(es) to indicate your intention to allow the parent(s) to have visitation. Write the visitation schedule down in the blanks provided. You may attach additional pages if necessary.

Choose b) if you want to use the visitation schedule included in this packet.

### Paragraph 4: Cooperation and Consultation

Check the line to indicate your willingness to cooperate and consult with one another in the event a situation arises which this Agreement does not anticipate.

### Paragraph 5: Change of Residence

Check the line beside this paragraph to indicate that you will give the other party(ies) advance notice of any relocation, and the complete new address and telephone numbers as soon as they are available.

### Paragraph 6: Child Support Amount

In order to arrive at the appropriate amount of child support, you must go to

<http://csconlinecalc.georgiacourts.gov/frontend/web/index.php> and complete the downloadable electronic worksheet (which has accompanying instructions). **When you file your papers, you must include the Child Support Worksheet and accompanying schedules. If you do not do this step, your papers will not be accepted for filing by the Clerk of Court.** This is true even if you already have an Order for child support through Georgia's Child Support Enforcement agency. At the top of the webpage, there is a tab which says "training materials." If you click on this tab, you can find more information about how to correctly fill out these worksheets and schedules.

Check the line beside paragraph 6. In the blank provided, fill in the name(s) of the person(s) who are responsible for paying child support. Then fill in the amount, and check the lines to indicate how often the payments should be received. In the blanks provided, explain how the child support will be reduced as each child is no longer eligible for child support.

#### Paragraph 7: Child Support Method of Payment

Choose paragraph a) if you want the child support to come directly to the Plaintiff.

Choose paragraph b) if you want the child support to be paid to the Plaintiff by the parent(s) employer(s) via an Income Deduction Order.

Choose paragraph c) if you want the child support to go to the Plaintiff through Georgia's Child Support Enforcement Agency.

#### Paragraph 8: Health Insurance

Check the line beside this paragraph. Check the line beside the party who will be responsible for maintaining health insurance for the benefit of the minor child(ren). In the blanks provided, specify how the costs not covered by the insurance policy will be divided up. Check the lines to indicate both who should provide health insurance cards and who should cooperate in submitting claims under the policy.

#### Paragraph 9: Voluntary Agreement

Check the line beside this paragraph to show that this agreement was entered voluntarily without any external pressure.

#### Paragraph 10: Entire Agreement

Check the line beside this paragraph to show that there are no agreements, either verbally or in writing, other than those listed in this document.

## Signatures

Each party who signs this agreement must sign it **in the presence** of a notary public. The parties do not have to sign at the same time, and they do not have to use the same notary public.

### **STEP 6: Ask for a custody investigation, if necessary**

A custody investigation is allowed by O.C.G.A. § 19-9-4 in a contested custody action **ONLY** if there are specific allegations of “actual abuse, neglect, or other overt acts which have adversely affected the health and welfare of the child.”

## Introductory paragraph

Insert the name of the plaintiff in the blank provided.

Check one or more lines to indicate what kind of acts have occurred which have a harmful effect on the health and welfare of the child(ren). In the blanks provided, give details about these acts.

Complete the accompanying Certificate of Service by filling in the name(s) of the parties and/or attorney(s). Fill in the date, and sign your name. Fill in your address and telephone number(s).

Complete only the caption of the Order for Custody Investigation. The Judge will fill out the rest.

### **STEP 7: Attach other necessary documents.**

In addition to the forms you have already completed, you will need to fill out and attach some of the following forms to your complaint (they are in the packet):

1. **Certificate of Service** This document is used to help the Sheriff's department serve the Defendant(s) in the event there is/are no signed Acknowledgement(s) of Service.

2. **Acknowledgement of Service and Summons** If a Defendant signs this form, you will not need to have him or her served by the Sheriff's Department. If you need more than one, you can make a copy to use.

3. **Defendant's Acknowledgement of Service, Affidavit of Waiver of Venue and Personal Jurisdiction** This form is used when the Defendant does not live in the Georgia county where you are filing, but s/he is willing to submit to the jurisdiction of that county. Don't forget that if the custodial parent and the

children live in another state, the rules of jurisdiction and venue are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). If the Defendant lives in another state, his or her submission to the jurisdiction of a Georgia Court may not be sufficient to give that court jurisdiction. Please consult a lawyer if the Defendant lives in another state.

4. **Notice of Custody Determination** O.C.G.A. §§ 19-9-47 and 19-9-65 require that notice and an opportunity to be heard shall be given to “all persons entitled to notice under the law of this state as in a child custody proceeding between residents of this state, any parent whose parental rights have not been previously terminated, and any person having actual physical custody of the child.” If you need more than one, you can make a copy to use.

5. **Rule Nisi** This document is used to let the Defendant and other parties know the time and place for a hearing. If you need more than one, you can make a copy to use.

6. **Visitation Schedule** This form lays out a specific visitation schedule in order to reduce conflicts down the road.

7. **Final Judgment and Decree** This document will be filled out and signed by the Judge in order to show what the outcome of the case is.

#### 8. **Income Deduction Order**

### **STEP 8: Produce the required financial documents**

Along with the Change of Custody packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://csconlinecalc.georgiacourts.gov/frontend/web/index.php>.
2. Domestic Relations Financial Affidavit
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party’s behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received

from the party's employer should be provided.

5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.
7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any Court Orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

### **STEP 9: Pay the Filing Fee**

Unless you are able to have your filing fee waived, there is an filing fee in the Southern Judicial Circuit. You must pay this fee when you file your Complaint for Change of Custody unless you also file a Poverty Affidavit.

### **STEP 10: File the forms.**

You should make at least two copies of all of your documents. Give the clerk your

original and the additional copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the Court. The other copies will be given to the other parties in this case.

### **STEP 11: Prepare your case for trial, if necessary**

Most civil cases use **pretrial discovery**. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

**Interrogatories** are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the Court.

**Depositions** are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be "impeached," or discredited by referring back to the deposition testimony.

**Requests for Production of Documents** are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party's tax returns, bank statements, or other important documents.

**Physical and Mental Examinations** may be used only with the Court's permission, when a party's physical or mental condition is an issue in the trial, and when the requesting party can show "good cause," i.e., the information is extremely important and cannot be otherwise obtained.

**Requests for Admissions** are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

**STEP 12: Receive the Final Judgment.**

After trial, if you have not settled the case, the Judge will issue a Final Order regarding custody. Your change of custody is not final until the Judge signs the Final Order in the case.