

MOTION FOR CHANGE IN CUSTODY - PARENTAL RIGHTS AND RESPONSIBILITIES

After a divorce/dissolution case in Common Pleas Court or after a Juvenile Custody/Visitation case in Juvenile Court

There must be a current custody order to use these forms – you will need a different form if there is no order of custody

Type or Print all Forms - *If you are downloading the forms from the website, the forms are in PDF and can be typed online and then saved on your computer or flash drive for revision and printing.*

You can access these fillable forms at this website:

<https://mail.oslsa.org:8889/home/admin@oslsa.org/Marietta%20Repository>

*** All forms in BOLD must be signed in front of a notary.***

Forms to be completed by you

- Form 24 Complaint - Tells the Court that you want to change custody
- Form 28 Instructions for Service - Tells the Court where to send copies to the other party - *Certified Mail is the normal method of service for papers of this type*
- Affidavit 3 Parenting Proceeding Affidavit** – tells the Court where your child/ren have lived for the past 5 years
- Affidavit of Income and Expenses** – tells the Court about your income situation for the establishment of support if custody should change

After completing the forms

- Make three (3) copies of each completed form.
- Take the originals and three (3) copies to Clerk of Common Pleas Court if the custody order was in a divorce, dissolution, visitation case filed in regular Common Pleas Court, OR take to the Clerk of Juvenile Court if this was originally a juvenile court case.
- If you cannot afford the filing fee, then use the enclosed **Poverty Affidavit** for the Court you are filing in.

After forms are filed

- Clerk will send you notice of any court dates. Attend all of these court dates.
- If you move, call the Clerk with your new address.

IN THE COURT OF COMMON PLEAS

Division
COUNTY, OHIO

IN THE MATTER OF:

A Minor

Name

Case No.

Street Address

City, State and Zip Code

Judge

Plaintiff/Petitioner

Magistrate

vs.

Name

Street Address

City, State and Zip Code

Defendant/Petitioner

Instructions: This form is used to request a change in a shared parenting plan or a change in the designation of the sole residential parent and legal custodian. A Request for Service (Uniform Domestic Relations Form 28) and a Parenting Proceeding Affidavit (Uniform Domestic Relations Form - Affidavit 3) must be filed with this Motion.

MOTION FOR CHANGE OF PARENTAL RIGHTS AND RESPONSIBILITIES (CUSTODY) AND MEMORANDUM IN SUPPORT

1. I, _____ (name), request this Court change the allocation of parental rights and responsibilities (custody) Order filed on this date _____ (filed date) regarding the following minor child(ren): _____

Name of Child

Date of Birth

Blank lines for Name of Child

Blank lines for Date of Birth

2. Select one:

_____ (name) is currently designated as the residential parent and/or legal custodian of the children and resides in the _____ School District.

The parents now have a Shared Parenting Plan.

3. The circumstances have changed since the Court issued the existing order. The change in circumstances and any other reason for the requested change are as follows:

4. I request that the Court change the existing order in the following way:

5. I believe that the changes I am requesting are in the child(ren)'s best interests.

Your Signature

Telephone number at which the Court may reach you
or at which messages may be left for you

IN THE COURT OF COMMON PLEAS

Division
COUNTY, OHIO

IN THE MATTER OF:

A Minor

Name

:
: Case No. _____

Street Address

:
: Judge _____

City, State and Zip Code

Plaintiff/Petitioner

:
: Magistrate _____

vs./and

Name

Street Address

City, State and Zip Code

Defendant/Petitioner

Instructions: This form is used when you want to request documents to be served on the other party. You must indicate the requested method of service by marking the appropriate box.

REQUEST FOR SERVICE

TO THE CLERK OF COURT:

Please serve the following documents on the following parties as I have indicated below:

- Defendant/Petitioner at the address shown above.
 - Certified Mail, Return Receipt Requested
 - Issuance to Sheriff of _____ County, Ohio for Personal or Residence service
 - Other (specify) _____

Form 28

Plaintiff/Petitioner at the address shown above.

Certified Mail, Return Receipt Requested

Issuance to Sheriff of _____ County, Ohio for Personal or Residence service

Other (specify) _____

_____ County Child Support Enforcement Agency (provide address below):

Certified Mail, Return Receipt Requested

Issuance to Sheriff of _____ County, Ohio for Personal or Residence service

Other (specify) _____

Other (address): _____

Certified Mail, Return Receipt Requested

Issuance to Sheriff of _____ County, Ohio for Personal or Residence service

Other (specify) _____

SPECIAL INSTRUCTIONS TO SHERIFF:

Your Signature

Affidavit 3

COURT OF COMMON PLEAS _____ COUNTY, OHIO

Plaintiff/Petitioner	Case No. _____	
v./and	Judge _____	
Defendant/Petitioner/Respondent	Magistrate _____	

Instructions: Check local court rules to determine when this form must be filed.
 By law, an affidavit must be filed and served with the first pleading filed by each party in every parenting (custody/visitation) proceeding in this Court, including Dissolutions, Divorces and Domestic Violence Petitions. Each party has a continuing duty while this case is pending to inform the Court of any parenting proceeding concerning the child(ren) in any other court in this or any other state. **If more space is needed, add additional pages.**

PARENTING PROCEEDING AFFIDAVIT (R.C. 3127.23(A))

Affidavit of _____
 (Print Your Name)

Check and complete ALL THAT APPLY:

1. I request that the court not disclose my current address or that of the child(ren). My address is confidential pursuant to R.C. 3127.23(D) and should be placed under seal to protect the health, safety, or liberty of myself and/or the child(ren).
2. Minor child(ren) are subject to this case as follows:

Insert the information requested below for all minor or dependent children of this marriage. You must list the residences for all places where the children have lived for the last **FIVE** years.

a.	Child's Name: _____	Place of Birth: _____	
	Date of Birth: _____	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	
	<u>Period of Residence</u>	<u>Check if Confidential</u>	<u>Person(s) With Whom Child Lived</u> (name & address)
	to present	<input type="checkbox"/> Address Confidential?	<u>Relationship</u>
	to _____	<input type="checkbox"/> Address Confidential?	_____
	to _____	<input type="checkbox"/> Address Confidential?	_____
	to _____	<input type="checkbox"/> Address Confidential?	_____

Affidavit 3

b. Child's Name: _____ **Place of Birth:** _____
Date of Birth: _____ **Sex:** Male Female

Check this box if the information requested below would be the same as in subsection 2a and skip to the next question.

<u>Period of Residence</u>	<u>Check if Confidential</u>	<u>Person(s) With Whom Child Lived</u> (name & address)	<u>Relationship</u>
_____ to present	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____

c. Child's Name: _____ **Place of Birth:** _____
Date of Birth: _____ **Sex:** Male Female

Check this box if the information requested below would be the same as in subsection 2a and skip to the next question.

<u>Period of Residence</u>	<u>Check if Confidential</u>	<u>Person(s) With Whom Child Lived</u> (name & address)	<u>Relationship</u>
_____ to present	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CHILDREN, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

3. Participation in custody case(s): (Check only one box.)

- I **HAVE NOT** participated as a party, witness, or in any capacity in any other case, in this or any other state, concerning the custody of, or visitation (parenting time), with any child subject to this case.
- I **HAVE** participated as a party, witness, or in any capacity in any other case, in this or any other state, concerning the custody of, or visitation (parenting time), with any child subject to this case. For each case in which you participated, give the following information:

Affidavit 3

- a. Name of each child: _____
- b. Type of case: _____
- c. Court and State: _____
- d. Date and court order or judgment (if any): _____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CUSTODY CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

4. Information about other civil case(s) that could affect this case: (Check only one box.)

- I **HAVE NO INFORMATION** about any other civil cases that could affect the current case, including any cases relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning any child subject to this case.
- I **HAVE THE FOLLOWING INFORMATION** concerning other civil cases that could affect the current case, including any cases relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning a child subject to this case. Do not repeat cases already listed in Paragraph 3. Explain:

- a. Name of each child: _____
- b. Type of case: _____
- c. Court and State: _____
- d. Date and court order or judgment (if any): _____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

5. Information about criminal case(s):

List all of the criminal convictions, including guilty pleas, for you and the members of your household for the following offenses: any criminal offense involving acts that resulted in a child being abused or neglected; any domestic violence offense that is a violation of R.C. 2919.25; any sexually oriented offense as defined in R.C. 2950.01; and any offense involving a victim who was a family or household member at the time of the offense and caused physical harm to the victim during the commission of the offense.

<u>Name</u>	<u>Case Number</u>	<u>Court/State/County</u>	<u>Convicted of What Crime?</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

Affidavit 3

6. Persons not a party to this case who has physical custody or claims to have custody or visitation rights to children subject to this case: (Check only one box.)

I **DO NOT KNOW OF ANY PERSON(S)** not a party to this case who has/have physical custody or claim(s) to have custody or visitation rights with respect to any child subject to this case.

I **KNOW THAT THE FOLLOWING NAMED PERSON(S)** not a party to this case has/have physical custody or claim(s) to have custody or visitation rights with respect to any child subject to this case.

a. Name/Address of Person _____

Has physical custody

Claims custody rights

Claims visitation rights

Name of each child: _____

b. Name/Address of Person _____

Has physical custody

Claims custody rights

Claims visitation rights

Name of each child: _____

c. Name/Address of Person _____

Has physical custody

Claims custody rights

Claims visitation rights

Name of each child: _____

OATH

(Do Not Sign Until Notary is Present)

I, (print name) _____, swear or affirm that I have read this document and, to the best of my knowledge and belief, the facts and information stated in this document are true, accurate and complete. I understand that if I do not tell the truth, I may be subject to penalties for perjury.

Your Signature

Sworn before me and signed in my presence this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

Affidavit 1

**COURT OF COMMON PLEAS
COUNTY, OHIO**

Plaintiff/Petitioner		Case No. _____
v./and		Judge _____
Defendant/Petitioner		Magistrate _____

Instructions: Check local court rules to determine when this form must be filed. This affidavit is used to make complete disclosure of income, expenses and money owed. It is used to determine child and spousal support amounts. Do not leave any category blank. Write "none" where appropriate. If you do not know exact figures for any item, give your best estimate, and put "EST." **If you need more space, add additional pages.**

AFFIDAVIT OF INCOME AND EXPENSES

Affidavit of _____
(Print Your Name)

Date of marriage _____ Date of separation _____

SECTION I - INCOME

	<u>Husband</u>	<u>Wife</u>
Employed	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Employer	_____	_____
Payroll address	_____	_____
Payroll city, state, zip	_____	_____
Scheduled paychecks per year	<input type="checkbox"/> 12 <input type="checkbox"/> 24 <input type="checkbox"/> 26 <input type="checkbox"/> 52	<input type="checkbox"/> 12 <input type="checkbox"/> 24 <input type="checkbox"/> 26 <input type="checkbox"/> 52

A. YEARLY INCOME, OVERTIME, COMMISSIONS AND BONUSES FOR PAST THREE YEARS

	<u>Husband</u>	<u>Wife</u>
Base yearly income	\$ _____ 3 years ago 20 _____	\$ _____
	\$ _____ 2 years ago 20 _____	\$ _____
	\$ _____ Last year 20 _____	\$ _____
Yearly overtime, commissions and/or bonuses	\$ _____ 3 years ago 20 _____	\$ _____
	\$ _____ 2 years ago 20 _____	\$ _____
	\$ _____ Last year 20 _____	\$ _____

Affidavit 1

B. COMPUTATION OF CURRENT INCOME

	<u>Husband</u>	<u>Wife</u>
Base yearly income	\$ _____	\$ _____
Average yearly overtime, commissions and/or bonuses over last 3 years (from part A)	\$ _____	\$ _____
Unemployment compensation	\$ _____	\$ _____
Disability benefits		
<input type="checkbox"/> Workers' Compensation		
<input type="checkbox"/> Social Security		
<input type="checkbox"/> Other: _____	\$ _____	\$ _____
Retirement benefits		
<input type="checkbox"/> Social Security		
<input type="checkbox"/> Other: _____	\$ _____	\$ _____
Spousal support received	\$ _____	\$ _____
Interest and dividend income (source)		
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Other income (type and source)		
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL YEARLY INCOME	\$ _____	\$ _____
Supplemental Security Income (SSI) or public assistance	\$ _____	\$ _____
Court-ordered child support that you receive for minor and/or dependent child(ren) not of the marriage or relationship	\$ _____	\$ _____

Affidavit 1

SECTION II – CHILDREN AND HOUSEHOLD RESIDENTS

Minor and/or dependent child(ren) who are adopted or born of this marriage or relationship:

Name	Date of birth	Living with
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

In addition to the above children there is/are in your household:

_____ adult(s)
_____ other minor and/or dependent child(ren).

SECTION III – EXPENSES

List monthly expenses below for your present household.

A. MONTHLY HOUSING EXPENSES

Rent or first mortgage (including taxes and insurance)	\$	_____
Real estate taxes (if not included above)	\$	_____
Real estate/homeowner's insurance (if not included above)	\$	_____
Second mortgage/equity line of credit	\$	_____
Utilities		
o Electric	\$	_____
o Gas, fuel oil, propane	\$	_____
o Water and sewer	\$	_____
o Telephone	\$	_____
o Trash collection	\$	_____
o Cable/satellite television	\$	_____
Cleaning, maintenance, repair	\$	_____
Lawn service, snow removal	\$	_____
Other: _____	\$	_____
	\$	_____
TOTAL MONTHLY :		\$ _____

Affidavit 1

B. OTHER MONTHLY LIVING EXPENSES

Food		
○ Groceries (including food, paper, cleaning products, toiletries, other)	\$	_____
○ Restaurant	\$	_____
Transportation		
○ Vehicle loans, leases	\$	_____
○ Vehicle maintenance (oil, repair, license)	\$	_____
○ Gasoline	\$	_____
○ Parking, public transportation	\$	_____
Clothing		
○ Clothes (other than children's)	\$	_____
○ Dry cleaning, laundry	\$	_____
Personal grooming		
○ Hair, nail care	\$	_____
○ Other	\$	_____
Cell phone	\$	_____
Internet (if not included elsewhere)	\$	_____
Other	\$	_____
	TOTAL MONTHLY	\$ _____

C. MONTHLY CHILD-RELATED EXPENSES (for children of the marriage or relationship)

Work/education-related child care	\$	_____
Other child care	\$	_____
Unusual parenting time travel	\$	_____
Special and unusual needs of child(ren) (not included elsewhere)	\$	_____
Clothing	\$	_____
School supplies	\$	_____
Child(ren)'s allowances	\$	_____
Extracurricular activities, lessons	\$	_____
School lunches	\$	_____
Other	\$	_____
	TOTAL MONTHLY	\$ _____

Affidavit 1

D. INSURANCE PREMIUMS

Life	\$	_____
Auto	\$	_____
Health	\$	_____
Disability	\$	_____
Renters/personal property (if not included in part A above)	\$	_____
Other _____	\$	_____
TOTAL MONTHLY		\$ _____

E. MONTHLY EDUCATION EXPENSES

Tuition		_____
o Self	\$	_____
o Child(ren)	\$	_____
Books, fees, other	\$	_____
College loan repayment	\$	_____
Other _____	\$	_____
	\$	_____
TOTAL MONTHLY:		\$ _____

F. MONTHLY HEALTH CARE EXPENSES (not covered by insurance)

Physicians	\$	_____
Dentists	\$	_____
Optometrists/opticians	\$	_____
Prescriptions	\$	_____
Other _____	\$	_____
	\$	_____
TOTAL MONTHLY:		\$ _____

G. MISCELLANEOUS MONTHLY EXPENSES

Extraordinary obligations for other minor/handicapped child(ren) (not stepchildren)	\$	_____
Child support for children who were not born of this marriage or relationship and were not adopted of this marriage	\$	_____
Spousal support paid to former spouse(s)	\$	_____
Subscriptions, books	\$	_____
Entertainment	\$	_____

Affidavit 1

OATH

(Do not sign until notary is present.)

I, (print name) _____, swear or affirm that I have read this document and, to the best of my knowledge and belief, the facts and information stated in this document are true, accurate and complete. I understand that if I do not tell the truth, I may be subject to penalties for perjury.

Your Signature

Sworn before me and signed in my presence this ____ day of _____, _____.

Notary Public

My Commission Expires:

INSTRUCTIONS FOR POVERTY AFFIDAVIT
- PRINT OR TYPE -

1. Fill in whether this is a *GENERAL* division Common Pleas Court case (after a divorce or dissolution or visitation only action) or a *JUVENILE* Division case (the original order is out of a juvenile court)
2. Fill in the name of the county where the Court is.
3. Fill in the name of the Minor Child(ren) involved in this action OR the Plaintiff and Defendant as it appears on your papers.
4. Fill in the Case Number and the Judge of the action if you know it, leave it blank if you don't.
5. Fill in your name.
6. Sign your name ONLY IN FRONT OF A NOTARY if the affidavit is correct.

MAKE 2 COPIES AND TAKE WITH THE MOTION TO THE COURT

PLEASE NOTE: FILING WITH A POVERTY AFFIDAVIT DOES NOT MEAN YOU DO NOT HAVE TO PAY COURT COSTS. IT ONLY MEANS THAT YOU DO NOT HAVE TO PAY IT IN ADVANCE. THE COURT WILL DETERMINE WHO IS TO PAY COURT COSTS AT THE TIME OF THE HEARING.

IN THE COURT OF COMMON PLEAS
1) GENERAL OR JUVENILE DIVISION
2) NAME OF COUNTY, OHIO

In The Matter of:

3) NAME OF CHILDREN

3) NAME OF PLAINTIFF,

Plaintiff,

vs.

3) NAME OF DEFENDANT

Defendant.

Case No. **4) CASE NUMBER**

Judge _____

AFFIDAVIT OF INABILITY
TO PREPAY COURT COSTS.

I, **5) FILL IN YOUR NAME**, being first duly cautioned and sworn, depose

and state:

1. That I am a party in interest in the above-captioned action; that I have a meritorious cause of action but am unable to give security or a cash deposit to secure costs.
2. That I am unable to afford the hiring of an attorney to represent me in this matter.
3. That I own no liquid assets or property of any substantial value to prepay costs.

**6) SIGN YOUR NAME IN FRONT
OF NOTARY ONLY**

Sworn to and subscribed in my presence this _____ day of _____,
20_____.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ DIVISION

_____ COUNTY, OHIO

In The Matter of:

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

Case No. _____

Judge _____

AFFIDAVIT OF INABILITY TO
PREPAY COURT COSTS

I, _____, being first duly cautioned and sworn,
depose and state:

1. That I am a party in interest in the above-captioned action; that I have a meritorious cause of action but am unable to give security or a cash deposit to secure costs.
2. That I am unable to afford the hiring of an attorney to represent me in this matter.
3. That I own no liquid assets or property of any substantial value to prepay costs.

Sworn to and subscribed in my presence this _____ day of _____,
20_____.

NOTARY PUBLIC

CHANGE OF CUSTODY FACT SHEET

A court cannot change custody from you to the other parent unless certain requirements of Ohio law, Revised Code Section 3109.04, are met. The court must review certain facts in deciding whether to change custody.

The court must decide if there has been a “change of circumstances” of the child or the custodial parent (or a parent in shared parenting plan). The change of circumstance must have occurred after the last custody decree. (Issues the court has heard and decided cannot be raised again.) Such issues might include the mental instability of the custodial parent, frequent changes of residence, abuse or neglect of the child or his education or substance abuse. Other issues may be considered. However, the situation must have a direct, adverse impact on the child. Frequently, a parent seeking custody will try to combine a series of minor events or situations to show that there has been a detrimental change in circumstance.

Once the court finds that a “change of circumstances” has occurred, the court must determine if:

- a) the present custodian has agreed to the change of custody;
- b) the child has been placed in the other parent’s home by the custodial parent and is integrated into that home; or
- c) the harm likely to be caused by such a change of environment is outweighed by the benefit of placing the child in the other home.

Ohio law creates a presumption in favor of retaining the present custodian; however, sufficient evidence can rebut this presumption. The court must consider the following factors in deciding what is in the child’s “best interest”:

- 1) the wishes of each parent;
- 2) the wishes and concerns of the child;
- 3) the child’s interaction with the parents, siblings, and other people who impact the child (neighbors, friends, teachers);
- 4) the child’s adjustment to the home, school and community;
- 5) the mental and physical health of all persons involved;
- 6) the parent most likely to honor and facilitate visitation;
- 7) whether a parent has failed to make ongoing child support payments;
- 8) whether the custodial parent has willfully denied visitation to the other parent;
- 9) whether either parent is planning to establish a residence out of state; and
- 10) whether either parent has abused children or been a perpetrator of domestic violence.

Any child who is mature may state an opinion as to who should be the legal custodian. The child’s wishes are one of many factors in deciding what is in the child’s “best interest.” The court is permitted by statute to interview a child in chambers (privately) if either parent requests such an interview.

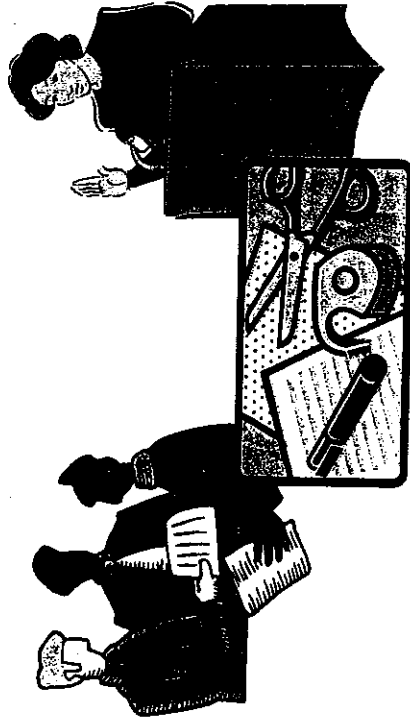
You may ask the court to appoint a guardian ad litem (GAL). A GAL will investigate and report to the court. The GAL will talk with parents, teachers, counselors and others and review records. The GAL also will talk with the child. You should cooperate with the guardian ad litem who has been appointed on the case. You should provide the names and telephone numbers for your child's teachers (last year and this), counselors, pediatrician, and others who may have knowledge of your child's needs and environment.

Court Hearing on Change of Custody

How to Prepare

What You Must Prove

How to Present Your Case at the Hearing



What You Need To Prove

Since you filed the Motion for Change of Custody, you must prove the reason or reasons for that request. You must convince the Judge or Magistrate that:

- circumstances have changed regarding the child or residential parent since the original custody order granting your ex-spouse custody
- as a result of those changes, it is now in the best interests of the child or children that you get custody
- the change of environment would cause more good than harm to the child or children.

AND

AND

Examples of circumstances that justify a change in custody:

Your ex-spouse is:

- currently in jail or has been convicted of a crime;
- has been charged with child neglect or abuse;
- is drinking or using drugs excessively; or
- is in the hospital for some physical or mental incapacity.

Your child:

- is not doing well in school; or
- has been declared unruly or delinquent.

If you and your ex-spouse agree on the change of custody, your testimony and the testimony of your ex-spouse should be enough to get custody changed.

If you and your ex-spouse do not agree on the change of custody, you must present evidence to show that your children will be better off in your custody.

Show Up for the Hearing On Time !

The Court will set a time and date for a hearing on your case and let you know this date immediately after you file your court papers or by mailing you a reminder notice. **Mark this date in your calendar.** If you do not show up at the hearing, the court will automatically rule in favor of your ex-spouse.

REMEMBER



If your ex-spouse cannot or will not appear in court, have him/her write a paper stating that he/she agrees to the change of custody. Get that statement notarized (sign the paper in front of a notary public who will also sign and stamp the document).

REMEMBER



If you move your home any time after filing the motion to modify custody, you must notify the court of your new address. If you don't, the Court will have no way of letting you know the time and date of the hearing.

What to Bring to Court

Documents and other evidence that prove that a change of custody should occur:

- school records for the child
- certified copy of judgment entry of conviction against your spouse (proof convicted of crime)
- certified copy of your child's adjudication of delinquency

Witnesses who will testify on your behalf. Only use witnesses who will testify in your favor. You can

testify on your own behalf. If your children are old enough, they can also testify that they would rather live with you.

Financial information, including proof of income.

Bring at least one of the following:

- a letter from your welfare office or employer
- your paycheck stub and tax return
- letter from the Social Security Administration

TIP

If your children do not want to testify in court, ask the Judge or Magistrate to speak to the children in his or her office alone after he has heard all of the other witnesses. The Judge probably will not let either you or your ex-spouse hear what the children say.

What to Do at the Hearing

Explain generally to the Judge why it is that you believe custody should be changed and why that change would be best for your child or children. Your ex-spouse may be given a chance to summarize his/her reasons for opposing the change of custody.

Call your first witness. Don't forget—you can call yourself as a witness. If you have more than one witness, you can call them in any order you want to.

If you are the witness, tell the Judge or Magistrate why you believe that custody should be changed (include the reasons stated in your Motion). Also explain why this change is in the best interests of your child or children.

Only testify to things that you know or have observed yourself.

When someone else is the witness:

- Ask the witness to tell the court his/her name and relationship to you and/or your ex-spouse.
- Question the witness about the topics or incidents that you want him/her to talk about.

After each of your witnesses testify, your ex-spouse or his/her attorney will have a chance to question that witness as well.

When you are questioned:

- Listen carefully to each question and make sure you understand it before you answer it. If you do not understand the questions or are not sure what you are being asked, say so.
- Do not volunteer unnecessary information, only answer the question that is asked.
- Answer all questions truthfully.
- Only testify about things you personally saw or heard or know from your own experiences.

After you have offered all of your witnesses, your ex-spouse has the right to present witnesses, also.

After each of your ex-spouse's witnesses testify, you will have a chance to ask him/her questions as well. All of your questions must be about subjects raised by your ex-spouse's questions. The Judge can also question these witnesses.

After all the witnesses have testified, you can summarize all of the testimony for the Judge and briefly state again why you believe custody should be changed. Your ex-spouse will be given the opportunity to do the same.

Rules to Remember

1. The judge is more interested in facts than in your opinions. If you can prove something, do so! For example:

- Rather than telling the judge that your ex-spouse is no good for your child, prove it! Get a copy of his/her school records showing that the child's grades have dropped since living with your ex-spouse.
 - Rather than telling the judge that your ex-spouse is a violent person, prove it! Get a certified copy of your ex-spouse's judgment entry of conviction for assault or domestic violence, or have a witness testify that he/she has seen your ex-spouse act violently.
 - Rather than telling the judge that you are a reformed drug addict, prove it! Get your counselor or social worker to testify that you have been in treatment for one year and sober for 12 months.
2. Be professional and control your temper at all times! If you ex-spouse tells horrible lies about you, don't get angry and start yelling at him/her. This only makes you look bad.

Final Decision

After the Judge or Magistrate has heard all of your testimony and comments, he/she will:

- come to a decision, sign a judgment entry, and give you a copy of the signed entry or send a copy to you by mail; or
- wait to make a decision, and mail a copy of the judgment entry to you.

Prepared by:

NAPIL Equal Justice Fellow, OSLSA

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TIP

When questioning witnesses:

- Keep your questions short and open-ended. For example, "Have you ever seen my ex-husband interacting with our children? Can you tell me what you observed?"
- Don't argue with the witness. If they don't answer as you expected, just move on.

REMEMBER



The topics your witnesses discuss should support your reasons for wanting custody changed or show that the change is in the best interest of the children.

CAUTION

Witnesses generally cannot testify about what another person told them. This is called

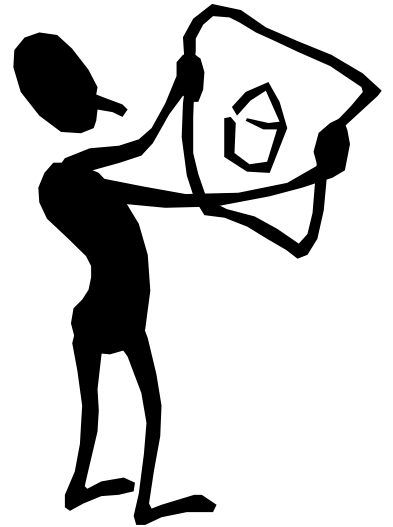
"hearsay." One exception to this

rule is that witnesses CAN testify to what they have heard your ex-spouse say, and sometimes to what has been said by other people when your ex-spouse was present.



Representing Yourself in Court?

How to Use Photographs,
Letters, Business Records,
and Other Evidence to Help
Prove Your Case



What is Evidence?

Evidence is anything you use to prove your claim. Evidence can be a photograph, a letter, documents or records from a business, and a variety of other things. All evidence that is properly admitted will be considered by the judge.

Your case probably will be decided by a judge. If there is a jury, it will look at admitted exhibits during its deliberations.

For example:

- **In a request for change of custody**, the child's school records could be introduced as evidence that the child's grades have dropped or he/she has missed a significant amount of school while living with the other parent.
- **In a domestic violence or stalking civil protection order case**, a photograph of any injury you suffered or a threatening letter written by your abuser may help your case.
- **In a divorce case**, a copy of tax return documents or documents showing who has title to a car may be introduced as evidence.

Why Use Evidence?

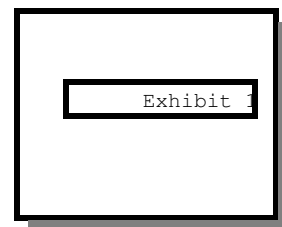
- ➊ Evidence is more **believable and trustworthy** than what a person says. For example, in a domestic violence case, if you say that your ex-boyfriend has left you threatening messages but he testifies that this is an absolute lie, the judge may not know whom to believe. However, if you submit a tape recording of one of these messages the judge will be more likely to believe you.
- ➋ Evidence may make something **easier to understand**. “A picture is worth a thousand words.” Some things are hard to explain in words, while a drawing or photograph is descriptive and clear.

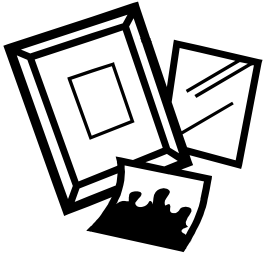
How Do I Present Evidence to the Court?

Each court is different, but in most courts, you can't just walk into court with a photograph or document and show it to the judge or jury. There are many things you must do before the court will even look at the evidence you have. Further, there are many different types of evidence, and the rules for using each type of evidence are different. Once you follow these rules, your evidence will be “admitted”.

Steps to Follow to Admit Evidence

- ➔ Before you ever go to court, think about the evidence you want to use to prove your case. Mark each piece of evidence with an exhibit number (attach a sticker labeled “Exhibit 1,” “Exhibit 2,” etc.)
- ➔ Bring these marked Exhibits with you to court. When you want to show the court one of the exhibits, do the following things:
 - ➊ Show the exhibit to the other party or the other party's attorney.
 - ➋ Then “lay the foundation” for the evidence. To do this, you must show that the evidence is relevant to your case and authentic (not a forgery). Depending upon what you want the court to consider, follow the rules listed in this pamphlet for “laying the foundation” - explaining why and how the exhibit is connected to your case.
 - ➌ Either you or your witness must testify about the exhibit.
 - ➍ Ask the court to admit the exhibit into evidence. The other party or attorney may object to the exhibit for some reason. Try to answer these objections as best you can. If you can't, let the judge decide.
 - ➎ If there are no objections from the other party, or the judge has ruled in your favor, ask the court to “admit the Exhibit into evidence.”





Laying the Foundation for Photographs

1. Explain why a photo is connected to your case. For example:
“This photo shows the injury I suffered after my ex-boyfriend punched and kicked me.”
2. Explain how you know about what is in the photo. For example:
“I had my sister take this photograph within 2 hours after the incident occurred and went to get the film developed myself the following day.”
3. Explain that the photo is timely. For example:
“At the bottom right-hand corner of the photo is the date on which it was taken. As you can see, the photo was taken on the same day that the incident occurred, which is also the same day the police arrested my ex-boyfriend.”
4. Explain that the photo “fairly and accurately” shows what is depicted in the photo as it appeared on the date relevant to your case. For example:
“This photo is a fair and accurate depiction of how my face and side looked two hours after the incident and for the next two weeks.”

TIP

When using photographs, it is best to use color photos and enlarge them, if possible.

Foundation for Letters

1. Explain why the letter is connected to your case. For example:
“This is the letter that I received from my ex-boyfriend shortly before he beat me up.”
2. Explain when and how you got the letter. For example:
“This letter was shoved under the door to my apartment some time before 6 p.m. on Wednesday, January 2, 2001. I found it on the floor when I came home from work that day.”
3. Prove that the signature is that of a party to the case. Ways to prove this:
 - **Explain to the court: that you are familiar with the other party’s signature, how you came to know that person’s signature, and that it is your opinion that the signature on the letter is the other party’s signature.**



- **Call a witness who is familiar with the party’s signature, and ask the witness:**
“Do you know the other party in this case? Are you familiar with the party’s signature? How?”

Then show them the letter and ask “Is this the other party’s signature?”

- **Call the person who signed the letter.**
Show the witness the document, and ask the witness if that is his or her signature. (Only do this if you think they will admit to it).

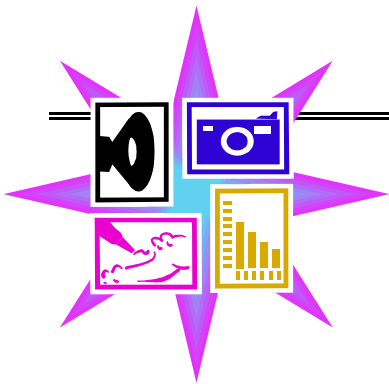
4. Explain that the letter is in the same condition now as when you received it. (“The letter was kept in a safe place and nothing has been changed since I received it.”)

TIPS

Do not read anything from the letter until the court has admitted it into evidence.

If the other party objects to the letter saying that it is hearsay, respond by saying: “The letter shows the letter writer’s state of mind.”

Laying the Foundation for Documents and Records From Businesses



1. Explain how the document or record is related to your case.
2. Call a witness from the business/agency that produced the record, ask the witness what his or her responsibilities are at the business/agency and how he or she is involved in record keeping.

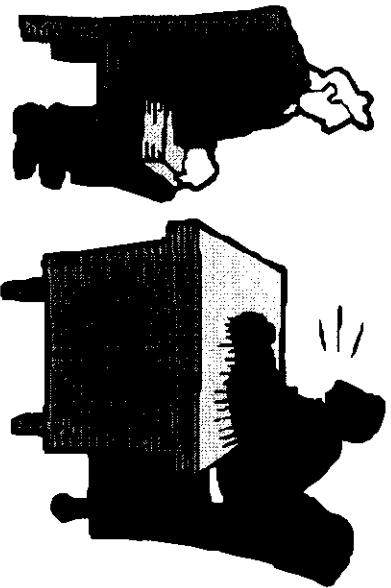
3. Show the witness the record and ask him/her if it is a record from the business/agency.

4. Ask the witness:
 - Was the record made by a person with knowledge of the acts or events appearing on it.
 - Was the record made at or near the time of the acts or events appearing on it.
 - Is it the regular practice of the business/agency to make such a record, and
 - Was the record kept in the course of a regularly conducted business activity.

TIP

If the record is certified (a statement is attached to the record stating that it is in fact a record from a public agency or it has an agency seal on it) you do not need to do anything before you show it to the judge. Just let the judge know it is certified.

How to Handle Witnesses When You Are Representing Yourself



When Should I Bring a Witness to Court?

It is always a good idea to bring a witness with you simply to tell the Court that you are an honest person or to confirm that what you are telling the Court is true.

In most cases that come before the Court, both sides are telling a different version of the same story. The Court knows that each side may be telling the version that best serves his or her own interests. The testimony of a witness (someone not involved in the case directly) will make your side of the story more believable.

In some types of cases, you are required by law to bring a witness. For example, in divorce cases, many Courts require a that you bring a witness to testify that you are a person known to have good character in your community (that you are an honest and good person).



What If My Witnesses Can't Come to the Hearing?

Your witness must come to the hearing! A handwritten note from a person will not be accepted by the Court—the witness must show up at the hearing and testify live. Live testimony is required so that the other side has an opportunity to ask questions of your witness as well.

To make sure your witnesses will show up, make sure you call them the week of the hearing and again the day before the hearing to remind them.



Who Should I Bring as a Witness?

→ People who know you and your reputation in the community.

→ People who know about the situation that brought you to the Court from things they have seen or heard. Only use witnesses after you have talked to them and are sure that they will tell the Court what is helpful to your case.

While it is okay to have a friend or family member be a witness for you, it is always best to have someone who does not favor one side over the other. With family members and friends, the Court may assume that the person is testifying for you simply because they like you and want you to win.



How Do I Prepare My Witnesses?

→ Think about what is the most valuable thing each witness could say on your behalf.

→ Write down a few questions that will help the witness get the idea across.

→ Practice with your witness ahead of time, so you know what answers will be given.





What Should I Do With My Witnesses at the Court Hearing?

- Start by asking the witness their name and address.
- If your witness is a professional, you should ask what their job is, what their educational degrees are, and how long they have been doing their job.
- Then ask specific questions about what information they have about your case.

With your own witness, it is not okay to ask "leading questions." Leading questions give the witness the answer you want them to say.

You must keep your questions open-ended. *Open-ended questions are Who, What, Where, When, How, and Why questions.*

Examples to use:

- How would you describe my husband's condition when he dropped the children off at your house?
- What did my husband do when he would pick the children up from day care?

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What About the Other Side's Witnesses?

The other side will question them first. The judge will give you an opportunity to "cross examine" them (that is, ask them your own questions). You do not have to ask any questions if you think the witness will only repeat what was already said.

When asking questions of the other side's witnesses, you are allowed to ask leading questions. Leading questions have Yes or No answers.

Examples to use:

- Was my husband ever drunk when he dropped the children off at your house?
- Didn't my husband yell and swear at the children when he came to pick them up from day care?

~ ~ ~

Rules To Follow When Questioning Witnesses

- Keep your questions short.
- Never ask a question when you do not know what the answer will be—the answer could hurt your case more than help it.
- If you don't get the answer you were expecting from a witness, do not argue with them or accuse them of lying. It makes you look bad before the judge. Remember . . . politeness at all times!
- If a witness refuses to answer a question, ask the judge to make the person answer.

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Samples of Questions to Ask My Witnesses

- What is your name?
- What is your address?
- How long have you known me?
- During the time that you have known me, have you become familiar with my reputation in the community?
- Do I have a reputation for good character and honesty in the community?
- From what you know about me, am I someone the Court can rely upon to tell the truth?
- You have heard what I have said in Court. To the best of your knowledge, do you know it to be true?
- Please explain how you know this to be true.

Prepared by:

NAPIL Equal Justice Fellow
Ohio State Legal Services Association
September 2000

In addition to the forms in this packet, you may find additional forms and informational pamphlets to help you on the internet at the following website:

www.ohiolegalservices.org

Click on “For the Public”

Locate and click on the legal area that you would like to review – use the “search this site” box if you are not sure which area to review

You can also search this website to learn how to access the local legal services program for your area