

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you or the opposing party has filed for divorce and you feel it would be in the best interest of the children that you have interim custody of them or if you feel they are in danger by the custody of the other party and you want custody of the children until the court decides which party gets permanent custody. Do not use this form unless you or the opposing party has filed for Divorce.

FORM INVOLVED. The form is a **Motion for Interim Custody and Child Support**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. You will need to mail a copy to the opposing party and fill out the certificate of service showing that you did mail a copy of the motion to the opposing party. If you file your Motion for Interim Custody with a divorce summons and complaint you can have the motion for interim custody personally served with the summons and complaint on the defendant or opposing party rather than mailing.

How to file a Motion for Interim Custody and Child Support. You must file your motion for interim custody and child support by filing the original with the court and by mailing a copy to the opposing party if they are not represented by legal counsel or to their attorney if the plaintiff is represented. The clerk will set your case for hearing on your motion and will send out notices to you and the opposing party for such hearing.

BURDEN OF PROOF. If you file a Motion for Interim Custody, you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your claim by a preponderance of the evidence. This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the moving party have the burden of showing the following to the court:

1. That it would be in the child(ren)'s best interest that you be awarded interim custody of them until the final outcome of the case. The courts primary concern when awarding custody is the best interest of the child(ren) and not the shortcomings of the parents unless those shortcomings reflect on a party's ability to care for the child(ren). What this means is that the plaintiff and their witnesses need to testify who cares for the child(ren) such as taking them to medical appointments, dealing with their education needs, bathing them, sheltering them, feeding them and generally caring for the children.

2. If you feel that the child(ren) would be in danger by being in the other party's care you need witnesses and evidence to prove those allegations. Evidence or testimony of alleged immoral conduct of the opposing party is not relevant unless it has a direct bearing or effects the best interest of the child(ren). For example, if the opposing party abuses alcohol this would not be relevant unless you can show that the opposing party neglected or abused the child(ren) while abusing alcohol.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert the name of the plaintiff from the divorce complaint.
- (2) on this line insert the name of the defendant from the divorce complaint.
- (3) insert your name
- (4) insert the reasons you want interim custody and child support. You must show the court it would not be in the child(ren)'s best interest that the opposing party have custody until final hearing on the divorce complaint. The court will more than likely schedule a hearing on the Motion of Interim Custody so be prepared to prove your allegations at that hearing. See the Burden of Proof above.
- (5) on this line insert the day.
- (6) on this line insert the month.
- (7) on this line insert the year.
- (8) on this line insert your name by signing.
- (9) on this line insert the address where you mailed your motion for interim custody. It will be either the opposing party if they are not representing by legal counsel or to their attorney if the opposing party is represented.

3. That the other party is an able-bodied person capable of paying child support during the pendency of the interim order of custody in an amount deemed reasonable by the Court.

Wherefore, the undersigned prays this court to issue an order:

A. Granting me interim custody of the child(ren) and for child support until final outcome of the complaint or in the alternative,

B. Order the other party to pay a reasonable amount of child support during the pendency of the interim order.

D. Set this matter for hearing.

D. For any other relief the court finds just and equitable.

Dated this (5)____ day of (6)_____,(7)_____.

(8)_____
Plaintiff/Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that I mailed a true and correct copy of this Motion for Interim Custody and Child Support upon the opposing party(s) or their attorney by first class mail at (9)_____.

Dated this (5)____ day of (6)_____, (7)_____.

(8)_____
Plaintiff/Defendant