

Lebanon County  
Court of Common Pleas

Custody Handbook  
For  
Self-Represented  
Litigants

August 2014

## I. INTRODUCTION

A custody action is a way to legally obtain primary or partial custody of your children. **It is recommended that you at least speak to an attorney so you can find out your rights.**

**COURT-STAFFED OFFICES IN THE COURTHOUSE ARE  
NOT PERMITTED TO GIVE YOU LEGAL ADVICE.**

If you decide to represent yourself in the custody action (known as “pro se”), it will take a lot of time, and cause you difficulty, confusion and frustration. You **MUST** follow the Rules and Procedures, both state and county, as are required for attorneys. The Court will not allow you to skip any procedure because you **“did not know how or when”** to do something in your custody action. This packet is not to be a substitute for professional legal advice tailored to a specific fact situation.

**Also, the Judges, Conciliators and Mediators WILL NOT be available to you to provide advice or guide you through the proceedings. You are NOT ALLOWED to contact Judges, Conciliators or Mediators except for filing official paperwork or appearing in Court proceedings.**

If you feel you need an attorney, you may contact MidPenn Legal Services, 513 Chestnut Street, Lebanon, Pennsylvania 17042. Telephone (717) 274-2834 between 8:30 A.M. and 4:30 P.M.

## II. DEFINITIONS

“Action” All proceedings for shared legal custody, sole legal custody, partial physical custody, primary physical custody, shared physical custody, sole physical custody or supervised physical custody, and proceedings for contempt and modification of prior Orders of any Court.

“Caption” The heading on a pleading which sets forth the name of the Court, the number of the action, the name of the pleading, and the names of all of the parties.

“Complaint” A formal pleading, filed in the Prothonotary’s Office, in the paragraph format and will all contents as required by the Pennsylvania Rules of Civil Procedure for pleadings requesting shared legal custody, sole legal custody, primary physical custody, sole physical custody, partial physical custody, shared physical custody or supervised physical custody, to begin a custody action when there is no pre-existing Custody Order.

- “Continuance” A request to change the date of a Conference, Mediation, Pretrial Conference or Trial to another date.
- “Custody” The legal right to keep, control, guard, care for and preserve a child and includes the terms “legal custody”, “physical custody” and “shared custody”.
- “Custody Conciliation Conference” A conference, facilitated by a Custody Conciliator, where the parties to an action meet together in an attempt to narrow the issues in the custody action to facilitate the conciliation process and to encourage frank, open and meaningful exchanges between the parties and their respective counsel. The Custody Conference Conciliator shall not be a witness for or against any party.
- “Custody Conciliator” A member of the Lebanon County Bar or other appropriate person appointed by the Court to conciliate custody cases filed with the Court and recommend to the Court Interim or Temporary Custody Orders.
- “Defendant” The person being sued.
- “Ex Parte” In order to preserve fairness in all proceedings, no one party or his/her lawyer may contact the Court or the Custody Conciliator about issues in the case without the other party’s participation. This includes by telephone, mail, fax, email or in person.
- “Home County” The county in which the child has resided preceding the time involved for at least the past six (6) consecutive months, and in a case of a child less than six (6) months old, the county in which the child lived from birth.
- “Jurisdiction” The authority of the Court to act regarding particular parties and the subject of the litigation.
- “Legal Custody” The legal right to make major decisions affecting the best interests of a minor child, including, but not limited to, medical, religious and educational decisions.
- “Minor Child” An individual under the age of eighteen (18) years, including by birth or adoption.
- “Order” A formal written document, signed by a Judge, directing schedules, procedures, arrangements and decision-making authority during the course of and at the conclusion of custody litigation.

- “Partial Physical Custody” The right to take possession of a child away from the primary custodial parent for a certain period of time.
- “Party” A named Plaintiff or Defendant in the action.
- “Petition” A formal pleading, filed in the Prothonotary’s Office, in the paragraph format and with all contents as required by the related section of the Pennsylvania Rules of Civil Procedure for the particular type of Petition: to modify an existing Custody Order or to cite contempt (disobedience) of an existing Custody Order.
- “Physical Custody” The actual physical possession and control of a child.
- “Plaintiff” The person filing the case.
- “Pre-Trial Conference” A conference with the Judge and the parties’ counsel, or the party if unrepresented, where the issues that will be presented at a Hearing are clearly enumerated and any special requests for witnesses are discussed.
- “Primary Physical Custody” The right to assume physical custody of the child for the majority of the time.
- “Pro Se” For one’s own behalf or appearing for oneself.
- “Registered Mail” Either registered mail or certified mail.
- “Relocation” A change in a residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights.
- “Service” (meaning service of process) – The formal delivery, to the other party, in the manner directed by the Pennsylvania Rules of Civil Procedure, of legal documents related to an action before the Court, including original process (initial complaint, petition, etc.), and later pleadings filed in that action, as well as notices of petitions about to be filed. Because the date of service has legal significance in an action before the Court, proof of the date of service of each such document on the other party must be filed by the party who performed service, whether for original process or for later pleadings in the case.
- “Shared Legal Custody” The right of more than one individual to legal custody of the child.

“Shared Physical Custody” The right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

“Sole Legal Custody” The right of one individual to exclusive legal custody of the child.

“Sole Physical Custody” The right of one individual to exclusive physical custody of the child.

“Standing” A legally recognized right to participate as a party in a custody action. This is determined by legal principles and not by the level of sincerity or amount of good faith of an interested person.

“Supervised Physical Custody” Custodial time during which an agency or an adult designated by the Court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

“Venue” The jurisdiction in which a child custody action may be filed. Pennsylvania would be the proper location for the filing of a custody action if the child has lived for at least the past six (6) months in the Commonwealth.

“Verification” A written statement of fact by the signer, supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

### III. FREQUENTLY ASKED QUESTIONS/PROCEDURES

#### • WHEN SHOULD I FILE FOR CUSTODY?

If you are *the custodial parent (the child resides primarily with you)*, you should file for custody if:

- You are afraid that the other parent may take the child out of the area without your permission and not return;
- The other parent consistently does not pick up the child or return the child at the times that were verbally agreed upon and you want a court order to be able to enforce those times; and/or
- You need legal verification for school enrollment, health insurance benefits, Social Security or welfare benefits, etc.

If you are the ***noncustodial parent***, you should file for custody if:

- The custodial parent is withholding the child from you or is not giving you as much time as you would like to have;
  - You want the child to live primarily with you; and/or
  - You are not having any input in the major decisions affecting the child such as educational, medical or religious issues.
- ARE THERE SITUATIONS WHEN IT MAY BE BETTER *NOT* TO FILE?

If you and the other parent of the child have an agreement between the two of you which is working well and the children are happy, there is no reason to get the Court involved. Sometimes getting the Court involved can create bad feelings when there were none before.

If you are the custodial parent and the other parent is not involved in your child's life (and you like it that way), filing for custody could create a forced partial custody schedule which you might not like.

Whether to begin a custody action can be a fact sensitive decision. If you have questions about your specific situation, you should consult an attorney.

- WHO MAY FILE FOR CUSTODY?

A parent may file even if the child has never lived with him/her. Grandparents may file if they have standing under any of the following sections of Pennsylvania custody law: 23 Pa.C.S.A. §§5311, 5312 or 5313. A third party wishing to seek custody or supervised physical custody should consult an attorney as the law is complex in that area. As used in this information packet, "**parent**" or "**other parent**" also could apply to such other parties **if** they have standing to file.

- HOW MUCH DOES IT COST TO FILE?

The current fee for filing an original custody action where the appointment of a Conciliator is being requested is \$375.50 as of August 8, 2014. If it is an original custody action and the parties are entering a custody stipulation, the filing fee is \$140.00 as of August 8, 2014. These filing fees are subject to change. The fee is to be paid at the time that the custody complaint or stipulation is filed at the Prothonotary's

Office on the first floor of the Lebanon County Courthouse. It can be paid by cash, money order, personal check or cashier's check; a money order or check should be made payable to the Lebanon County Prothonotary. The filing fee is non-refundable and non-returnable.

If you fit the financial requirement for low income families, you can get the filing fee waived. To see if you qualify, you must file an IFP (*in forma pauperis*) petition.

- ARE THERE ANY OTHER COSTS INVOLVED?

Possibly. If your case is not resolved at the conciliation, it may be referred to mediation in appropriate cases. If a case is referred to mediation, each of the parties will be directed to pay \$150 (for a total of \$300). Such payment shall be made prior to the scheduled mediation date. Payment is to be made at the Lebanon County Prothonotary's Office.

- WHAT TO FILE?

The Custody Complaint (form 1) with the Order for the appointment of Conciliator (form 2) and the Criminal Record/Abuse History Verification (form 9). You will need to bring the original and an extra copy for every party in the action. Do not forget to bring the filing fee with you. You will also need to provide a self-addressed, stamped envelope with enough postage to cover the cost of mailing all of the copies to you.

- WHERE TO FILE?

A Custody Complaint should usually be filed in the county where the child has resided for the last six (6) months. In situations where that circumstance may not be easily determined, an attorney should be consulted. In Lebanon County, custody actions are filed in the Prothonotary's Office which is located in Room 104 of the Lebanon County Municipal Building at 400 S. Eighth Street, Lebanon, Pennsylvania 17042. The hours of operation for the Prothonotary's Office are 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

- WHAT HAPPENS AFTER I FILE THE COMPLAINT?

The Prothonotary's Office will keep the original copy of the Complaint and Order appointing Conciliator.

After the complaint is filed in the Office of the Prothonotary, the paperwork is forwarded by the Prothonotary's Office to the Office of Court Administration to have a Custody Conciliator appointed. Copies of the custody complaint will be returned to you with the name of the custody conciliator assigned to your case. The Custody Conciliator will schedule a Conciliation Conference, this is the first stage of a custody action.

It is your responsibility to make sure the other parent or party is given notice of the custody action. Service of the Complaint must be made by either personal service (form 4a or 4b) or certified mail (form 5) in accordance with Pa.R.C.P. 1930.4.

- DO I HAVE TO BRING ANYTHING TO THE CONFERENCE?

The Notice sent by the Custody Conciliator which informs you of the date, time and location of the Conference also sets forth what you need to bring to the Conference. This will include, but may not be limited to, your completed Parenting Plan (form 7).

- WHO RUNS THE CONCILIATION CONFERENCE?

The conference is conducted by an attorney who has been appointed by the Court to act as a Custody Conciliator. His or her job is to help the parents or parties work out a custody schedule which is agreeable to all. The Conciliators cannot take sides, nor can they look at evidence you wish to present such as character references, letters from teachers, doctors, counselors, etc. One (1) hour will be allotted for the Conciliation Conference.

- WHAT IS THE APPROPRIATE CONDUCT AND DRESS AT THE CONFERENCE?

The Custody Conciliator controls the conference and decides who talks first and whether the statement is relevant to furthering a custody agreement. Dress as if you were working in a business office – shorts are not permitted. Do not chew gum. Do not interrupt the Custody Conciliator or the other party. Each party will have an opportunity to speak. Remember to control your emotions and your remarks. If there are angry outbursts or inappropriate language, the offending party may be ejected and the conference may continue in that person's absence.

- WHAT IS THE PROCEDURE AT THE CONFERENCE?

The Custody Conciliator will first ask the party who filed the Complaint what he or she wants to see happen. Then the other party will have a chance to respond. It is good to have worked out what you want to say ahead of time. If an agreement can be reached, the Custody Conciliator will prepare a recommendation to the Court setting forth the agreement of the parties and asking that the Court adopt it as a Custody Order. If the parties cannot agree, the Custody Conciliator may make a recommendation to the Court for a temporary custody schedule and in appropriate cases refer the case to mediation. If a case is not appropriate for mediation (where there is an active PFA (Protection from Abuse) Order for example), the Custody Conciliator may make a recommendation for a temporary custody schedule and request a pre-trial conference be scheduled with a Judge. You will receive a copy of the Court Order with the temporary custody schedule and date of the pre-trial conference.

- WHO MAY COME TO THE CONFERENCE?

Only the parties on the caption are allowed at the conciliation. Each party may bring an attorney. No other relatives, friends, etc. are allowed in the conference room. Children will be permitted in the conference ONLY if there is a specific Court Order allowing them to attend. Children must not be left unattended in the courthouse, so please make day care provisions for them elsewhere.

- WHAT IF I AM UNABLE TO ATTEND THE CONFERENCE ON THE DAY IT IS SCHEDULED?

There are only certain conditions that allow for continuances. Work is not considered an adequate reason for a continuance. To request a continuance you must first ask the other party if he/she objects. If there is an agreement, you should contact the Conciliator and request the continuance. If there is no agreement, you must petition the Court to request the continuance.

- WHAT IS THE PROCEDURE AT MEDIATION?

If no agreement is reached at the Conciliation, the Conciliator will refer the matter to mediation, if appropriate. If your case is referred to mediation, each of the parties will be directed to deposit \$150 (total \$300) at the Prothonotary's Office. An Order will be entered appointing a Mediator in your case. A mediation session will be scheduled (2 hours will be allotted for the mediation).

Mediation is an opportunity for the parties to have a direct conversation with each other in an attempt to settle their custody issues facilitated by a Mediator. Even if you are represented by an attorney, your attorney is not involved in the mediation process. Any agreement reached at the mediation is voluntary and the Mediator can assist you in putting the agreement in place. Anything discussed at the mediation is confidential.

If you do not reach an agreement at the mediation, the Order from the Conciliation Conference will remain in effect, and a Pretrial Conference will be scheduled before one of Lebanon County's Judges.

The Custody Mediator will first ask the party who filed the Complaint what he or she wants to see happen. Then the other party will have a chance to respond. It is good to have worked out what you want to say ahead of time. The Mediator will listen to each party's position and attempt to resolve the differences among the parties. If an agreement can be reached, the Custody Mediator will prepare a recommendation to the Court setting forth the agreement of the parties and asking that the Court adopt it as a Custody Order. If the parties cannot agree, the Custody Mediator may make a recommendation to the Court for a temporary custody schedule and request a pre-trial

conference be scheduled with a Judge. You will receive a copy of the Court Order with the temporary custody schedule and date of the pre-trial conference.

- WHO MAY COME TO THE MEDIATION?

If your Conciliator decides to refer your case to mediation, the Conciliator will discuss with you who may attend the mediation. The decision regarding participants will be made in advance and only those individuals will be permitted in the mediation room. Children will be permitted in the mediation only if there is a specific Court Order allowing them to attend.

- WHAT IF I AM UNABLE TO ATTEND THE MEDIATION ON THE DAY IT IS SCHEDULED?

There are only certain conditions that allow for continuances. Work is not considered an adequate reason for a continuance. To request a continuance you must first ask the other party if he/she objects. If there is an agreement, you should contact the Mediator and request the continuance. If there is no agreement, you must petition the Court to request the continuance.

- WHAT HAPPENS IF AN AGREEMENT CANNOT BE REACHED?

If no agreement is reached at either the conference or the mediation, your case will be forwarded to the Court for resolution. A pretrial conference will be scheduled with the Judge assigned to your case. You will receive an order with the date, time and location of the pretrial conference.

- WHAT IS A PRETRIAL CONFERENCE?

A pretrial conference is a meeting with the attorneys (or the parties if there are no attorneys) and the Judge assigned to the case. The purpose of the pretrial conference in advance of the custody trial is to identify the issues and see whether there can be a resolution without going to trial. The time allotted for the pretrial conference is one (1) hour.

- WHAT DO I NEED TO BRING TO THE PRETRIAL CONFERENCE?

No later than forty-eight (48) hours prior to the pretrial conference, counsel or the parties, if unrepresented, are required to exchange parenting plans with each other. The parenting plan shall be brought to the pretrial conference as well. The parenting plan shall be in the form set forth in the Pennsylvania Custody Act, Section 5331 (c).

In addition, each party or their attorneys shall have a prepared list of all potential witnesses, any outstanding issues to be resolved and the estimated length of trial. If an agreement is not reached at the pretrial conference, a trial date will be established.

- WHAT HAPPENS IF A TRIAL IS SCHEDULED?

### **RULES OF CONDUCT**

If you are not represented by an attorney, you are considered a “self-represented litigant”. Even though you are unrepresented, the court will hold you to the same standards of conduct in the courtroom. All parties will be bound by the *Pennsylvania Rules of Civil Procedure* and the *Pennsylvania Rules of Evidence*. The *Pennsylvania Rules of Evidence* set standards for objections to what is being said by a witness, what constitutes relevant testimony, what exhibits can be admitted, etc. If you were the party who filed the complaint, you will present your case first. You will testify on your own behalf and present witnesses to help prove why the Court should grant the relief you want. The other party will be able to cross examine or question you and your witnesses. The Judge may also have questions.

The Court Attendant will tell you where you should sit. After the trial has started, you may not leave the table without permission from the Judge. Each party acting as an attorney must stand when addressing the Judge (unless you are testifying on the witness stand) and must refer to the other party and witnesses as Ms. or Mr. This is a formal setting. The Judge is always addressed as “Your Honor”.

### **ATTIRE**

As noted above, this is a formal setting. You should dress in business attire. Shorts, flip flops, tank tops, tee shirts, mini skirts, jeans, pajamas, etc. are not appropriate.

### **WITNESSES**

It is your responsibility to give your witnesses notice of the time and date for the trial. Please check the *Pennsylvania Rules of Civil Procedure* regarding subpoenas for the witnesses, if necessary. A subpoena is a Court Order directing a witness to come to the trial. The statutory witness fee and mileage payment must accompany the subpoena.

### **CHILDREN AT THE HEARING**

Judges usually do not interview children who are under six (6) years of age. You may ask the Judge ahead of time (such as at the pretrial conference) if the children should be brought to the trial.

The Judge usually speaks with the children in his chambers after the testimony has ended for the day. It is boring for the children to spend the day in the hallway of the Courthouse waiting. Children may not be left unattended in the hallway and the parties must be in the Courtroom during the trial. That means it is necessary to bring another responsible adult to watch them if you are bringing them to the trial.

## **NEED FOR MORE TIME**

If the hearing is not completed, another day of testimony will be scheduled for a later time. Even when testimony has been completed, you will usually not get a ruling from the Judge on that day. The Judge may ask for proposed custody arrangements which outline the custody schedule you request. Then he will take time to deliberate. The time varies based upon the complexity of the case and the Judge's current work load.

- WHAT HAPPENS IF I AM UNABLE TO ATTEND THE TRIAL ON THE DATE IT IS SCHEDULED?

Because of the large number of Family Court cases, if you continue your trial, it could be months, not weeks, until a new trial date can be scheduled. The parties are expected to make every reasonable effort to arrange their schedules so they can be available for the trial on the important issue of their child's custody. However, as with the continuance of the conciliation conference or mediation, if there is some dire reason why the trial needs to be continued, you first must get permission from the other side. If you have permission, you must have both parties sign the continuance request. If there is no agreement, you must petition the Court with a Motion for Continuance and proposed continuance Order.

- WHAT IF I DO NOT AGREE WITH THE JUDGE'S DECISION?

You may file an appeal of the Judge's decision to the Pennsylvania Superior Court within thirty (30) days of the date of the Court Order. *Pennsylvania Rules of Appellate Procedure* apply and must be followed exactly. Due to the complexity of this procedure it is recommended that you consult an attorney. Taking an appeal also involves paying to have the transcript of the entire hearing prepared from the court reporter's stenographic notes.

- HOW DO I CHANGE A CUSTODY ORDER AFTER IT IS ENTERED?

If you and the other parent **agree** to do so, you are free to follow a different schedule at any time, but it will not be a Court Order unless an uncontested modification is filed. If the other parent does **not agree** to a change but you want to change the Order, you must file a Petition for Modification which is similar to the original Custody Complaint. You must attach a copy of the current Custody Order as an exhibit to the Petition.

- IS THERE A FEE FOR THE MODIFICATION?

Yes, the fee is \$200.00 as of August 8, 2014. The fee is subject to change and is *non-refundable*.

- THE OTHER PARENT NEVER SPENDS TIME WITH MY CHILD(REN), MAY I TERMINATE HIS OR HER PARENTAL RIGHTS?

Parental rights cannot be terminated unless: there is a stepparent who is willing to adopt the child and (1) the uninvolved parent signs a consent to the adoption; or (2) after a hearing, the Court has determined that the other biological parent has abandoned the child such that his rights can be terminated without his or her consent. This is a separate procedure in the Orphan's Court division. It is **NOT** a custody procedure.

- MAY I KEEP THE OTHER PARENT FROM SEEING MY CHILD(REN) BECAUSE THAT PARENT DOES NOT PAY CHILD SUPPORT?

No. The non-payment of child support does not allow a parent to disobey a Court Order for custody. The Court believes that it is in the child's best interest to have a relationship with both parents. Instead, child support issues should be pursued through the Lebanon County Office of Domestic Relations (717) 228-4480.

- CAN CUSTODY EVER AFFECT SUPPORT?

Yes. If the noncustodial parent can show that he or she regularly has the child in excess of a threshold amount of time over the course of the year, the support amount may be adjusted. The threshold amount of time is established by the State Support Guidelines.

- MY CHILD IS 12 YEARS OLD. MAY HE OR SHE DECIDE WHERE SHE WANTS TO LIVE?

Yes, if the parties agree to accept his or her choice without further litigation. But if the parents go to a hearing despite knowing the child's preference, there is no magic age in Pennsylvania when the child gets to make the decision as to where he or she will live. The Court looks at all of the factors involving the best interest of the child and the child's preference can be a factor. The weight of that preference will depend upon the age, maturity, intelligence and reasoning of the child.

- WHEN IT IS TIME FOR MY CHILD TO VISIT THE *OTHER PARENT*, HE DOES NOT WANT TO GO. DO I HAVE TO SEND HIM?

If there is a Court Order scheduling your child to visit with the other parent at a certain time, the schedule should be followed or you can be held in contempt of the

Court Order. You should be encouraging your child to spend time with the other parent unless there is a reasonable fear for the child's physical safety. However, you may have to justify your refusal at a later contempt proceeding or you may need to file a pleading to modify the Custody Order if your concerns continue.

- WHAT IF THE OTHER PARENT IS NOT FOLLOWING THE CURRENT CUSTODY ORDER?

If a party to a custody case is not following the Custody Order and is determined to have knowingly violated the Order, they may be found in contempt of that Order. If a party is found in contempt, they may be sanctioned, i.e., punished by the Court for the violation.

You may file a Petition for Civil Contempt in the format as set forth. (Form 6) You will need to bring the original and an extra copy for every party in the action. There is no filing fee for a Petition for Civil Contempt. You will need to provide a self-addressed, stamped envelope with enough postage to cover the cost of mailing all of the copies back to you.

Prepare the Petition starting with the heading and caption, the names of the people involved and action number, just as it appears in the existing Custody Order. You must also complete the form "Notice and Order to Appear" with this same information. After preparing your Petition, assemble the original and all copies with the attached "Notice" form on top.

You must prepare the original and the same number of copies of the Petition and Notice of the Contempt filing as are required for a Custody Complaint. Also, after filing, when the papers are returned to you by mail for service, you are responsible for serving all other parties in the manner required by law and for filing an Affidavit of Service as set forth in the instructions for filing a custody action.

File the original Petition along with all copies required in the Prothonotary's Office. Again, there is no fee for filing a Petition for Contempt. Upon filing, the Prothonotary will forward all pleadings to Court Administration for the scheduling of a hearing date. Allegations of contempt are scheduled for a hearing directly before one of the Judges of the Court of Common Pleas.

After a hearing date is assigned, the papers are returned to you for service on all other parties named in the caption of the case. Remember, when filing at the Prothonotary, bring a self-addressed, stamped envelope with enough postage to cover the cost of mailing all copies back to you. The instructions set forth in the main custody packet concerning how you should appear at the hearing and your attendance there are also applied to contempt actions.

**NOTE:** A lawful remedy for contempt is **NOT** a change of the Custody Order. If you want an existing Custody Order changed because it is not being honored, you also must

file a separate custody modification request in the proper format as required by applicable procedural rules.

#### IV. SPECIAL RELIEF

CAN I GET THE COURT TO RULE ON PARTICULAR DISAGREEMENTS I HAVE WITH THE OTHER PARENT ABOUT MY CHILD(REN) BEFORE MY CASE GETS TO THE STAGE OF THE CONCILIATION CONFERENCE OR TRIAL?

For some kinds of disagreements, yes. For others, no, because they are matters for parents to decide, not the court system. The procedures discussed earlier in this packet describe how to handle a case when the parents disagree about *physical* custody, meaning where the children will live primarily and the schedule of custodial contact for the other parent. However, in Pennsylvania, the other kind of custody involved in any custody case is *legal* custody, meaning the right to share in decision making about important matters affecting the child. In most cases, except where a parent is found incapable of participating in such decisions, *legal* custody is shared by the parents regardless of where a child resides.

Examples of legal custody issues are whether a child will attend public school or some type of private school, who will be the child's doctor or dentist, what religion, if any, will the child learn, whether a teenager may have a part time job or go on a trip, whether a child will play in organized sports, take music lessons, etc. All of these legal custody issues are for the parents, not the Court, to decide and therefore are called "co-parenting issues", meaning the parents, even though separated, should discuss them and must be responsible enough to do so in a civil, respectful manner. "Informing" the other parent about a decision you made alone (except for medical emergencies) is not a "discussion" and instead is a violation of the shared legal custody process required by Pennsylvania custody law.

BUT WHAT KINDS OF DISPUTES WILL THE COURT BECOME INVOLVED IN UNTIL MY CUSTODY CASE IS DECIDED?

This is called "special relief" (see *Pennsylvania Rule of Civil Procedure* 1915.13). Examples of special relief are:

- Requesting the Court to grant a continuance of a custody conciliation conference or mediation when the other party does not agree;
- Requesting that an expert, such as a licensed psychologist (paid for by the parties, not the court system), become involved in the case by performing an evaluation of both parents, and sometimes other adult household members, preparing a report and testifying at the trial (see *Pennsylvania Rule of Civil Procedure* 1915.8);
- If no Custody Order is in effect at the time you file your custody action, requesting a temporary custody arrangement until the first phase of the custody action, which is

the Conciliation Conference (**CAUTION:** If you request such a temporary Order, there is no guarantee that the resulting Order will be the custody arrangement you requested if the Court is convinced by the other parent or otherwise that a different temporary order is more appropriate); and

- Requesting that the other parent follow the provision of a temporary Custody Order, such as honoring any agreed upon vacation schedule, etc.

#### HOW DO I MAKE REQUESTS FOR THESE TYPES OF “SPECIAL RELIEF”?

To preserve fairness between the parties by ensuring that each party knows what the Court is taking into consideration when deciding requests for special relief, such requests must be prepared as a formal pleading, similar to a Custody Complaint, with the full caption at the top, signature verification at the end, and the relief you are requesting in numbered paragraphs in the body of the Petition.

MAY I JUST MAIL IN A SPECIAL RELIEF PETITION OR STOP BY A JUDGE’S CHAMBERS TO PRESENT AND DISCUSS MY REQUEST FOR A TEMPORARY CUSTODY ORDER, OR TO HAVE A CUSTODY EVALUATION ORDERED, ETC.?

NO! All requests for special relief, including Orders for temporary custody until the first Custody Conciliation Conference, must be filed with the Prothonotary. There may be additional filing fees required to process your special relief petition and proposed Order. Check with the Prothonotary’s Office to determine the filing requirements (i.e. number of copies, etc.) and whether filing fees are required.

#### **COMMUNICATION WITH THE COURT**

IF I HAVE QUESTIONS ABOUT HOW TO PRESENT MY CASE, WHAT MY RIGHTS ARE, OR A PROBLEM WITH THE OTHER PARENT WHILE MY CASE IS PROCEEDING THROUGH THE COURT SYSTEM, MAY I WRITE OR CALL THE JUDGE ASSIGNED TO MY CASE FOR MORE INSTRUCTIONS ABOUT WHAT TO DO, OR AT LEAST TO LET THE JUDGE KNOW THE PROBLEMS I AM EXPERIENCING IN GETTING THE OTHER PARENT TO COOPERATE?

NO! Attempts to communicate with the Court without the other party present to know what you are telling the Judge is called *ex parte* (without the other person) communication. This kind of one-sided effort to contact a Judge is strictly prohibited. In addition, the Judge’s staff may not have this kind of communication. Even if you do not intend to discuss the facts of your case and limit your contact to requesting instruction about how to proceed, that may be considered legal advice, which neither a Judge, the Judge’s staff, nor any other court related office may give you. If you do not understand what steps to take or how a custody action proceeds after reading this packet, you should consult an attorney.

The Court’s authority to act is not exercised in response to letters or telephone calls, but only in response to formal pleadings and evidence presented in official proceedings. The permissible method of communicating with the Court about your case is by filing formal pleadings, served on the other party, as discussed above, or in an actual court proceeding where the other party is present to hear what you are relating to the Judge or Custody Conciliator, who serves as the Court’s representative at Custody Conciliation Conferences.

The ONLY exception to these restrictions is when the Court or its staff *requests* you to provide information to assist the Court in handling your case. Examples of such Court requests are:

- Responding to a request by the other party for a continuance;
- Furnishing school schedules or vacation plans;
- Providing a list of suggested counselors or other experts; or
- Submitting proposed custody schedules/arrangements.

Just as with any pleading you file, complete copies of any information you provide the Court, even if requested by the Court, must be provided at the same time to the other party.

**V. FORMS**

#	FORM
1	CUSTODY COMPLAINT
2	ORDER FOR APPOINTMENT OF CONCILIATOR
3	AFFIDAVIT OF SERVICE
4	ACCEPTANCE OF SERVICE
5	PETITION FOR MODIFICATION
6	PETITION FOR CONTEMPT
7	PARENTING PLAN
8	NOTICE OF PROPOSED RELOCATION/COUNTER-AFFIDAVIT RE: RELOCATION
9	CRIMINAL RECORD/ABUSE HISTORY VERIFICATION

- NOTE: PLEASE SEE *Pennsylvania Rules of Civil Procedure* and Local Rules for physical Characteristics of Legal Papers. The approved forms for Lebanon County custody proceedings can be found on the Lebanon County website as indicated above. Statewide custody forms are also available on the Unified Judicial System website at [www.pacourts.us](http://www.pacourts.us).

## VI. RULES

- State Rules pertaining to custody can be found in *Pennsylvania Rules of Civil Procedure* beginning at Rule No. 1915-1 through 1915.25
- County Rules pertaining to custody can be found in the Lebanon County Local Rules, specifically Rules beginning at Rule No. 52-FD-1915.4-2.
- A copy of the *Pennsylvania Rules of Civil Procedure* as well as the Lebanon County Local Rules can be found at the Lebanon County Law Library.
- A copy of the Pennsylvania and local Lebanon County Rules of Court can be found at the Lebanon County Law Library. The Lebanon County Rules of Court may also be accessed on the Lebanon County website which is at [www.lebcounty.org](http://www.lebcounty.org). To access the Local Rules, click on “Departments”, “Court System”, and then “Forms and Rules for Practitioners”.