North Penn
LEGAL SERVICES

Family Law Handbook

This handbook provides useful information about common Family Law issues. If you need Family Law help, this handbook has good suggestions about some of the most common areas of Family Law.

TOPICS INCLUDE

- Marriage
- Custody
- Child Support
- Divorce

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Introduction

Purpose

This handbook provides useful information about common Family Law issues. If you need Family Law help, this handbook has good suggestions about some of the most common areas of Family Law. If you are already involved in a Family Law court case, this handbook discusses common procedures in your county. This handbook also gives answers to commonly asked questions.

Disclaimer (a legal caution)

This handbook is a guide. It does not give legal advice. It is a general statement of the law. It should be used ONLY as a guide. It should not be considered legal advice because everyone's case is different and family law cases may be different from one county to the next. Also, family laws change over time. This handbook may not be reprinted every time family laws change. If you have a specific concern or legal problem, do not rely on this handbook. Be sure to seek the advice of an attorney about the facts of your case.

Need Legal Help?

A lawyer can help you understand the laws that may apply to your situation. If you are low income, you may qualify for free legal help. If you reside in Northeastern or North Central Pennsylvania, please call North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

Online forms and resources

Child Custody forms are available at **www.PALawHELP.org** Select the "Children & Families" section, and choose "Child Custody and Guardianship."

Child Custody

What is child custody?

Child Custody is the legal right to keep, control, guard, and care for a minor child and includes the terms "legal custody" and "physical custody." Pennsylvania law defines a minor child as any unemancipated individual less than 18 years of age.

What is the difference between legal and physical custody?

When someone files a custody action, the courts will generally determine legal custody and physical custody. Plaintiffs (people who file custody complaints) and Defendants (people who are responding to a custody complaints) are called "parties."

Legal Custody is the right to make major decisions on behalf of the child, including but not limited to: medical, dental, religious, and educational decisions.

Physical Custody is defined as the actual physical possession and control of a child. In other words, who is the child living with or staying with at any given time?

BEST INTERESTS OF THE CHILD

Courts use a legal standard called the "best interests of the child" when making decisions about legal and physical custody. In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving substantial weighted consideration to the factors specified under paragraphs (1), (2), (2.1), and (2.2) which affect the safety of the child, including the following:

(1) Which party is more likely to ensure the safety of the child.

(2) The present and past abuse committed by a party or member of the party's household, which may include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(2.2) Violent or assaultive behavior committed by a party.

(2.3) The level of cooperation and conflict between the parties, including:

(i) which party is more likely to encourage and permit frequent and continuing contact between the child and the other party or parties if contact is consistent with the safety needs of the child; and

(ii) the attempts by a party to turn the child against the other party, except in cases of abuse where reasonable safety measures are necessary to protect the safety of the child. A party's good faith and reasonable effort to protect the safety of a child or self shall not be considered evidence of unwillingness or inability to cooperate with the other party. A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party.

(3) A willingness and ability of a party to prioritize the needs of the child by providing appropriate care, stability, and continuity for the child, considering the parental duties performed by the party on behalf of the child in the past and whether the party is willing and able to perform the duties in the future, and attend to the daily physical, emotional, developmental, educational and special needs of the child.

(4) The need for stability and continuity in the child's education, family life and community life, except if changes are necessary to protect the safety of the child or a party.

(5) The child's sibling and other familial relationships.

(6) The well-reasoned preference of the child, based on the child's developmental stage, maturity and judgment.

(7) The proximity of the residences of the parties.

(8) Each party's employment schedule and availability to care for the child or ability to make appropriate child-care arrangements.

(9) The history of drug or alcohol abuse of a party or member of a party's household.

(10) The mental and physical condition of a party or member of a party's household.

(11) Any other relevant factor.

Exception – A factor shall not be adversely weighed against a party if the circumstances related to the factor were in response to abuse or necessary to protect the child or the abused party from harm and the party alleging abuse does not pose a risk to the safety of the child at the time of the custody hearing. **Temporary housing instability as a result of abuse** shall not be considered against the party alleging abuse.

Determination – No single factor shall by itself be determinative in the awarding of custody. The court shall examine the **totality of the circumstances,** giving weighted

consideration to the factors that affect the safety of the child, when issuing a custody order that is in the best interest of the child.

Are there different types of physical custody arrangements that a court can order?

When deciding your case, there are many different custody arrangements that the court can determine is best for your child. A party in a custody case can be granted the following:

Shared Physical Custody: The right of more than one individual to assume physical custody of the child, each having significant periods of physical custody with the child. Time may be split 50/50, or one party may have slightly more, but parenting time is approximately equal.

Primary Physical Custody: The right to assume physical custody of the child for a majority of the time.

Partial Physical Custody: The right to assume physical custody of the child for less than majority of time. This could be anywhere from a few hours to a couple of days with overnight periods each week. Short periods of partial physical custody may sometimes be referred to as "visitation."

Sole Physical Custody: The right of one individual to exclusive physical custody of the child. This arrangement may be ordered when the other party is incarcerated or otherwise unable to parent.

Supervised Physical Custody-Visitation: Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interactions between the child and individual with those rights.

Are there different types of legal custody arrangements that a court can order?

Remember, legal custody is not about who has the child in their care, it is only about making important decisions for the child. Legal custody can only be *sole* or *shared*.

Shared Legal Custody: The right to make major decisions for the child is shared by two or more parties. Shared Legal Custody is awarded in the majority of cases, especially between parents.

Sole Legal Custody: Only one party has the right to make major decisions for the child. Sole legal custody is usually limited to situations where the other party is unavailable or lacks the capacity to make sound decisions (i.e. due to substance abuse or mental illness).

Sole Legal Custody may also be awarded for limited purposes, usually to resolve areas of contention between the parties where they cannot come to a mutual agreement. For instance, where one party unreasonably withholds their consent for a passport for the child, the other party may obtain sole legal custody for purposes of obtaining the passport only. In that case, legal custody would remain shared in all other matters.

Other important custody terms

Relocation: Change in residence of the child which significantly impairs the ability of the non- relocating party to exercise custodial rights.

Parental Duties: Includes meeting the physical, emotional and social needs of the child.

Pro Se: When a party represents themselves, without the assistance of a licensed attorney. It may involve filing papers or appearing at a conference or hearing on your own.

Petition: A written request presented to the Court that states specific facts and asks the Court to take some specific action on a case. If you file a petition, you are the "Petitioner" and the other party is the "Respondent."

Mediation: The process by which a neutral mediator (either a lay person or lawyer) assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. Any agreement reached in mediation must be based upon the voluntary decisions of the parties. The mediator does not make the decisions.

Court Order: A legal document signed by a Judge requiring a person to do something or requiring a person not to do something. A court order is THE LAW.

Contempt of Court: Willfully failing to follow a court order.

Modification: A change to an Order of Court. Court orders may be changed after a hearing or by agreement of the parties. Custody orders may always be subject to change if it is in the child's best interest to do so.

Emancipation: Independent status granted to a child under the age of 18 who is married or has otherwise been determined by the Court to be independent of his or her parents or guardian(s).

Who can file for custody?

Most of the time custody actions involve two parents. But, custody actions may also be brought by grandparents, great-grandparents, nonrelatives or the state. The legal right to participate in a custody case is called **standing**. Just because a person has standing to file for custody, that does not mean that they have the right to be awarded any form of custody. Having standing just means that they have the right to ask the court to hear their petition and make a determination.

1. **Parents vs. Parents:** In cases where one parent files against another, there shall be no presumption that custody should be awarded to a particular parent. In other words, both parents stand on equal footing.
2. **Parents vs. Grandparents or Great-Grandparents:** In any child custody case between parents and a third party, including grandparents and great-grandparents, there is a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

Under Pennsylvania law, grandparents may file for primary physical custody or partial physical custody of a child under certain circumstances. BUT grandparents or great-grandparents DO NOT have an automatic right to file for custody.

A Grandparent or Great-Grandparent may file for ANY form of physical or legal custody if:

- They are in loco parentis - have been acting like the child's parent for 12 consecutive months;

OR

- They are not in loco parentis but satisfy the following requirements:
  1. The relationship began with the consent of a parent or under court order; **AND**
  2. The grandparent or great-grandparent assumes OR is willing to assume responsibility for the child, **AND**
  3. ONE of the following is met:
     - The child has been declared dependent by a judge;
     - The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; **OR**
     - The child resided with the grandparent or great-grandparent for at least 12 months and is removed from home by parents (IF THE GRANDPARENT OR GREAT-GRANDPARENT FILES FOR CUSTODY WITHIN SIX (6) MONTHS OF REMOVAL);

OR

- They are able to prove all of the following:
  1. They are willing to assume responsibility for the child;
  2. They have sincere interest in the child, (determined based on the nature, quality, extent, and length of their involvement in the child's life); **AND**
  3. The parents no longer maintain control over the child.

A Grandparent or Great-Grandparent who does not meet the above requirements may file for **partial physical custody** or **supervised physical custody** if ONE of the following is met:

1. A parent (grandparent's child) is deceased; or
2. The parents initiated a custody proceeding and do not agree whether the grandparents should have custody; or
3. The child resided with the grandparent or great-grandparent for twelve (12) months AND THE GRANDPARENT OR GREAT-GRANDPARENT FILES FOR CUSTODY WITHIN SIX (6) MONTHS OF REMOVAL.

Note: Grandparent and Great-Grandparent custody is an important and complicated issue. You should speak with an attorney. You can call NPLS at 877-953-4250 to see what services are available in your county or contact your local bar association's lawyer referral program.

3. **Parents vs. Third parties:** Third parties can file for custody, partial custody, or supervised partial custody of a child. A third party may have custody rights when they have acted like a parent or stood "in loco parentis" (like a parent) for twelve (12) consecutive months. A third party may also have custody rights when the parents no longer maintain control over the child, and they have a sincere interest in the child's welfare and have or are willing to assume responsibility for the child. In determining whether there is a sincere interest in the child's welfare, a court will look at the nature, quality, extent, and length of the third party's involvement in the child's life.
4. **Parents vs. the State:** The state may obtain custody of a child in three ways:
    1. By consent of the parent or guardian – not to exceed 30 days. If the county agency wishes to extend custody beyond 30 days, they must file a dependency action;
    2. Through a dependency action – when the county agency, usually the child protective services department, is able to prove that the child is currently without proper parental care or control and the care and control needed is not immediately available; or
    3. A delinquency adjudication – a criminal act by the child.

Dependency and delinquency cases are generally separate from custody matters and operate under different laws. To learn more, see the chapter of this handbook about Dependency.

When should I file for custody?

Sometimes parents can work out their differences. However, there are often situations that can only be resolved by the courts. You should consider filing a petition if:

1. You are being denied all contact with your child;
2. You or your children are survivors of domestic violence or any other form of abuse or neglect;
3. The other parent or party is threatening to take your child and not give them back; or
4. The other parent or party is planning on moving out of the county, state, or country with the child and you do not want the child to move.

For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.

Are there situations where I may not want to file for custody?

You may not want to file for custody if:

1. Your child is living with you, and you have been able to work out arrangements with the other parent, and the other parent is not likely to take and keep your child.
2. You are satisfied with your current custody arrangement. If you file you may be "opening the door" for the other parent. For example, if one parent has not seen

the child for a long time and you file for custody, the court will likely grant partial custody or supervised partial custody rights to the other parent.

3. You already have a protection order that has a provision for custody that you are satisfied with. **REMEMBER,** the custody provision in your protection order expires the same time your protection order expires.

For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.

In what county do I file for custody of my child?

Child custody cases are filed in the county where the minor child has been living for a period of six (6) months, or since the child's birth if the child is less than six (6) months old.

If you are the custodial parent and you and the child have not been residing in your current county for six (6) months, you may need to file in the county where you previously lived.

Where do I need to go to file for custody?

Different counties have different child custody procedures. You should start by going to or calling the family court administrator's office, the civil clerk of court or the Prothonotary's office.

Please review the child custody insert in this handbook for specific information on where to file in your county.

Is there a fee for filing for custody?

Yes. The filing fee may range from $150–$250 dollars, depending on where you are filing.

However, if you are low-income, you may request a waiver of the fees by completing what is called an *In Forma Pauperis (IFP)* petition. If a judge grants your request, the IFP Order allows a low-income party to file their child custody paperwork for free. You will need to provide the Court with information concerning your monthly income and expenses in your petition.

Please review the child custody insert in this handbook for specific information on how to file an IFP petition.

What information do I need to file? What do I need to say in my custody paperwork?

You are the Plaintiff and the other parent, third party, or grandparent is the Defendant(s). This is the information you will need for your custody paperwork:

1. Your name and address;
2. The name and addresses of all the defendant(s);

REMEMBER, even if your child is living with a grandparent and the other parent is not involved, you must also list him or her as a defendant.

3. The name and birth date of the child, and with whom the child is currently living;

4. What relationship you have to the child: whether it be parent, grandparent etc.;
5. Whether you were married when the child was born (if you are a parent of the child). If you were married, state to whom you were married;
6. Every address at which the child has lived over the past five (5) years, to the best of your knowledge, and with whom the child lived at each address;
7. Everyone currently living with you, including:
   - Their full names,
   - Their dates of birth,
   - Criminal records, including past convictions and any currently pending charges,
   - Any past or current involvement with *any* children and youth agency, and
   - Any final protection orders that have been entered against them by a court after conducting a hearing and making a finding (in other words, not an order that was entered by agreement);
8. What relationship each defendant has to the child;
9. Everyone, to the best of your knowledge, currently living with the defendant(s);
10. If you have a custody order from the same county, a different county or a different state, you will need to write down the county and case number and attach a copy of the order to your custody paperwork;
11. Whether or not you or the children have been abused or neglected;
12. Every person that you believe has or may have rights to the child;

An example of a person who may have rights to the child is a grandparent or third party, if the child lived with them and they acted like the child's parent for a significant period of time.

13. List ANY criminal and/or abusive history of the party or any other adult living at the parties' residence; and
14. Finally, you will need to tell the court what custody plan you are suggesting for the child and why that plan is in the child's best interests. For example, if you want the court to order that you have primary physical custody, you must give some reasons why it is in the child's best interests.

It is important to know that there are certain confidentiality requirements when filing your petition. DO NOT list social security numbers, financial account numbers, driver license numbers, state identification numbers, the names of children, or an abuse victim's contact information in your petition.

Depending on your county, NPLS may be able to assist you in your preparation of the necessary paperwork for your case. You can call NPLS at 877-953-4250 to see what services are available in your county. If no services are available, you can go to PALawHELP.org select the "Children & Families" section, and then choose "Child Custody and Guardianship."

How is the Defendant notified that I filed for custody?

After you file your custody paperwork, you are required to serve the other party. You will usually serve the other party by mail.

You **must** send the custody paperwork by certified mail, restricted delivery, return receipt requested, and also by regular first class mail.

You **must** keep the green certified mailing card to prove you mailed the custody paperwork by certified mail.

Although you may be able to obtain a waiver of the filing fees, you are responsible for the costs of serving the paperwork. Some counties prefer you send one copy by certified mail, return receipt requested, which is an extra fee. Postage costs range from approximately $16 to more than $20 for mailing. Again, refer to the insert for information about your county's procedures.

You should serve the Defendant immediately after filing your papers. If you fail to serve the Defendant, your hearing may be continued or dismissed.

What if I or someone living in my home has been arrested, charged or convicted of a crime?

Criminal arrests, charges and convictions are becoming a bigger and bigger part of child custody cases.

Pennsylvania changed its child custody law in January 2011. The new law requires that where a party seeks any form of custody, the court must consider whether that party of member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in the section below or an offense in a different state similar to the offenses below. In August 2024, Pennsylvania heightened its safety standards and added additional offenses that the court must consider.

The court must consider the criminal conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that party.

Although all offenses are listed below, some of the most common offenses are:

- Protection Order Violations;
- Simple Assault;
- DUI;
- Possession, sale, delivery or manufacture of drugs; and
- Terroristic Threats

CRIMINAL CONVICTIONS OR CHARGES BY YOU OR ANY MEMBER OF YOUR HOUSEHOLD THAT YOU MUST TELL THE COURT WHEN SEEKING ANY FORM OF CUSTODY:

- Contempt for violation of a protection order or agreement;
- Driving under the influence of alcohol or controlled substance;
- Possession, sale, delivery, manufacturing or offering for sale any controlled substance or other drug or device;

- Criminal Homicide, Simple Assault, Aggravated Assault, Recklessly Endangering Another Person, Terroristic Threats, Stalking, Kidnapping, Unlawful Restraint, or False Imprisonment;
- Interfering with custody of children;
- Luring a child into a motor vehicle or structure;
- Human trafficking;
- Rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent exposure, sexual abuse of animal, sexual abuse of children, sexual exploitation of children, or incest;
- Sex offender registration non-compliance;
- Arson and related offenses;
- Concealing the death of a child;
- Corruption of minors, unlawful contact with a minor or endangering the welfare of children;
- Trading, buying, selling or dealing infant children;
- Cruelty to animal, aggravated cruelty to animal, animal fighting, possession of animal fighting paraphernalia;
- Prostitution and related offenses;
- A finding of abuse by a Children and Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction.

What happens after I file my custody paperwork? What is the difference between mediation and a custody conference?

In most counties, you and the Defendant will attend a custody conference or mediation, or both, prior to going before a judge.

Mediation

In some counties, you and the defendant will be directed to appear before a trained mediator. A mediator is either a lay person or an attorney. The mediator works with the parties to reach an agreement.

If you and the other party reach an agreement, the mediator will write down the agreement. A judge will sign your agreement making it an official child custody order. If the parties are unable to come to an agreement, your case will be scheduled for a child custody conference.

If you are a victim of domestic violence, your county should allow you to skip mediation due to the domestic violence between you and the Defendant. You are not required to have a current PFA. You must certify that you have been a survivor of domestic violence recently, within the last 24 months.

Custody Conference

In other counties, you and the Defendant will be directed to appear at a child custody conference.

You will appear before a child custody hearing officer. The hearing officer is an attorney or judge. The hearing officer or judge will try to assist the parties in coming to a satisfactory custody arrangement for the child. Both parties may be represented by attorneys.

If you and the other party can come to an agreement, the hearing officer will write down the agreement and forward it to the court for approval by the judge and entry as an order.

If you and the Defendant are unable to come to an agreement, in some cases, the hearing officer may conduct a hearing, called a "record hearing," after which they will make a written recommendation to the court, and the court will typically issue an interim order based on the recommendation. In other cases, the nature of the dispute may require resolution before a judge at a full custody hearing or trial. In some counties, it may take many months for the court to make a final determination.

The custody conference and mediation process may differ from county to county so please review the insert for specific information on your county.

What is the Kids First Program or Co-Parenting Class?

Every plaintiff and defendant IS REQUIRED to attend a parenting class. In some counties, if you fail to take the required parenting class, the court could dismiss your petition, hold you in contempt of court or deny periods of custody, partial custody, or supervised partial custody until you complete the required class.

The parenting class is different from county to county so please review the insert for specific information on your county's co-parenting class.

Do I need an attorney to represent me in my child custody case?

Parties can represent themselves in child custody cases. Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of child custody cases. Your local office may be able to provide limited advice concerning your case. Please call 877-953-4250 to see what services may be available in your county.

If you would like a private attorney to represent you, you can contact your local bar association's lawyer referral service.

How can I prepare for my child custody conference?

If you and the other parent have worked out an agreement, you can tell the child custody hearing officer. The hearing officer will take your agreement and make it into a custody order.

If you believe that you and the other parent will not be able to work out an agreement, you should be prepared to answer the following questions about yourself and the minor child:

1. Where are you living? Where is the child living? (if not with you) Do you rent or

own? Who else is living with you? How many bedrooms do you have? Where is the minor child sleeping?

2. Information about the child's schooling or any special medical concerns about the child.
3. Your work schedule and child care arrangements.
4. If you don't work, information on how you are supporting the minor child.
5. If you are living with a boyfriend or girlfriend, are they employed? Where?
6. What custody arrangements you are looking for: primary physical custody, partial physical custody, or supervised partial custody?
7. What custody arrangements you are asking the Defendant to have: primary physical custody, partial physical custody, or supervised partial custody?
8. What are the specific days and times that you want to have custody, and when are you requesting custody exchanges to take place?
9. What will be the logistics of the custody exchanges? Will you meet the other party halfway, or will you take turns picking up the children from the other's residence? Do you both have valid driver's licenses and registered vehicles? If not, are there friends or family members who are willing to help?
10. If a children and youth agency has been involved at any point, especially if it was recent, information about the reason for their involvement and the outcome, and any recommendations that were made.
11. Any concerns about the Defendant and the children.
12. Any criminal convictions or charges.

In some counties, the child custody hearing officer may also hear from or review the following:

The minor child. If the child is over a certain age, the hearing officer may interview the child concerning their wishes about contact with either party.

Counseling reports/therapist. A hearing officer may review reports from or speak with the child's counselor if there are allegations that contact with one party may be harmful to the child.

Children and Youth. A hearing officer may review reports from or speak with a local children and youth caseworker about issues that may be relevant to the custody case.

What are the possible outcomes of the child custody conference?

If the parties agree:

If the parties are able to reach an agreement at the custody conference, an order of court may be dictated or signed. The order of court will state each parent's custodial rights.

What if I disagree with the recommendation of the hearing officer or am unable to agree with the other party?

If both parties are seeking primary physical custody of the minor child, then your case

will be scheduled for a full hearing before a judge. In some counties, the Court will enter an interim order until the case is heard by a judge.

If you disagree with the recommendation of an interim Order, you will have a right to request a hearing before a judge.

The procedure to request a hearing before a judge may differ greatly from county to county so see your county insert for more information.

What if the court determines that there is an ongoing risk of harm to the child?

If the court determines that:

- A party has a history of abuse of the child, or of any household member; or
- There is an ongoing risk of harm to the child, or to an abused party, by another party or one of their household members;

Then, if the party who committed the abuse (or has a household member who did) is awarded any form of custody, the court order must include safety conditions to protect the child (and/or the party who was abused).

Could the safety conditions involve supervised contact with the child?

Yes, the court may order professional or nonprofessional supervised physical custody of the child. The court may also limit the time of day for physical custody and the maximum hours of custodial time per day or week.

Is there a preference for professional supervised custody?

Yes, the law favors professional supervised custody, but a nonprofessional supervisor may be allowed in cases where a professional supervisor is not available within a reasonable distance or the court determines that the party requiring supervised physical custody is unable to pay for the professional supervision. In such cases, any proposed nonprofessional supervisor must appear in person before a judge and sign an affidavit of accountability, and the judge must find that the individual is capable of promoting the safety of the child.

If you believe the court may require your periods of custody to be supervised, and you have a willing friend or family member you would like to propose be approved by the court, you may wish to have them with you when you attend your conference or hearing to expedite the approval process, especially if you have not seen your children in a while and wish to start visits as soon as possible.

CUSTODY TRIAL: What type of evidence will I need?

The court looks at many factors impacting a child's physical, intellectual, moral and spiritual well-being, including, but not limited to:

1. **The custody arrangement of siblings.** Generally, courts prefer that brothers and sisters are raised together in one household.
2. **Who has been the primary caretaker of the child?** The court will look at who has been the person who has been the primary caretaker in the past and who has been meeting the child's day-to-day needs.

3. **The parents' new relationships.** If you, and/or the Defendant are dating, are there any concerns about him or her? Are there issues of domestic violence, criminal record, or drug or alcohol abuse? How does the significant other get along with the child?
4. **The parties' work schedules.** The court will consider the work schedules and the amount of time the parties have available to care for the child.
5. **Stability of the parties.** The court will consider the benefit of stability in a child's life, which includes the parties' ability to maintain a single home and provide a stable lifestyle.
6. **The parties' finances.** A common myth is that the person with more money will win the custody case. This is typically not true. The court will look at each party's ability to provide financial stability in the child's life by providing an adequate home and living environment for the child. The court can be concerned if, because of your low-income status, you are frequently evicted because you are unable to pay your rent.
7. **The accommodating parent.** The court will consider which parent will most likely allow and encourage the child frequent and continuing contact with the other parent.
8. **A party's past conduct.** Courts like to focus on present circumstances when making custody decisions. A party's past conduct will not be considered UNLESS it has a harmful current or future effect on a child.
9. **Abusive conduct.** The judge must consider each parent and adult household member's present or past violent or abusive conduct – regardless of the existence of a PFA.
10. The judge must consider whether a parent has been convicted of certain crimes, including DUI, violation of a PFA, kidnapping, incest and sexual abuse of the children.

REMEMBER: The court will NOT consider if a parent is paying child support before making a determination concerning custody.

What if I lose after a custody trial, can I appeal on my own?

If you are unhappy with the judge's decision after a full custody trial, you have the right to appeal to the Superior Court of Pennsylvania within thirty (30) days after the date of the judge's order.

Appeals to the Superior court are very complicated and expensive. It is possible, but difficult for a person to proceed in the appeal without an attorney due to the complexity of the legal documents that need to be filed, the filing deadlines and other requirements and fees.

If you are unhappy with an order, you should consult with an attorney to see whether or not you have any basis for an appeal and/or the likelihood an appeal would be successful or the best option in your case.

Can my custody order be changed?

Child custody orders may be modified at any point in time until the child turns 18 years old. However, please be mindful that a Court may not consider a modification petition if you file one every few months, where there has been little to no change in the circumstances of the parties.

The Court will again use the "best interests of the child" standard to decide whether the requested modification should be granted. In filing a modification petition, you will generally go through the same procedures as in filing an initial complaint.

What if the Defendant fails to follow the order?

Each party is required to comply with the custody order. A parent who breaks a court order also breaks the law. In other words, if one parent willfully disobeys or fails to comply with an existing custody order, the other parent may file paperwork asking the Court to compel them to obey the order. The paperwork is called a **Petition for Contempt.**

Under Pennsylvania law, if the judge decides that the custody order has been willfully and intentionally broken, the disobeying parent who broke the court order may be:

1. Put in jail for up to six (6) months;
2. Fined up to $500;
3. Placed on Probation for up to six (6) months;
4. Have their motor vehicle operating privileges suspended; and/or
5. Pay court costs and attorneys fees.

HOWEVER, in child custody cases, this rarely, if ever occurs.

It is more likely in child custody cases that a judge may order other relief as deemed necessary to make up for the disobeying party's behavior, or to ensure their future compliance. For example, the judge may order make-up time if one parent withheld the child for their visitation with the other parent, or modify exchange times if the parent constantly brings the child home late.

The child custody insert may have additional information on the types of outcomes judges tend to order in your county when a person is found in contempt of violating a child custody order.

What if the Defendant refuses to return the child after a visit and/or leaves the state with the child?

People do not always act in the best interests of the child because child custody matters are very emotional. One parent may keep the child from the other parent without the other parent's consent. If you believe the other party's behavior poses a risk to the safety and well-being of the child, you can file a **Petition for Special Relief.** In some counties, you may be able to see a judge the same day. In other counties you may need to wait at least 5 days.

Pennsylvania law gives judges broad powers when an emergency occurs. After a party files a petition for special relief, a judge may direct a parent not to leave the

state or county with the child. A judge can direct a party to return the child to the other parent. A judge may award temporary physical custody, partial physical custody or supervised partial custody to one parent on a temporary basis. A judge may do anything else he or she feels would be in the best interests of the child.

The child custody insert may have additional information about the procedure that may be helpful for your county.

The child lives with me and I want to move out of Pennsylvania or my county but the other party won't agree. Can I move anyway?

A common problem occurs when the parent with whom the child lives wants to move, or relocate, with the child out of their county or out of the state and the other parent does not want them to.

YOU SHOULD SPEAK WITH A LAWYER IF YOU ARE THINKING OF MOVING WITH THE CHILD.

YOU SHOULD SPEAK WITH A LAWYER IF YOU OPPOSE THE OTHER PARTY MOVING WITH THE CHILD.

RELOCATION is defined as a change in a residence of the child which significantly impairs the ability of the nonrelocating parents to exercise custodial rights.

Relocation cannot occur unless:

1. Every other person with custodial rights consents; **OR**
2. The court approves the proposed relocation.

Relocation Factors

The court must consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

1. The nature, quality, extent of involvement and duration of the child's relationships with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.
2. The age, development, needs of the child and the likely impact relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
3. The feasibility of preserving the relationships between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
4. The child's preference.
5. Whether there is an established pattern of conduct of either party to promote, or thwart the relationship of the child and the other party.
6. Whether relocation will enhance the general quality of life for the party seeking relocation, including, but not limited to: financial and emotional benefit or educational opportunity.

7. Whether the relocation will enhance the general quality of life for the child, including but not limited to, financial or emotional benefit or educational opportunity.
8. The reasons and motivations of each party for seeking or opposing relocation.
9. The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
10. Any other best interest of the child factor.

The Relocation Notice

IMPORTANT - Notice, by certified mail with return receipt requested to the other party, MUST be given either sixty (60) days before relocation or within ten (10) days from the date the party knows of relocation.

THE FOLLOWING INFORMATION MUST BE INCLUDED WITH THE NOTICE:

1. The address of the intended new residence.
2. Mailing address.
3. Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.
4. The home telephone number of the intended new residence.
5. The name of the new school district and school.
6. The date of the proposed relocation.
7. The reasons for the proposed relocation.
8. Proposed revised custody schedule.
9. Other information.
10. You MUST also say the following in your notice: *****IF YOU DO NOT FILE WITH THE COURT AN OBJECTION TO THIS PROPOSED RELOCATION WITHIN 30 DAYS AFTER RECEIPT OF THIS NOTICE, YOU WILL BE FORECLOSED (PREVENTED) FROM OBJECTING TO THE RELOCATION*****

Failure to provide notice:

The court may consider failure to provide notice as:

1. A factor in making a determination;
2. A factor in determining whether custody rights should be modified;
3. A basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;
4. Sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the objecting party; and
5. Ground for contempt and the imposition of sanctions.
6. Any consideration of a failure to provide reasonable notice…shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

Depending on the specific facts of your situation, you should be aware that relocating with the child without notice to the other parent may cause the court to award physical custody of the child to the non-relocating parent, and may even result in charges being filed against you for crimes relating to child abduction. Accordingly, consulting with an attorney prior to taking action is strongly recommended.

How to Object to Relocation:

1. A party entitled to receive notice may file an objection with the court and seek a temporary or permanent order to prevent the relocation.
2. If the party objects to relocation, a hearing will be held.
3. The objection must be made by filing with the court a counter-affidavit.
4. The counter affidavit objection to relocation must be filed with the court thirty (30) from the date you received the certified letter notifying you of the relocation.

Failure to Object:

If a party who has been given notice of relocation and does not object within thirty (30) days from receiving the notice but later petitions the court for a review of the custodial arrangement cannot present any testimony challenging the relocation at the hearing.

What does the relocating parent do when an objection is not filed?

The relocating parent must:

1. File an affidavit with the court confirming proper notice was given, thirty (30) days have passed and an objection has not been filed;
2. A petition to confirm the relocation details; and
3. A proposed order.

What happens if the nonrelocating parent objects? What happens at a relocation hearing?

The court will hold a full evidentiary hearing or trial on the proposed relocation. The court may, on its own motion or at the request of a party, expedite the evidentiary hearing or trial on the proposed relocation in order to make its decision before the relocation occurs.

If the court finds that an emergency exists, the court may approve the relocation pending the hearing or trial. Otherwise, the relocating party is not permitted to move until the court has granted approval.

The party proposing the relocation has the burden of establishing that the relocation will serve the best interests of the child.

Note: It is very important for you to consult with an attorney prior to moving to a new county or out of the state. In some cases, if you move without consent of the other party or court permission, you could lose primary custody of the child and/or could face criminal charges for custodial interference.

REMEMBER, child custody cases are very fact specific and can be very complicated. This handbook is intended only as a guideline and informational packet to help you understand the court system in regard to custody cases. If your case is complicated, you should consider consulting with an attorney.

Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of child custody cases. Please call 1-877-953-4250 to see what services may be available in your county.

Frequently Asked Questions

Isn't it true that I need to be the first one to file for custody?

OR

Does whoever files for custody first get what they are asking for?

- You DO NOT need to be the first parent to file for custody.
- Custody cases are decided by a rule called the "best interests of the child."
- The parent who files first DOES NOT get an advantage.
- It may be better NOT to file for custody. The custody process may give an otherwise uninvolved parent an opportunity to get back into the child's life.

Are child custody and child support linked? In other words, if the other parent is not paying child support do I still need to let them see the child?

- Child Support and Child Custody **ARE NOT** linked.
- You may be found in **contempt** of a Court Order if you withhold visits from the other parent because they have not been paying support.
- You **must also** pay child support even if you are not seeing your child.

The other parent cannot take my child around their new boyfriend or girlfriend right?

- The court will not ban your child from visiting the other parent's boyfriend or girlfriend **unless** you can prove the girlfriend or boyfriend is dangerous, is likely to be a bad influence on the child, or that it is not in the child's best interests.
- Absent evidence to the contrary, the court trusts that neither parent would expose their child to mean and dangerous people.

Will the court system give the other parent partial custody rights even if they have not paid child support and have not seen the child for a long time?

- Yes. A parent can see their child even if they fail to make child support payments.
- The law assumes that it is in the child's best interest to have a relationship with both parents.
- The court system may give him or her visitation unless you can show that having contact with the other parent is not in the child's best interest.
- Depending on the specific circumstances, the court may order a form of family counseling called "reunification therapy" to help the child and the estranged parent to reconnect and communicate openly in a safe setting.

Doesn't the court system always keep children with their mother?

- The court system **will not** automatically give mothers custody of their children.
- The court system will decide who gets custody based on the best interests of the child.
- The custody statute expressly prohibits the court from favoring either gender in its decision.
- In recent years, the courts have been moving towards a presumption of equal parenting time.
  - A presumption is only a starting point. It can be rebutted by persuading the court that another arrangement will better serve the child's interests.

Can the other parent go to the child's school or day care and pick them up if we do not have a Court Order?

- Yes. Without a court order, either parent can go to the child's school or daycare and pick them up without questions.
- Each school and day care will likely have its own policy on to whom the child may be released.
- You should ask your child's school or day care provider what their policy is so you know what to expect and can take precautions if they are needed.

Will the court system help me force the other parent to visit their child?

- No. Even if you get a Court Order granting partial physical custody or supervised partial custody to the other parent, the court system **will not** force him or her to visit your child.
- The court system **does not** have the ability to make someone be a good parent if they do not want to be one.

What happens if me and the other parent cannot follow the custody order?

- If parenting issues continue to arise after the final custody order, a court can sometimes appoint a third-party parenting coordinator to provide recommendations.

Will the police help me get the child back from the other parent if we do not have a Court Order and the other parent refuses to return the child to me?

- The police **cannot** force the other parent to return your child to you because there is not an Order of Court and you are both the parents.
- The police may talk with the both of you to reach a short-term agreement.
- You should **immediately** file for child custody to obtain a Court Order that will make very clear who can have the child on which days and at which times.

Do all child custody lawyers charge the same fee to represent clients?

- NO. Some private child custody lawyers may ask you to pay a retainer. A retainer is when you pay money up front for a lawyer's services.
- Some child custody lawyers may not ask you to pay a retainer and may be willing to take reduced payments based on your income.

- If you feel you will be hiring a private lawyer, you should talk to a few different lawyers before choosing one. Many lawyers will do the first interview for free or for a reduced fee of $25 – $50. You should ask whether or not there will be a charge for the initial visit when you call.

Is there an easier way to prepare my child custody paperwork?

- Go to www.PALawHELP.org, then select the "Children & Families" section, and then choose "Child Custody and Guardianship."
- Or go to your local county website for information.

Can the Court force me to take a drug test, get a drug & alcohol evaluation, get a psychological evaluation, have my house inspected, or do anything else that feels like a violation of my rights?

- Yes. The Court may require you to do any of the things mentioned above, and numerous other things as well, including co-parenting counseling, parenting classes, or anger management classes. The Court may also require you to meet with a court-appointed attorney for the child called a Guardian Ad Litem.
- You MAY refuse to do these things. But the Court can find you in contempt, and will usually impose consequences relating to your custodial rights, such as limiting your contact with your child.

What is Contempt?

- A parent who **intentionally** and **willfully** breaks a court order breaks the law.
- A hearing will be scheduled in front of a judge. If a judge decides you have willfully and intentionally not followed the Court Order, you may be put in jail for up to six (6) months and/or fined up to $1,000 **for each violation**.

Domestic Violence

What types of Protection Orders are there?

- Protection from Abuse Order (PFA)
- Sexual Violence Protection Order (SVPO)
- Protection from Intimidation Order (PFIO)

Each of these protection orders can be very effective tools for victims of domestic violence to obtain various kinds of relief.

What is a Protection from Abuse Order?

In Pennsylvania, a person can apply for a Protection from Abuse Order, commonly known as a PFA, against a person whom they share an intimate relationship with. A PFA can prohibit a person from abusing, harassing, stalking, or threatening a protected person.

Who can file a PFA?

In order to file a PFA, you must:

1. Be 18 years old, an emancipated minor, or have an adult guardian file on your behalf,

AND:

2. The abuser MUST be your:
   - Parent
   - Current or former spouse
   - Child
   - Current or former sexual or intimate partner, including same sex partners (i.e., present or former boyfriend/girlfriend or father/mother of your children)

You MUST file for a different protection order OR contact the police and report the abuse if the person that is abusing you does not fit into one of these categories! You will not be allowed to file a PFA but will need an SVPO or PFIO, or instead to file criminal charges.

When should I file a PFA?

You should file a PFA when you are abused. Pennsylvania Law defines abuse as:

- Attempting to cause or causing bodily injury or causing fear of bodily injury;
- Sexual assault;
- Physical or sexual abuse of minor children;
- Stalking; or
- False imprisonment.

What is **NOT** considered abuse?
Pennsylvania does not consider the following, without more, to be sufficient to order a PFA:

- Mental or emotional abuse; or
- Arguments concerning custody of children.

What is a Sexual Violence Protection Order?

In Pennsylvania, a person can apply for a Sexual Violence Protection Order, or SVPO, against a person whom they do NOT share an intimate relationship with. An SVPO can prohibit the person from having any kind of contact with a protected person.

Who can file an SVPO?

In order to file an SVPO, you must:

1. Be 18 years old, an emancipated minor, or have an adult guardian file on your behalf,

AND:

2. The abuser MUST NOT be your:
   - Parent
   - Current or former spouse
   - Child
   - Current or former sexual or intimate partner, including same sex partners (i.e., present or former boyfriend/girlfriend or father/mother of your children)

In other words, the abuser must NOT be an intimate relation of yours.

If you can file for a PFA then you cannot file for a SVPO and vice versa. They apply to different types of abusers.

When should I file an SVPO?

You should file an SVPO when another person has committed an act against them that would be one of several crimes. These crimes include:

- Sexual offenses;
- Endangering welfare of children if contact is sexual;
- Corruption of minors;
- Sexual abuse of children; or
- Sexual exploitation of children.

You do NOT need to file criminal charges in order to file for and obtain an SVPO.

What is a Protection from Intimidation Order?

In Pennsylvania, a minor can obtain a Protection from Intimidation Order, or PFIO, against an adult. A PFIO prohibits an adult from harassing or stalking the protected minor.

Who can file a PFIO?

In order to file a PFIO, the protected party must:

1. Be a minor (under 18 years old),

AND:

2. The abuser MUST be an adult (over 18 years old) who is NOT a:
   - Family member
   - Household member

If you have a familial or intimate relationship with the abuser, you CANNOT file an SVPO or PFIO, but you can file a PFA. If you do NOT have a familial or intimate relationship with the abuser, you CANNOT file a PFA, but you can file an SVPO or PFIO.

When should I file a PFIO?

You should file a PFIO on behalf of a minor when another adult has committed an act against them that would be one of several crimes. These crimes include:

- Harassment; or
- Stalking.

You do NOT need to file criminal charges in order to file for and obtain a PFIO.

What county should I file in?

If you want to file a protection order, the law allows you to file in the county where:

1. You live or work;
2. The abuser lives; or
3. The county where an abusive incident occurred.

If the victim of domestic violence fled their home to avoid further abuse, they may have the right to file in another county or state. You should contact that state or county clerk's office, domestic violence office, or legal aid office for more information.

Where do I need to go to file for a protection order?

During Business Hours:

You can file your petition at your county's Court of Common Pleas. Some counties have a separate PFA office. The PFA office staff will help you file a PFA, SVPO, or PFIO petition. In other counties, you may need to go to the Civil Prothonotary, Clerk of Court, or Court Administrator's Office to find out where to file.

After Business Hours, Weekends, or Holidays:
You can file for a PFA, SVPO, or PFIO in an emergency, when your local courthouse is closed. The emergency order can be filed at your local Magisterial district court or in Philadelphia, at the Criminal Justice Center. To find out where and how to file, call 911 and ask for the on-duty magisterial district justice.

YOU MUST REMEMBER: If you receive an emergency order from a magisterial district justice or from the Criminal Justice Center, it will expire at 5 p.m. on the next day that the courthouse is open. You must go to the courthouse and request the order to give you a temporary order. The temporary order will typically last ten (10) days until the hearing on your request for a Final Order.

THERE SHOULD BE BI-LINGUAL STAFF OR ACCESS TO TRANSLATION SERVICES WHEN FILING FOR A PROTECTION ORDER. IF NOT, CONTACT YOUR LOCAL LEGAL AID OFFICE OR DOMESTIC VIOLENCE SUPPORT GROUP FOR HELP. PLEASE CHECK THE COUNTY SPECIFIC INSERT TO FIND LOCAL AGENCIES THAT YOU CAN CONTACT FOR HELP.

Is there a fee to file for a protection order?

You don't have to pay any fees to file a PFA, SVPO, or PFIO petition. As a Plaintiff filing for a protection order, the Court is **PROHIBITED** from charging you any fees, even if you later want to withdraw it.

You can ONLY be required to pay the costs if you lose your hearing AND the court finds that you lied when filing the petition.

*If you believe you were truthful in your petition and the court still orders you to pay the court costs, you should consult with an attorney or local legal aid office. You should talk with an attorney **immediately** because a petition for reconsideration needs to be filed within ten (10) days of the order being entered.

What do I need to say in my petition?

Court staff should help you fill out your petition. You are the Plaintiff. The other party is the Defendant. You should try to have the following information:

1. Name of Defendant and all persons you want protected;
2. Dates of birth;
3. Social security numbers;
4. Address of Defendant and/or address(es) where the Defendant may frequently be found;
5. Specific information about the incident (when, where, what happened?).

The following is helpful, but not required to file:

1. Evidence/documentation of incident (i.e. – medical records, police reports, and/or photographs of any injures);
2. Photograph of Defendant;
3. Information about Defendant's car (make, model, license plate number).

It is important to know that there are certain confidentiality requirements when filing your petition. DO NOT list social security numbers, financial account numbers, driver license numbers, state identification numbers, the names and birthdays of children, or an abuse victim's contact information in your petition.

What happens after I file my protection order petition?

You will see a judge the day you file your petition. The judge will ask you some questions about the incident. If the judge believes you need immediate protection, the judge can issue a Temporary Protection Order. The Temporary Protection Order prohibits the Defendant from having any contact with you. The law requires that a hearing on your request for a final protection order be scheduled within ten (10) days.

In many counties, if you have a child in common, the temporary order may suspend the Defendant's contact with the child until final hearing.

How is the abuser notified of the protection order?

In many counties in Pennsylvania, the sheriff's office is responsible for serving the Defendant with a copy of the Temporary Protection Order and petition. The order gives the exact date and time of the hearing for the Final Order.

In some counties, YOU may be responsible for serving the Defendant. If that is the case, you can ask the police to serve the Defendant. You can also have any adult (must be at least 18 years of age) give the Defendant the paperwork. Whoever delivers the paperwork to the Defendant must complete a verification of service to be filed with the court.

If you are in a county where you are responsible for serving the Defendant, and you are having trouble finding the Defendant, you may ask the court's permission to serve the Defendant by mail. If you serve by mail, you must mail the petition, order and hearing notice to the Defendant's current or last known address by certified mail with return receipt requested. You should also, but are not required, to serve the Defendant by first class mail.

If the Defendant is NOT served by the time the hearing is scheduled, the hearing will be continued (rescheduled) until the Defendant is served. The court will issue another temporary order that will last until the next hearing date.

Do I need an attorney to represent me at the hearing?

Plaintiffs can represent themselves at protection order hearings. Your legal aid office may not be able to represent you but you should call to find out if they will. If not, and if you still would like an attorney, you should contact your local bar association's lawyer referral service or domestic violence support group. Check the insert for specific information about their availability in your county.

Preparing for Your Hearing

You will be given notice of your hearing date on the day you file your petition. The hearing will be scheduled within ten (10) business days.

EVIDENCE

You may present the following evidence that the judge should consider when making his or her decision:

1. **Your own testimony:** Your own testimony is important. You will have an opportunity to explain what happened. You should remember the dates and times of the incident. Give as many facts as possible about the current abusive incident and any past incidences. A judge will hear about incidences that may have happened within the past few years. A judge may not consider an incident that happened more than five years ago.
2. **Photos:** You should bring photos of bruises, injuries, or damaged property. The person who took the pictures should be available at the hearing to testify that he or she took the pictures. Besides your own testimony, pictures are often the best type of evidence.
3. **Written Communication from Defendant:** Threatening or abusive letters, emails, and text messages may be used as evidence. You must explain when you received the communication and how you know it was from the Defendant.
4. **Taped voicemail messages:** Threatening or abusive recorded messages from the Defendant may be used as evidence. You must state when you received the message and how you know it was the Defendant who left the message.
5. **Bills showing financial loss:** A Plaintiff may be paid back for any financial expenses caused by the abusive actions of the Defendant.
6. **Witnesses:** If other people actually saw or heard the abuse, you should bring them to court to testify. They may need to be served with a subpoena, discussed below in #8.
7. You should bring copies of any hospital records, police reports, abuse reports, phone records and taped conversations to use in court if the judge allows it. It is completely up to the judge whether he or she will consider that type of evidence.
8. If you want a police officer or other professional to testify on your behalf, you will need to send them a subpoena to appear in court on your behalf.

A subpoena is a form you can fill out requiring a person to testify. You can obtain a subpoena in the Civil Prothonotary/Clerk of Court's office in the county you filed your protection order. It costs between $3.50 and $5.00. You will need to serve the subpoena on your witness in advance of the hearing.

Interpretation Services

You should request an interpreter if YOU (or the DEFENDANT) speaks a language other than English. You should call the PFA office or clerk's office **prior to your hearing.**

If an interpreter isn't available, the case may be rescheduled. As a Plaintiff, you want and need to understand every word that the judge or Defendant is saying at the hearing.

What should I wear to Court?

Dressing a certain way should not affect the outcome of your case, but it is important to show respect to the court. It is best to dress nicely. A conservative pair of pants and a shirt are best.

What to Expect at the Hearing

It is important to show up for your hearing on the correct date and time, even if you think the Defendant has not been served. The Defendant may show up even if he does not have a copy of the papers you filed. You will be issued another hearing date and time, if the case is rescheduled.

Your petition will be dismissed if you do not show up.

If you have an emergency the day of your hearing, you can contact the court to reschedule your hearing. Your hearing may or may not be rescheduled. If the court does not agree to reschedule the case, you MUST show up or your case will be **dismissed.**

Be prepared to wait all day for your case to be called, but if the Defendant harasses you while you are waiting, you should immediately tell a sheriff and/or court personnel.

Do I have to have a full hearing?

These are some other possibilities of what may happen the day of your hearing:

1. **The Defendant is not served:**
   If the Defendant is not served, you will be given another date to appear for a hearing. Your temporary order will be extended until your next hearing date.
2. **You do not show up:**
   If you do not show up, your petition will be dismissed. The Temporary Protection Order will end. If you have a good reason for not showing up, you may be able to ask the court to reconsider and reschedule your case. You will need to file legal papers asking the court to reconsider. This is a complicated procedure and you may need an attorney to assist you.
3. **The Defendant does not show up:**
   The judge will enter a final order "by default" if the Defendant does not show up but was served with the petition. The judge may ask you questions about what happened before granting the requested relief.
4. **You decide to withdraw your petition:**
   You have the right to withdraw your petition without being assessed filing fees. If you filed the petition because of an abusive incident, you should consult with a domestic violence agency or attorney before withdrawing your petition.

You should carefully consider a decision to withdraw your petition if:

A. You are doing so because of a further threat of harm by the Defendant to yourself or a third party.

B. You are doing so because of a threat concerning child custody issues with the Defendant.

C. You are doing so because of a threat concerning child support issues with the Defendant.

5. **The Plaintiff and Defendant agree to the entry of a final order against Defendant without admission:**
   If the Defendant will not admit they committed the acts that you have accused them of in your petition, you and the Defendant can agree to the entry of a Final Protection order without a full hearing. The agreement without admission has the same force and effect as a final protection order. The parties can agree to additional provisions in the final order such as the duration of the protection order and child custody provisions.

6. **The Plaintiff or Defendant requests a continuance:**
   You or the Defendant may request a continuance to obtain counsel or other witnesses or for other reasons. If the Defendant is also facing criminal charges due to the incident against you, the Defendant will typically ask for a continuance so his or her testimony cannot be used against him or her at a criminal hearing. The judge will hear the reasons for the continuance and decide whether or not it should be granted.

What if I have to have a full hearing?

1. **You will present your case. When testifying, you should try to do the following:**
   a. Begin with the recent incident.
   b. Be as specific as possible about what happened.
   c. If the judge asks you specific questions, answer them as best as you can.
   d. Look at the judge directly and be respectful. Address the judge as "Your Honor" and do not interrupt the judge when he or she is speaking.
   e. Try to have your evidence organized. You will need to show your evidence to the Defendant during the hearing. Also, you will need to explain how the evidence relates to your case. Judges understand that you may not know the proper way to enter evidence. Just be clear that you want to offer the documents as evidence to support your case.
   f. You should clearly explain why you are afraid of the Defendant.
   g. If you are seeking an SVPO or PFIO, you should clearly explain how the Defendant's actions are one of the crimes listed under the "When you should file" section.
   h. You should be clear about the other type of relief you are seeking and why (i.e. child custody, support, etc.).

i. You will then have the right to have your witnesses testify on your behalf. You or the judge may ask your witnesses questions.

2. **Plaintiff's Cross-examination:**
   The Defendant or their attorney may ask you and your witnesses questions. Their questions should be limited to what you said in your testimony. You and your witnesses should try to stay calm during cross-examination and be brief with your answers.
3. **The Defendant will present their case:**
   The Defendant will have an opportunity to respond to your testimony and present their case. You cannot interrupt the Defendant while they are testifying.
4. **Defendant's Cross-examination:**
   You will have an opportunity to ask the Defendant and their witnesses questions about their testimony and evidence. Your questions should be limited to what they said in their testimony.
5. **Rebuttal:**
   A judge may give you an opportunity to present further testimony after the Defendant has testified.
6. **The Judge's decision:**
   In a PFA, SVPO, or PFIO case, the burden of proof is "preponderance of the evidence." This means that you must prove that it is more likely than not that the abuse occurred. Pennsylvania Law defines abuse as having "a reasonable fear of further harm if the order is not granted." The judge will either grant a final order or dismiss the petition. The judge may or may not give the reasons why they granted or dismissed the case. The judge may or may not order any additional relief if he grants an order for protection.

What type of relief can I get with a PFA?

If you are able to obtain a final PFA (either after hearing or by agreement), an order may contain the following:

1. An order prohibiting the Defendant from having any contact with you or any other protected persons (including other family members besides yourself and your children);
2. An order prohibiting the Defendant from any abusive contact (whether it is stalking, physical abuse, threats, etc.) with you or any protected person;
3. An order evicting the abuser from a home or apartment;
4. An order establishing or modifying custody, partial custody or visitation rights of a child;
5. An order establishing or modifying a support order. This can include health insurance coverage and rent or mortgage payments. If a support order is established in a PFA, you **MUST** file a separate support case with your local domestic relations office within two weeks;
6. An order for the abuser to turn-in weapons, ammunition, and any firearms to law enforcement agencies;

7. An order for the abuser to turn-in any firearm license(s) (including hunting licenses);
8. An order prohibiting an abuser from acquiring or possessing any firearms for the duration of the PFA;
9. An order for the abuser to pay for any financial losses that you may have suffered or incurred as a result of the abuse. This may include: medical treatment, damages to personal property, loss of employment, wages, or moving expenses;
10. An order specifying when and how an abuser can retrieve any personal belongings the Plaintiff may still have;
11. An order keeping your current or future addresses confidential from the Defendant; and
12. Any other provision that will prevent further abuse.

If a final order is entered against a defendant, who contested the PFA, they will be required to give up all firearms within 24 hours to law enforcement.

What type of relief can I get with an SVPO or PFIO?

1. An order prohibiting the Defendant from having any contact with you or any other protected persons (including other family members besides yourself and your children);
2. Any other provision that will prevent further abuse.

The Defendant filed a protection order against me. Can he do that?

There are times when a Defendant will file a protection order around the same time you filed against them. A PFA office cannot refuse to file a protection order for someone, even if the Defendant's petition does not seem believable. The Defendant would have had to follow the same procedures you did.

A judge may grant a temporary order against you and the two petitions will be heard together. If the Defendant has a temporary order against you, you will also be prohibited from having contact with the Defendant. You can also be subject to criminal liability if you violate the Temporary Order.

A judge may not grant a temporary order if he is aware you filed and received a protection order. The Defendant will still have the right to have a hearing on his petition that will be heard the same day as your case.

A Defendant may file against you to pressure you to either withdraw your protection order or agree to a mutual order. Mutual orders are when there is an order against each party in a case. **You should consult with an attorney before agreeing to a final order against you because of the possible criminal consequences for any violations of the order.**

How long does my protection order last?

In Pennsylvania, a Plaintiff can obtain a protection order for a maximum period of three (3) years. A protection order may be shorter by agreement or order of court.

My protection order is about to expire, what do I do?

A protection order can be extended when the Defendant commits further abusive acts after the entry of the initial protection order.

You will need to file an additional petition prior to the expiration of your protection order and have a hearing. The same procedures apply as with the initial hearing.

Can the Defendant face criminal charges for the same incident that I filed the protection order for?

Yes. Abuse is a crime and the District Attorney may pursue criminal charges against the Defendant. You should keep in touch and cooperate with the District Attorney's Office in prosecuting any case against the Defendant.

Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of protection order cases. Your local office may be able to provide representation or advice concerning your case. Please call 1-877-953-4250 to see what services may be available in your county.

Divorce

Disclaimer

This section gives basic information about divorce. You should only file for a divorce on your own in certain situations. You should consult with an attorney before deciding to proceed on your own. If you have any of the common property shared with your spouse such as real estate, pensions, investments, and common debts and obligations, you may need to retain an attorney to protect your rights.

What is Divorce?

Pennsylvania Law defines divorce as the legal dissolution of marriage.

Divorce cases are often very emotional. You should try to keep this in mind when making decisions about your divorce. You may want the court to assess blame on the other spouse. However, courts are more concerned with outcomes. Filing a no-fault divorce rather than a fault divorce will often be an easier way to proceed and in your best interest to resolve your case.

Do I need an Attorney?

Divorce matters can be complicated. You should consult with an attorney if you wish to file or if you receive divorce papers filed against you. Generally, most legal aid offices do not handle divorce actions. There are some offices that assist with filing of Pro Se divorce cases in certain situations. If you reside in Northeastern or North Central Pennsylvania, please call North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

If you and your spouse have been separated for a long time, you may be able to file the divorce papers on your own using self-help forms. You can call your local county to see what forms may be available to you.

What county should I file in?

If you want to file a divorce, you should file in the county where one or both spouses have lived for at least the past six months.

If you want to file in another county, you should consult with an attorney whether or not

the county you propose is appropriate.

What are the different grounds for divorce in Pennsylvania?

In Pennsylvania, there are both fault-based divorce grounds and no-fault ones. The fault grounds include desertion, cruel and barbarous treatment, and adultery, among others. In most cases, you will need an attorney if you want to pursue a fault-based divorce because it will require a hearing and evidence.

The no-fault grounds for divorce include a one-or-more year separation of the parties, the institutionalization of one spouse, and the case where both parties agree to be divorced. These can often be undertaken with advice or assistance, so contact **NPLS at 1-877-953-4250,** or your local Lawyer Referral Service or Bar Association to seek help and direction.

Counseling

When the grounds for divorce are indignities (a form of fault-based divorce), the agreement of both parties, or a one-or-more year separation, the court can require up to 3 counseling sessions if either party requests it. However, if you have a PFA against your spouse, you cannot be required to attend counseling sessions so long as you object.

Can I ask for other relief in the Complaint beside the entry of a divorce?

In a divorce, you may request the following additional relief:

1. An Order establishing custody, partial custody or visitation rights of a child.
2. An Order establishing alimony. Alimony is a support payment from one spouse to a dependent spouse to assist them after the entry of the divorce.
3. An order for alimony pendente lite. Alimony Pendente lite is support payments paid from one spouse to the other while the divorce is pending.
4. An order for equitable distribution of martial property. Martial property is property acquired while the parties were married and living together. Spouses may also have claims to the increase in value of property even if the asset was acquired before the marriage.
5. An order for counsel fees and expenses. In some cases, the court can order reasonable counsel fees and expenses to be paid by one spouse to the dependent spouse.

It is important to know that as of January 1, 2019, alimony is no longer deductible to the payor and taxable to the payee. This new law ONLY applies to agreements or orders entered on or after January 1, 2019.

Other Interim Relief

1. **Spousal support** – similar to alimony pendent lite in that it provides support to a dependent spouse while the divorce is pending. However, spousal support claims can be requested in a divorce complaint but are filed through your county's domestic relations/ support office. The duty to pay spousal support arises out of the marital relationship. A court can order alimony pendent lite and spousal support at the same time.
2. **Child support** – if not already filed, clients should also consider filing for a claim for child support. Like spousal support, you file for child support through your county's domestic relations/support office. The issue of child support is addressed in more detail in this handbook.

REMEMBER: This handbook is NOT intended for a guide for parties who have property subject to equitable distribution claims. These issues are very complicated and cannot be explained in a self-help handbook. You should consult with an attorney to protect your rights and any claims you may have to property. The handbook does not address divorce procedure, which varies from county to county. Check the insert for more county-specific information.

Can I retake my maiden name after my divorce is final?

At any time after the entry of a divorce decree, any person who is either a plaintiff or defendant in a divorce action may, at any time after the entry of a divorce decree, resume their prior last name by filing out a form giving notice that you wish to retake your maiden name.

You should be able to obtain the form at your local Prothonotary or Civil Clerk of Court located at your County's Courthouse. In most counties, there will be a minimal charge for filing this form.

Child Support

This section is about current Pennsylvania law and general procedures governing child support actions.

Laws are modified and changed from time to time. Please note that there have been important changes to the child support rules. Please read this section carefully to find out changes that may affect your case.

NOTE: For more specific information about how your county's rule may differ, please refer to the child support insert provided in this handbook.

What is child support and when do I have to pay?

Child support is money that a parent pays to help provide food, clothing, housing, and other essential things for his or her child. Child support may also include the cost to provide health care coverage and payment of medical bills and child care costs.

Under Pennsylvania law, parents are liable for the financial support of their children 18 years of age or younger, and are required to support their children to the best of their ability.

Parents may also be liable for the support of their children after the age of 18, for example, if the 18-year-old has not yet graduated from high school. Parents are not liable for support of emancipated children 18 years of age or younger. See the section of this book about emancipation.

NOTE: A Defendant's duty to pay support typically begins the date the complaint for child support is filed, NOT on the date of the order for support, unless the court directs otherwise.

Do I need an attorney?

If you and the other parent have similar incomes, you may not need an attorney to represent you. If the other parent has significant income or income that he is not reporting, you may wish to consult with an attorney prior to your initial conference to decide on whether hiring an attorney would benefit your case.

North Penn Legal Services may be able to provide you with some advice to assist you

with your case. If you reside in Northeastern or North Central Pennsylvania, please call North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

NOTE: This handbook is written from the Plaintiff's or custodial parent's point of view, HOWEVER, this information is also useful for Defendants or non-custodial parents who are obligated to pay child support.

What county should I file in?

When you file for support, you are the Plaintiff or obligee and the other party is the Defendant or obligor. An initial child support petition can be filed in the county where:

- the Defendant lives;
- the Defendant regularly works;
- you and the child live.

If there is a divorce or custody action pending between the parties in another county, the court may transfer the support action to that county to handle everything together.

Who can file for child support?

Child support cases usually involve two parents. But, child support cases may also be filed by an agency or third party caring for the child.

Any party, including an agency or third party, can file for child support if that party has custody of the child, regardless of whether a court order has been issued granting that person or agency custody of the child.

One example might be a grandparent who houses, feeds and cares for their grandchild. Another example would be a child that has been placed in foster care.

Do I have to file for child support?

The primary custodian of a child **is not required** to file for child support unless they receive cash assistance from the state. If so, then the Pa. Department of Public Welfare (DPW) will require them to file for support against the legally responsible party. **However,** if you are a victim of domestic violence, and filing for support would jeopardize your safety, **OR** if you do not know who the father of your child is, and cannot name a person who is likely to be the father, you will not be required to file for support.

If you are receiving food stamps or medical assistance from the state, you are **NOT** required by DPW to file for support.

Sometimes parties are able to work out their differences and make private agreements concerning support for a child. This may work for you, and there may be mediation services available at little or no cost to help you and the other party settle your support case. Call your local domestic relations office to ask about available mediation services.

Can I receive public benefits and child support at the same time?

If you receive public benefits, the child support collected will be paid to the Department of Public Welfare and you will receive what is called a **"support pass through."** A support pass through will be paid to you in the month following the month that support was paid.

The support pass through is **ONLY** paid if support is collected from the Defendant **in the month it is due.** Depending on your monthly support amount, you could receive up to $100 if you have one child and $200 if there is more than one child.

If you refuse to cooperate with the Department of Public Welfare to collect support from a legally obligated person, you could lose your public welfare benefits.

In some very limited situations, when the obligor has a lot of money, it may be to your benefit to receive your full child support amount rather than receive cash assistance.

You will need to decide whether or not you believe the obligor will pay their child support obligation each month. If you do not believe they will pay every month, then you may want to continue receiving cash assistance.

You may want to consult with an attorney if this situation is similar to yours. If you reside in Northeastern or North Central Pennsylvania, please call North Penn legal Services at 1-877- 953-4250 to see what services may be available in your county.

Where do I file for support?

Support cases are started by filing a complaint with the domestic relations office.

PLEASE REVIEW THE INSERT FOR THE ADDRESS OF YOUR LOCAL DOMESTIC RELATIONS OFFICE.

Is there a fee for filing a child support complaint?

There should not be any filing fees charged by Domestic Relations for filing an initial child support complaint. If your local domestic relations office is trying to make you pay a filing fee, you may file an In Forma Pauperis (IFP) petition to request that the filing fee be waived.

What information do I need to file my complaint for child support?

An intake worker may help you fill out the necessary paperwork to start your child support case. In some counties, you may have to fill out the paperwork on your own. You will need to gather as much of the following information as possible:

1. Your name and address;
2. The name and address of the Defendant;
3. The Defendant's date of birth;

4. The Defendant's social security number;
5. The Defendant's place of employment, if applicable;
6. The name and address of Defendant's closest relatives, if Defendant's current address is unknown;
7. The name and birth date of the child;
8. The birth certificate of the child;
9. The social security number of the child.

I am the mother and I want to file for support. I do not know who the father is. What can I do?

If you don't know who the father of the child is, you will have a difficult time filing for child support. If you think you know who the father is, but are not sure, you can discuss with the father about taking a paternity test or name him as a Defendant in a child support action. If he wants to contest paternity (claim that he is not the father), he must do so at the initial support conference.

I filed for support and the father is contesting paternity, what happens next?

Please see the Paternity section of this handbook to understand the father's rights concerning issues of paternity.

For every case where you and the Defendant/father are not married, the Domestic Relations Section will want to know if the Defendant has signed an acknowledgment of paternity. If an acknowledgment of paternity has not been signed, paternity will need to be proven. If the Defendant knows and admits he is the father, he can sign an acknowledgment of paternity. The Defendant **IS** liable for support of the minor child after signing an acknowledgment of paternity.

If the Defendant has not acknowledged he is the father, and refuses to sign a written acknowledgment, the conference officer will, in the majority of cases, order genetic testing.

If there is a 99% or higher probability of paternity, the court shall issue what is called a "rule," which is another term for an order, that directs the defendant to show the court why an order should not be entered finding him to be the father.

In order to have a hearing before the court, the Defendant must file an answer within twenty (20) days after service of the rule. The answer is limited to why the Defendant believes or can prove that the tests results are not reliable. If such answer is filed by the Defendant, the case will be listed for hearing.

If no answer is filed, the court will enter an order establishing Defendant's paternity of the child.

An order establishing paternity is NOT appealable. Once paternity is determined, the court will determine how much support must be paid. The Defendant can then file an appeal, and the issue of paternity must be

included in an appeal from a final child support order or the Defendant will lose the right to challenge it.

Are there any exceptions where the parties will not be ordered to have genetic testing after father's objection?

There may be times when genetic testing will not be ordered if there is a presumption of paternity. These issues are also briefly addressed in the Paternity section of this handbook. The issues are complicated and **YOU SHOULD** seek legal advice to discuss your rights.

What if I do not know where the father lives?

If you do not know where the child's non-custodial parent lives, your Domestic Relations section should refer you to the Parent Locator Service. This service uses federal, state and local resources to search for the non-custodial parent. You must give Domestic Relations as much identifying information about the Defendant as you can to assist with the search.

How is the Defendant notified that I filed for child support?

After your child support paperwork is filed, the Domestic Relations section will mail out a copy of the paperwork and notice of the proceedings at least twenty (20) days prior to the initial conference.

Do I need to bring any paperwork to my conference?

You **must** bring your completed income and expense statement.

You should try to fill out your income and expense statement as completely as possible. You will also need to bring:

1. Your most recent federal income tax return (if you are required to file);
2. Your pay stubs for the preceding six months, if applicable;
3. Verification of child care expenses;
4. Proof of medical coverage which you have or which is available to you for the child.

What happens if the Defendant does not show up at the conference?

If the Defendant fails to appear, after being properly served, the court will enter a temporary, or interim order in accordance with the support guidelines. The Defendant can appeal the order by following the procedures described in detail in later sections of this handbook.

In some limited situations, a bench warrant may be issued for a party's failure to appear for a child support conference or hearing.

You, as Plaintiff, are also required to appear at the conference. If you are physically unable to go to the conference at your scheduled date and time, you should call the Domestic Relations office immediately to let them

know your problems so they can make other arrangements or reschedule the conference. If you fail to appear, your case may be dismissed unless you receive public welfare benefits. In that instance, the case can proceed without you.

What source of income does the Court consider when issuing an Order for support?

Generally, the amount of support is based on both parties' monthly net income. Net income is the income you receive after certain taxes and other deductions are taken from your wages. The conference officer looks at a six-month average of all of the party's income. "Income" under support law includes income from any source, including, but not limited to the following:

- wages, salaries, bonuses, fees and commissions;
- net income from business or dealings in property;
- interest, rents, royalties, and dividends;
- pensions and all forms of retirement income;
- Social security disability benefits, social security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment benefits;
- alimony, if the conference officer finds it appropriate.

Domestic Relations may deduct only the following items to arrive at a net income: federal, state, and local income taxes, F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments, union dues, and alimony paid to the other party.

A conference officer should **NOT** consider the following sources as income:

- income tax refunds;
- public assistance benefits;
- Supplemental Security Income (SSI) benefits;
- foster care payments; or
- Social Security payments to a child due to a parent's death, disability or retirement*.

***Note: The amount a child receives from Social Security due to a parent's death, disability or retirement is added to the combined monthly net income of the parties to calculate the income available to support the child. After the support officer looks at the support guidelines, the child's social security money is subtracted from the Defendant's monthly support obligation because it is paid to the custodial parent.**

REMEMBER – Social Security benefits ARE considered income. Supplemental Security Income (SSI) benefits are NOT income under the support rules.

What happens if the Defendant does not work or quits his or her job?

Both parties are liable to support the child to the BEST of their ability. The conference officer will ask each party about their work history and educational background. Here are some common situations:

1. **Voluntary Reduction of Income:** When either party chooses to take a lower paying job, quits a job, leaves employment, changes jobs, changes employment status to go to school, or is fired for cause, there will generally be no effect on that person's support obligation.

   In these types of situations, the trier-of-fact will determine what is called a party's earning capacity. Earning capacity is the amount a person should earn, taking into consideration such facts as the party's age, health, training, work history and education.

2. **Involuntary Reduction of Income:** No change in support payments is made for normal increases or decreases in income. Support payments will be adjusted for substantial continuing involuntary decreases in income. Some examples would be: inability to work due to illness, lay-offs, or job eliminations.

3. **Seasonal employees:** Support orders for seasonal employees, such as construction workers, generally will be based on a yearly average.

The Defendant is in prison. Does the Defendant still have to pay support?

The court may terminate or suspend a person's child support obligation if they are in jail. If the person is in jail because they failed or refused to pay support, their duty to pay support continues while they are in jail. If the person is in jail for another reason, they may ask the Court to stop the support order until they get out of jail.

The Defendant is low income. How does that affect my case?

If the Defendant's income is very low, (the amount now is $867 or less) their support is calculated in a different way. This will mean a much lower child support order. You can contact North Penn Legal Services at 1-877-953-4250 or the Lawyer Referral Service in your county for information and advice when dealing with these cases.

The Defendant has a very high income. How does that affect my case?

The court has a formula for cases where the parties' combined monthly net income is very high. A recent decision has allowed courts to deviate from the support guidelines where the result would exceed the reasonable needs of the child, even when they are accustomed to a high standard of living. You should consult with a private attorney or Lawyer Referral Service in your county to protect your interests in these cases.

How does Domestic Relations come up with the support amounts?

Pennsylvania has support guidelines. Domestic Relations uses the support guidelines to calculate your child support payments. The guidelines have been updated as of May 2010.

The conference officer will use the support guidelines to complete a form that will show you how the monthly support amount is calculated.

Pennsylvania law does allow Domestic Relations to use a different amount other than the guideline amount. This is called a deviation from the amount of the support contained in the guidelines. If Domestic Relations deviates from the guidelines, they must give the reasons justifying the deviation.

Does child custody affect a child support calculation?

A child support calculation is only affected by child custody if the Defendant has the child **40% or more** during the year. The 40% is determined by the number of **overnights** the child spends with the Defendant.

The Defendant receives up to a 30% reduction in the monthly support obligation if the child is with them 40% or more of the overnights in a year.

Even if custody is shared equally, one party may still be liable for support if their income is also greater than the other party's.

Are child care expenses, health insurance premiums and unreimbursed medical expenses considered when making a child support order?

You should keep track of these expenses and request that they be considered in the final child support calculation (for specific information or advice, you can contact North Penn Legal Services or your local Lawyer Referral Service). Unreimbursed medical expenses over and above $250 per child per year should be submitted by Plaintiff to Domestic Relations for reimbursement by Defendant. The amount to be paid is based on the ratio of the parties' income.

Can I get help paying private school tuition, summer camp or for extracurricular activities?

Private school, summer camp and extracurricular activities **are not** expenses considered by the support guidelines. The court may or may not determine that these expenses are reasonable. If the initial support order does not take into account these expenses, you have the right to file exceptions to the order and make a specific request for these types of expenses as a deviation from the usual amount of support.

The Defendant has another family. How does that affect me?

If the total of the Defendant's basic child support obligation equals 50% or less of his

or her monthly net income, there may be no effect to your monthly support amount. The court will not consider additional expenses that the Defendant pays for his or her other family in terms of private school or extracurricular expenses. But, the court cannot make a support order resulting in the Defendant having less than $867 per month for his or her self-support reserve.

What happens at the child support conference?

The conference officer assigned to your case reviews your income and expense statements. The conference office may ask you to provide further information about your income and expenses. The conference officer will also ask the Defendant the same questions about their income and expenses.

The conference officer may recommend a support amount based on the support guidelines. The conference officer will make a recommendation to the court if the parties agree on this amount.

What happens if no one objects to the interim order?

Each party is given twenty (20) days to object to the entry of the temporary court order after they receive it. If no one files an objection within the twenty (20) day period, the temporary order will become a final order.

I don't agree with my support order. What do I do?

You will need to put in writing that you disagree and ask that a hearing be scheduled. You will need to sign and date your request and mail or hand deliver it to your local domestic relations office as soon as possible (within 20 days of receiving the temporary order).

This is generally called filing **exceptions** to the support order. You are filing exceptions when you request another hearing. You **must** write and mail or drop off a letter to the Domestic Relations Office within twenty (20) days.

A hearing, called a **De Novo Hearing** will be scheduled before the court. A **Hearing De Novo** means that the parties start over "from scratch."

I am late with my appeal. Can I file an appeal after twenty (20) days?

It is possible, but you must have a good reason. It is BEST to seek legal advice or assistance by calling North Penn Legal Services at 1-877-953-4250 or your local Lawyer Referral Service.

What do I need to say when I file exceptions?

In some counties, you will need to write a letter saying that you disagree with the child support order. Some counties may want you to be specific concerning the legal basis for the appeal.

Please refer to the insert for information concerning procedures in your county. You should consult with an attorney if you are unsure how to write your exceptions. **It is**

better to file exceptions on your own with a simple reason within twenty (20) days than to wait to get in touch with an attorney.

What happens at a De Novo Hearing?

Your De Novo Hearing may be before a hearing officer. A hearing officer may be an attorney or a judge depending on your county. A Hearing De Novo is one where both parties "start from scratch." Both parties act like a temporary order was never entered.

If you are a Defendant filing the appeal, you may wish to consult or retain an attorney for a De Novo Hearing. The De Novo Hearing may deal with complicated legal issues.

If you are disputing the earning capacity that the conference officer set for you, you will need some evidence to prove it was wrong. If you are saying that you can only earn less because of some mental or physical limitation or disability, you will need to have a doctor testify on your behalf.

If you are a Plaintiff filing for support, you may be assigned an attorney by the Domestic Relations Office to represent you in a De Novo Hearing. You should speak to your attorney **BEFORE** your hearing to help them prepare for it.

The hearing officer or judge will take testimony, and then will make a decision. That decision must be in writing and supported by reasons. If you disagree with the decision, you should consult with an attorney to discuss whether or not to appeal to a higher court. Appeals are very time consuming and expensive.

The Defendant isn't paying his support obligation. What can I do?

If the Defendant is not paying his support, you should contact your local child support enforcement officer. You should ask the enforcement officer to file a contempt petition. You will need to contact the enforcement officer in the county where the Defendant lives.

Sometimes the court will file a contempt petition on its own if the Defendant is really behind or "in arrears." The Defendant will be directed to appear before the court. If the Defendant fails to appear, a bench warrant may be issued for his or her arrest.

If the Defendant is found in contempt, there are many possible remedies the court may use to make the Defendant pay, some of which are:

1. Incarceration – Jail sentence up to six (6) months;
2. Wage attachment – forcing the Defendant's employer to take money out of the Defendant's paycheck;
3. Seizure of Defendant's bank account;
4. Suspension of a driver's license;
5. Suspension of a professional license;
6. Suspension of hunting or gaming license.

Can I check on my child support case online?

PACSES is the statewide child support computer system. PACSES stands for the Pennsylvania Child Support Enforcement Program. PACSES has all of the information about your child support case. The Domestic Relations Office uses PACSES to monitor support payments and enforce support orders.

You can learn more about PACSES by going to **www.childsupport.state.pa.us.** You can use PACSES if you are either the Plaintiff or the Defendant. You will need to establish a password to view the details of your case on this web site.

Can the child support order be changed?

Either party can file papers to modify child support. Child support may be modified when there has been a **material and substantial change** in circumstances.

The party filing, whether it is the Plaintiff or Defendant, must show a change in circumstances to justify an increase or decrease in the support amount. All of the same considerations and procedures apply as in the initial request for child support.

If you disagree with the order concerning your modification petition, the same rules apply with regard to filing exceptions.

What happens when the child turns 18?

A child is entitled to child support until he or she turns 18, or graduates from high school, whichever is **LATER.** If you receive a notice from Domestic Relations that you don't understand, or that you disagree with, you should contact **NPLS at 1-877-953-4250,** your local bar association, Lawyer Referral Service or Domestic Relations office to ask questions and/or apply for legal assistance when one or more of your children turns 18.

My child turned 18 but the Defendant still owes me back support. Does he have to pay it?

Even if the minor child has turned eighteen (18) years of age, you are still entitled to the back support. In some circumstances, Domestic Relations may send a notice that the Defendant's child support obligation is terminated **AND** they are doing away with the Defendant's arrears. This means they are not making the Defendant pay back his arrears. This may occur if the Defendant is unable to pay, has no known income or assets and there is no reasonable belief that the Defendant will be able to pay in the foreseeable future.

If you receive this notice, you have sixty (60) days to object. If you do not object within sixty (60) days, you will lose the right to collect the arrears. If you object, Domestic Relations will schedule a conference.

For more specific and useful information concerning child support issues, you can go to: www.childsupport.state.pa.us.

Frequently Asked Questions

Due to limited resources, your legal aid office may not be able to represent you at your hearing. You can contact **NPLS at 1-877-953-4250** to see what services may be available in your county.

If you still would like an attorney to represent you, you should contact your local bar association's lawyer referral service or consult the yellow pages. Some private child support lawyers may ask you to pay a retainer. A retainer is when you pay money up front for a lawyer's services. Some child support lawyers may not ask you to pay a retainer and may be willing to take reduced payments or determine how much you will need to pay based on your income.

If you feel you will be hiring a private lawyer, you should talk to a few different lawyers before choosing one. Many lawyers will do the first interview for free or for a reduced fee of $25 – $50, so you should ask whether or not there will be a charge for the initial visit when you call.

Paternity

Paternity is a very serious matter. What you do today can forever change yours and your child's life.

Disclaimer (a legal caution)

North Penn Legal Services does not provide representation in paternity cases unless it is part of a child support case. This section is provided as an informational guide outlining basic information about paternity.

What is Paternity?

In Pennsylvania, when a child is born to a woman who is unmarried, there is no legal relationship between the father and the child. A father of a child born to an unmarried woman is not the father for legal purposes. Therefore, paternity is the way to establish legal fatherhood.

Is there an easy way to establish paternity?

Yes. The mother and the father may sign an Acknowledgment of Paternity form. You may get the form at the time of birth of the child from the hospital. If signed, the hospital will provide the Acknowledgment to the Department of Public Welfare.

You can also obtain the Acknowledgment of Paternity form at your local Domestic Relations Office or local Department of Public Welfare (County Assistance) office.

An Acknowledgment of Paternity form must include the signed consent of the birth mother and signature of the birth father. The signatures must be witnessed by someone other than the birth mother or birth father. Then, the form is recorded as an acknowledgment of paternity.

DON'T SIGN IF YOU AREN'T SURE! Once an Acknowledgment has been signed, it is legally binding. An Acknowledgment can then be used at any time in a child support case to require a man to pay child support, even if many years have passed since the man and woman separated and the man has had little contact with the child.

Can I change my mind after signing the acknowledgment of paternity?

A voluntary Acknowledgment of Paternity may be cancelled by either party within 60 days after the form is signed or the date of a court proceeding related to the child, whichever is sooner. After the 60 days, the acknowledgment of paternity may be challenged in court **ONLY** on the basis of fraud, duress or material mistake of fact, which is difficult to prove.

Can the mother put my name on a birth certificate without my consent?

An unmarried woman can no longer put a man's name on the birth certificate without his signature and permission.

Can I still be held legally responsible for a child even if I'm not sure I'm the father?

A man can be held legally responsible for a child by the way he acts. If it can be clearly shown that a man has held the child out to be his biological child (acted as if he believes the child is his), and either received the child into his home or provided support for the child, then he can be held to be the child's legal father, where no other legal father has been established. The laws about presumption of paternity and estoppel are complicated legal issues that require the advice and counsel of a lawyer. You should get legal advice as soon as possible by calling your local legal services office.

I think I'm the father but the mother won't admit it. What can I do?

For men who believe that they are the father of a child, but the mother is unwilling to sign an acknowledgment or give him any information about the child, he can still file an acknowledgment as a claim of paternity. This does not give him any rights regarding the child, but entitles him to notice if the woman tries to put the child up for adoption. Men can also file a Petition To Determine Paternity with the Family Court if they want to do more than get notice about an adoption and are prepared to be a father to the child, or can file for partial custody of the child to establish their rights to the child.

Are the laws in PA different if the mother and I are married?

Yes. The biology of a child may not matter if the child is born to a married woman. If the woman is married at the time she becomes pregnant, the law will consider her husband to be the child's father. However, this rule does not apply if it can be shown that the man had no opportunity to have sex with his wife at the time of conception, or if he was unable to father a child.

Note: If the family unit is together, the court will not allow a third party to question paternity, even if he is the biological father. The laws about

paternity, presumptions and estoppel are very complicated, and you should get legal advice before you make any decisions.

What if I am married but separated from my wife? Am I still assumed to be the father?

If the husband and wife are separated or divorced at the time that paternity becomes an issue, then the "husband rule" may not apply. If the husband has acted like the child's father, the court could still decide that the husband is the legal father. The goal is to protect the child when the husband is the only father the child knows.

Can I make changes to my child's birth certificate?

Minor errors:

You can easily correct minor errors on a birth certificate such as spelling and typographical errors, the sex of the child, and date of birth of the child. The Division of Vital Records provides a complimentary Certification of Birth to the parents shortly after a child's birth. Parents should list the information to be corrected on the reverse side of this Certification of Birth under "Corrections Desired."

It will be necessary for the mother to sign in the designated area; however, it does not require notarization if it is returned to the Division promptly.

The individual requesting the correction must include a legible copy of his/her valid government issued photo ID, often a driver's license.

No fee is required if the original incorrect Certification of Birth is returned with your request to change it.

Changing names or removing the father's name on a birth certificate:

In some cases, you may be able to remove the father's name from a birth certificate by obtaining a specific court order that satisfies requirements of the Division of Vital Records. However, this is a complicated procedure and may not be available to you in your situation. You must prove, or the parties must agree that there was some fraud or mistake that lead to putting the wrong father's name on the birth certificate. You should consult with an attorney about whether or not you can do so in your case.

In some cases, names can be changed by consent of both parents via signature on the back of the birth certificate. The signed and notarized original certificate is then submitted to Division of Vital Records and an amended one is issued. However, most name changes will require a court order.

If a parent is looking to change the first, middle or last names on the minor child's birth certificate, the parent must file paperwork with their local court requesting that the name be changed.

You should consult with an attorney about these changes. Most legal aid offices do not handle name change cases. You can contact North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

Many important topics related to paternity are addressed in the child support section of this handbook. Please refer to that section to understand the relationship between paternity and child support.

Adoption

Disclaimer (a legal caution)

North Penn Legal Services does not provide representation in adoption matters. This section is a brief informational guide.

Do I need an attorney to file for an adoption?

Adoption proceedings can be complicated. You should consult with and will generally need to pay for a private attorney familiar with adoption cases. You can contact your local county bar association for a referral. Keep in mind that there is no set legal fee. And it will be best to consult two or more attorneys and ask about their fees.

What is Adoption?

Adoption is the legal creation of a parent-child relationship. Adoption usually occurs with minors. However, Pennsylvania law places no restrictions on the age of a person who can be adopted.

Adoption laws vary from state to state. If you are planning to adopt a child from outside Pennsylvania or the United States, you should consult with an attorney to understand your rights.

Who can adopt a child?

In Pennsylvania, any single adult or husband and wife may adopt. Pennsylvania has also ruled that same sex adoptions and second parent adoptions are legal.

How is the process different when the parent(s) consent vs. when they do not?

By consent:

If the parents voluntarily agree to the adoption, the hearing process is fairly simple. The parents may sign a Consent to Adoption. If the adoption deals with a newborn child, the parents must wait at least 72 hours after the child is born. This consent expresses their intention to place the child for adoption.

Involuntary termination:
If one or both parents do not agree to the adoption, the adopting parents must file a petition to Involuntary Terminate the rights of the biological parent(s). The adopting parents must prove that the biological parent has failed to perform parental duties for six (6) or more months, and that they have no interest in continuing to parent the child.

This burden is very difficult to meet. Pennsylvania Courts are slow to terminate a parent's rights, and will do it only by showing very good cause.

Are there different types of adoption?

There are several ways to adopt a child. The most common of the different types of adoption are those through an adoption agency. Direct or "open" adoption between the biological parents and the adoptive parents, and adopting internationally are also quite common. Step-parent adoptions are also very common.

Are there other things I will need to do besides filing the adoption papers?

The laws of every state require all prospective adoptive parents (no matter how they intend to adopt) to participate in a home study. This process helps educate and prepare the adoptive family for adoption and evaluates the adoptive family. In most cases, the adoptive parents must obtain a positive preplacement home study report prior to receiving a child.

Many states also require the adoptive parents to submit to child abuse and criminal record checks.

What happens after the child is placed with me?

After placement, the agency or the adopting parents must file a Report of Intention to adopt the child. The rights of the natural parents of the child must then be formally terminated by the court before an adoption can be granted.

Can the biological parents change their mind after the adoption?

The biological parent cannot change his or her mind after their rights have been terminated. However, there have been cases where biological parents have changed their mind after placement of the child but before the finalized adoption.

Remember: It is important that you follow the correct legal procedures for adoption so that it cannot be challenged at a later time.

Dependency

What is Dependency?

Parents must care for their children. Children must have a safe place to live, food to eat and medical care. Children must go to school. If a parent cannot or will not take care of a child, a county agency may step in and care for the child.

Dependency is the process by which a county agency steps in to take care and control of a child.

Dependency Definitions

County Agency – the people who help children and families obtain services that will help them solve problems related to their family units. The actual name varies by county but is generally something like "Children and Youth Services" or "The Department of Children, Youth and Families."

Emancipation – independent status granted to a child under the age of 18 who is married or has otherwise been determined by the Court to be independent of his or her parents.

Family Service Plan – a blueprint on how the court, county agency and family will work together to improve the problems and challenges leading to dependency.

Guardian or Guardian Ad litem (GAL) – any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian while court proceedings are happening.

Party – a person who is legally entitled to participate in the proceedings. Generally, parties in dependency matters include the county agency, parents and the child. Other people can petition the court if they want to participate in the proceedings. The judge in the case makes the final determination of who can participate as a party in the case.

Permanency Plan – a comprehensive plan that will result in a permanent home for the child either with one or both parents, a relative or a court approved adoptive parent.

Shelter Care Facility – a physically unrestricted place approved by the state where

a child can live temporarily while the child's case is decided or until an alternate safe home can be found.

What is a dependent child?

A dependent child is a child:

1. Who is without proper parental care and control;
2. Who is not going to school and should be going to school;
3. Who has been abandoned by his/her parents;
4. Who does not have a parent;
5. Who is under the age of ten (10) and has committed a delinquent act; OR
6. Who has been born to a parent whose parental rights to another child have been involuntarily terminated within three (3) years immediately preceding the date of birth of the child and the parent's conduct poses a threat to the child's health, safety or welfare.

How do I get an attorney to represent me?

Parents:

1. The court **must** assign and pay for an attorney for a parent that cannot afford to hire a private attorney.
2. An attorney must be appointed before the first court hearing.

Does an adult have to have an attorney?

1. No. An adult can waive, or decline, to have an attorney represent them. It is usually better to have an attorney in dependency cases, so it is best to ask for one right away.
2. The judge will ask the adult questions to make sure the adult knows and understands the consequences of not having an attorney.
3. An adult can **always** request an attorney at a later hearing even if they gave up their right to an attorney at an earlier hearing.

Children:

1. Children **MUST** have attorneys in dependency actions.
2. The court **MUST** appoint a free attorney to represent a child in dependency cases.

How do dependency proceedings start?

A dependency proceeding starts in one of six ways:

1. A **dependency petition** can be filed;
2. An application for **emergency custody** can be filed;
3. The child can be taken into **protective custody** by court order;
4. The court can **accept jurisdiction** over a resident child from another state;
5. The court can **agree to supervise** a child because another state's court has asked for that supervision; OR

6. A parent or guardian can agree to **voluntarily place** the child in the custody of a county agency for 30 days.

NOTE: the County Agency must file a request for a Shelter Care Hearing or a Dependency Petition within 24 hours of obtaining emergency protective custody of a child.

A shelter care hearing must be held within 72 hours of taking the child into custody.

The primary focus of the shelter care hearing is to determine if protective custody of the child continues to be needed and if the child needs to remain in the care and custody of a county agency.

Dependency Petitions

A dependency petition is the court document that is filed by the county agency alleging that a child is without necessary, proper parental care and supervision, and containing the facts and information that support the claim.

Frequently Asked Questions

How much does it cost to be involved with dependency court?

There is no cost for the court hearings themselves.

- If a child is declared dependent and removed from the home, the county agency may file for child support from the parent or guardian. If a child receives SSI or other monetary support, the county agency may be awarded that money until the child is returned to the home.
- If the parties are requested or required to go to programs like mental health programs or drug and alcohol programs, they may have to pay the fees. Sometimes the fees are paid for by the county agency. Check with the child's caseworker to see if assistance is available for these fees, or consult your attorney about getting a waiver of fees.
- Parties are generally responsible for transportation to and from court hearings and/or court ordered programs. Transportation assistance in the form of rides or bus passes may be available. Check with the child's caseworker.

Can I see my children everyday if they are in foster care?

The county agency is only required to set up 2 visits per month for you and your child. The court may order more frequent visitation if you ask for it.

What if I don't like my caseworker?

Speak to your attorney to see what the specific county policy is about changing workers, but it is always best to be on good terms and to cooperate with the case workers.

What if I don't like my attorney?

You can petition the court to appoint another attorney for you. The court may not do so, but you can ask.

What is the best thing I can do to get my children home quicker?

- Remember that at all times, you MUST deal with the caseworker politely and respectfully. You might not always like what he or she tells you, but the caseworker will document any instances of rude, threatening or abusive behavior towards the worker and will report it to the court.
- If you don't like the way the caseworker treats you, politely deal with the situation and call your attorney for assistance.
- If you don't like a service or service provider, document the date and time of your concern and call your attorney. DO NOT stop attending a service that is court ordered without advice of your attorney. Service providers will document that you are not attending and are not cooperative. Even if your point is valid, the judge will not be happy that you did not follow their order.
- Good rule of thumb – **IF YOU WOULDN'T SAY IT OR DO IT IN FRONT OF THE JUDGE, DON'T SAY IT OR DO IT IN FRONT OF YOUR CASEWORKER OR SERVICE PROVIDERS!**

Can I speak to my child's attorney?

Some child advocates will speak with parents. Please remember that the child's attorney is there to advocate for the child – not for you. Your child may want something different than you do. Your child's attorney will work to obtain the outcome for them that seems to be best for the child. For specific questions, you should speak to your own attorney.

How do I obtain an attorney for myself as a parent?

Each county is different. Seek assistance from your child's caseworker as to how to go about obtaining an attorney for yourself if one is not automatically appointed to you.

Remember that every county is unique. For specific assistance please contact an attorney familiar with your county rules and procedures, or your local county's bar association.

Emancipation

Emancipation is the legal process by which minors can attain adult status under law before reaching the age normally considered adulthood.

An emancipated minor is released from parental control. But, an emancipated minor is never given the right to vote, drink alcoholic beverages or enjoy other privileges given by law to adults.

What is the Emancipation process?

A minor must file an emancipation petition with the Court of Common Pleas. The minor's petition will be scheduled for a hearing in front of a judge. The judge will consider a minor's:

- Age;
- Marital status and whether or not the minor is a parent;
- Ability to be self-supportive by working, living on their own and/or paying their own bills;
- Desire to live independently from their parents or legal guardians; and
- Reasons for wanting to be emancipated.

The judge will also want to hear the minor's legal guardian's views on whether or not the minor should be emancipated.

Parental obligations and responsibilities after emancipation

Emancipation frees parents from the legal responsibilities of their child.

- Parents do not have an obligation to provide financial or educational support;
- Parents will no longer be held liable for the actions of their children; and
- Parents do not have any legal control over an emancipated child.

What are the consequences of a minor moving away from home without parental permission?

A minor may be picked up as a runaway when they move away from home without

their parents' or legal guardians' consent.

Children and Youth Services will be called and will meet with the minor's parents or legal guardian.

If Children and Youth determines the parents or legal guardians are not able to properly care for and control their child, Children and Youth may place the minor in foster care or with an adult relative.

Minors living on their own without emancipation

Parents can allow their children to live on their own or with another adult. But, the parents or legal guardian are still responsible for the child's medical, financial and educational needs.

Emancipation for underage parents

A minor is considered by the law to be emancipated for some purposes and not for others by becoming a parent.

- Minor parents have a right to custody of their child as long as they are able to care for their child;
- Minor parents have the right to make medical, educational, and adoption decisions regarding their child;
- Minor parents also have the right to consent to their own health care, but still require parental consent to obtain an abortion;
- But, a minor parent will not be fully emancipated if the minor cannot support themselves and does not live independently of their parents.

Emancipation for the purpose of receiving general assistance

A minor is not required to go before a judge to determine whether he/she is emancipated for the purpose of receiving public or general assistance.

Public Assistance offices make the initial determination of whether a minor is emancipated for the purpose of receiving General Assistance or Temporary Assistance to Needy Families (TANF). To be eligible for General Assistance, a person between the ages of sixteen (16) and twenty-one (21) must meet ONE of the following criteria:

1. The minor must have left the parental household and have established another residence independent of parental control; or
2. The minor must be married.

To receive TANF benefits, a minor parent must:

1. Live with their parent, guardian or adult relative or caretaker; or
2. Be enrolled in school or working.

Although emancipation for the purpose of receiving assistance serves as proof of the child's independent status, it does not mean the minor is emancipated for all purposes.

Emancipation for the purpose of schooling

Emancipation for the purpose of schooling is requested by minors who are living away from their parents or legal guardians and want to attend school in the area in which they are living.

Students under the age of twenty-one (21) are entitled to attend public school. But students under the age of twenty-one (21) only have a right to attend public school in the district where their parents or legal guardians reside.

Emancipation for this purpose enables minors to attend school in the area where they are living. Emancipation for this reason is for school purposes only and does not carry with it any other rights.

NOTE: This is a complicated area of law. The court will make its decision on a case- by-case basis. Depending on your county, NPLS may be able to give you general advice. You can call NPLS at 1-877-953-4250 to see what services are available. You will also find helpful information on PALawHELP.org and by contacting your county's bar association.

Marriage

This section provides important information about marriage in Pennsylvania.

Who may marry in Pennsylvania?

- Any two consenting parties over the age of eighteen (18) may marry in Pennsylvania.
- A party's parent or guardian must consent when the party is less than eighteen (18) years of age.
- The Court's consent must be obtained when either applicant is under the age of sixteen (16).

Marriage License and Ceremony

A marriage license is required before you can marry in Pennsylvania. Both parties must apply for a marriage license in person.

You should have the following information with you when applying for a marriage license:

- Your social security number;
- Your mother's maiden name;
- Your parents' current address;
- The state where your parents were born; and
- What your parents do for work (their occupation).

You must bring a copy of your divorce decree if you or the other applicant is divorced. The woman must also bring proof she resumed her maiden name if she resumed her maiden name after the divorce.

There is a **three-day** waiting period between the application and the issuance of the license.

The license is valid for 60 days from the date of issuance. The license can only be used in Pennsylvania. You may apply for a license in any of PA's counties, and may use it to marry in any county. You are not required to marry in the county where you get the license.

The following people may perform a marriage ceremony:

- Judges;
- Magisterial District Judges;
- Mayors of any municipality or borough; and
- Members of the clergy.

Common Law Marriage

Pennsylvania **stopped** recognizing common law marriage on January 2, 2005.

Pennsylvania **still** recognizes all common law marriages in existence on or before January 1, 2005.

Common law marriage is a marriage without a formal marriage license or ceremony.

The parties **are not** common law husband and wife just because they have lived together for a long time.

For common law marriage to occur, the parties must have no legal barriers to marry one another. An example of a legal barrier would be that one of the parties is already married.

The parties must also be a man and a woman over the age of eighteen (18) years old. The parties must also have stated, in the present tense, their intention to marry one another. A present tense statement would have been, "I marry you today" versus stating intentions to marry in the future.

The Court will look for "clear and convincing evidence" when deciding whether or not a common law marriage exists. The court will consider the following factors:

- Deeds to real estate;
- Marital status on court documents and tax returns; and
- Reputation of marriage, not limited to close friends and family.

The length of the relationship and the views about the couple's marital status by the community do not constitute marriage unless the other requirements for common law marriage are met.

Once established, the same formalities are required to dissolve a common law marriage as would be required to dissolve a marriage with a license and formalized by a ceremony.

NOTE: This is a complicated area of law. The Court will make its decision on a case- by-case basis. Depending on your county, NPLS may be able to give you general advice. You can call NPLS at 1-877-953-4250 to see what services are available. You will also find helpful information on PALawHELP.org and by contacting your county's bar association.

Acknowledgments

1. Definitions within the “Child Custody” section reprinted with permission from the Pike County Court of Common Pleas, August 2010.
2. Segments of the “Adoption,” “Marriage” and “Grandparent’s Rights” sections reprinted with permission from the Erie Bar Association, May 2010.
3. Segments of the “Custody Myths and Facts” and “Emancipation of Minors” sections reprinted with permission from MidPenn Legal Services, May 2010.
4. Segments of “The ‘Legal’ Baby’s Daddy: What Men Need to Know” section reprinted with permission from Philadelphia Legal Assistance, May 2010.
5. “Emancipation-General Information” section reprinted with permission from the Juvenile Law Center, June 2010.

Notes

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