

## **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://www.georgiacourts.org/csc/> 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.**

















