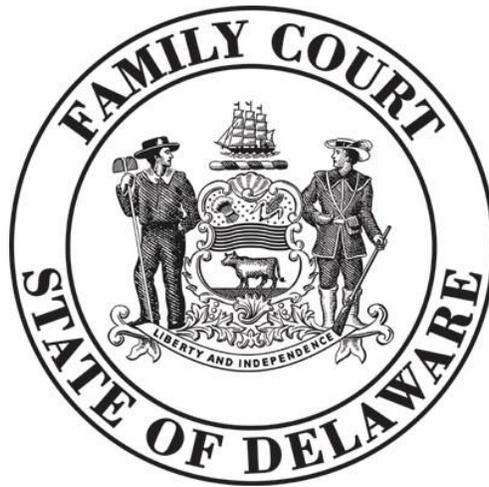


CHILD CUSTODY INSTRUCTION PACKET



<https://courts.delaware.gov/family>

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CHILD CUSTODY CASE INSTRUCTION PACKET

Please look for the following symbols throughout the packet. They will help guide you.



This Document Must Be Filed



Safety Check for Domestic Violence Cases



Fill in the Blanks or Write Information Here

1. INTRODUCTION & OVERVIEW OF SOME KEY ISSUES

Purpose of this Packet

This packet gives you information about obtaining a Child Custody Court Order in the State of Delaware and explains the steps in the process for these types of cases. Read this instruction packet very carefully. This packet does not give you legal advice. It gives you *information* about what Delaware law requires, and how the process works.

You should think about finding a lawyer to help you—whether you are the one filing the case or the one responding to it. Information on finding a lawyer (in some cases even if you have little or no money) is listed below on page 12.

If you do not have a lawyer for your case, you can represent yourself. This instruction packet will help guide you through the legal requirements and the process. There are other resources identified on pages 12-13 below that may also help you.

This introduction is a summary of some key issues in a Child Custody Case. You will find more detailed explanations of these and other issues later in this packet.

To make this Instruction Packet easier to read, it explains custody as if you are seeking custody of one child. If you are filing for custody of two or more children, the same rules and procedures apply. If the children have the same two parents, you

will be able to file a single petition. But, if the children have different fathers, for example, a separate petition must be filed for each child.

NOTE: The first step in a custody case is filing a petition to ask the Court to award custody of a child to a parent. The person asking for an order is called the **Petitioner** and the person responding (the other party) is called the **Respondent**.

What is Custody of a Child?

Under Delaware law, custody means the parenting arrangement between two parents for the child they have together. Custody includes:

- Where the child lives (called "residential placement");
- The contact (time) the child has with each parent (called "contact" or "visitation" or parenting time);
- Each parent's access to information, and;
- The role of each parent in making important decisions regarding the child (called legal custody), either by one parent alone (sole legal custody) or both parents together (joint legal custody). For example, legal custody includes the right to make decisions about the child's medical care, school and activities.

Every parent has a responsibility to care for and protect his or her children by making custody arrangements that are good for the children physically and emotionally.

The different types of custody are explained below on pages 25-26.

What if there is Domestic Violence or Abuse of a Parent or Child by the Other Parent?



Your safety and your child's safety are very important.

You can contact the police or seek other help if you feel endangered.

A parent who believes they or their child have been abused by the other parent can file a Petition for Order of Protection From Abuse (PFA). For more information, you should carefully review the Protection from Abuse Civil Case Instruction Packet on the Delaware Family Court website <https://courts.delaware.gov/family> (There are also resources you might want to consider using in that packet.

This packet explains the law and processes for custody cases with domestic violence. Look for the red safety check symbol throughout this packet.

24-hour Domestic Violence Hotlines:
New Castle County (302)762-6110
Kent & Sussex Counties (302) 422-8058

24-hour Child Abuse and Neglect Hotline: 1-800-292-9582

Custody Law Focuses on What is Best for the Child

A Judge will determine custody based on what is in the best interests of the child. This means that all decisions will be made by considering what is best for the child's health, happiness and safety. These decisions include: where the child will live, how much time the child spends with each parent, and which parent or parents make important decisions for the child. The Court will broadly consider any relevant information that could affect the welfare of the child.

- To determine what is best for a child, the Court must consider *all* relevant factors that can impact a child.
 - Domestic violence must be considered by a Court as a factor in determining custody. That means the Court must evaluate how any abuse impacts the child, and how abuse affects both the ability to parent and the co-parenting relationship. Abuse includes actions by one parent against the other parent and by a parent against a child.
 - In addition, in some cases, the type of violent offense committed by a parent means a Judge *cannot* award certain types of custody to the offending parent.
 - On the following page is a list of factors in Delaware law (13 Del C. §722) that a Court must consider along with any other facts that can impact a child.
-



13 Del. C. §722

- 1) The wishes of the child's parents as to his/her custody and living arrangements;
- 2) The wishes of the child as to his/her custody and living arrangements;
- 3) The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home or affecting the child's best interest;
- 4) The child's adjustment to his/her home, school and community;
- 5) The mental and physical health of all individuals involved;
- 6) How well each parent has in the past and currently satisfies their parental rights and responsibilities with respect to their children;
- 7) Evidence of domestic violence; and
- 8) The criminal history of any party or other resident of a household, including guilty pleas, pleas of no contest and criminal convictions.



-
- For a detailed explanation about the law, including the factors considered by the Court and specific laws for custody cases involving domestic violence, review pages 28-29 of this packet.
-

Who Can File for Custody?

You can file for custody in Delaware if the following requirements are met:

- ✓ There is **NO** Custody Order in place in Delaware or anywhere else; **OR** if you want to change an existing Custody Order; **AND**
- ✓ The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your Petition, unless the child is under the age of six months. (There are exceptions to this requirement. If the child has not lived in Delaware for at least 6 months, you may want to speak to an attorney to see if an exception applies to your situation. The statute that applies is 13 Del. C. §1920; **AND**
- ✓ You qualify as a “legal parent” under Delaware law.
 - Someone who is considered a parent can file for and gain custody of a child.
 - If you have questions about whether you are considered a parent so that you “have standing to file” a Petition for Custody, **it is a good idea to consult an attorney.**

There are a number of ways a person can qualify as a parent. This packet *does not attempt to describe all of the possible ways to qualify as a legal parent.* Here are *some* of the ways:

- You are the biological parent (mother or father);
 - This can be established if you gave birth to a child;
 - This can be established by a Voluntary Acknowledgement of Parentage in which the mother and a man sign (usually at the hospital). Typically, this is a document in which the mother and a man swear that the man is the child’s biological father and the man is identified as the father on the birth certificate.
 - This can be established in a Court proceeding after genetic testing (called an “adjudication of paternity” or parenthood);
- You have legally adopted a child;
- With married couples, the spouse of a mother is considered to be a “presumed” parent. (A presumption means the spouse is treated as a legal parent unless a Court determines otherwise in a legal proceeding.) This rule may apply to gay and lesbian couples who are married as well.
- You have been “adjudicated” a legal parent in a court proceeding.

- Whether “presumed”, “acknowledged”, or “adjudicated”, each of these methods cause a person to be placed on a child’s birth certificate as a “parent”.

- **What if someone has been acting like a parent to a child?**

A person who has taken on the role of a parent to a child may be considered a legal parent. Such a person is called a “De Facto parent.” To qualify as a De Facto parent, the following requirements under Section 8-201(c) of Title 13 of the Delaware Code must be proven in a legal proceeding in Family Court:

(1) The person has had the support and consent of the child's parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the De Facto parent;

(2) The person has exercised parental responsibility for the child. “Parental responsibility” means the care, support and control of the child in a manner that provides for the child's necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of such child.

(3) Has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature

- **What if I am a step-parent?** The law has a specific provision that allows a step-parent to seek custody, if all of the following conditions are met:

- You are married to the child's parent; AND
- Your spouse has custody or placement of the child; AND
- Your spouse dies or becomes disabled while your spouse has custody or placement of the child; AND
- The child has been living with you AND your spouse until such time that your spouse died or became disabled.

IMPORTANT NOTE: Even if you do not satisfy these specific rules, a step-parent may qualify as a De Facto parent. See the legal requirements explained above in answer to the question: What if someone has been acting like a parent to a child?

If you are not a parent but another person seeking visitation with a child, such as a grandparent, you should consult an attorney. There is some information about this on Delaware Family Court Website at <https://www.courts.delaware.gov/family/legalcare.aspx>

Automatic Court Order Preventing Permanent Removal of Child from Delaware When Custody Petition is Filed and Served

- Once a Custody Petition is filed and served, Family Court issues a Preliminary Injunction that prohibits the parties (the parents) from permanently removing a child from the jurisdiction of the Delaware Family Court without receiving permission from the other party or the Court.

What Happens If I Don't File for Custody?

Where there are two parents, a child is in their “Joint Natural Custody” if there is no Court order in place. This means each parent has a right to spend time with the child and to make major decisions about the child. Parents often informally agree about where the child will live and about the child's care and activities. Often that agreement is not written down and is just understood. Sometimes a parent is simply not involved and the children are raised by the other parent, perhaps with assistance from extended family or a step-parent. Note that these kind of informal arrangements between parents are generally not enforceable without a Court Order. If there is a disagreement about custody, you may need to go through legal proceedings to resolve the dispute.

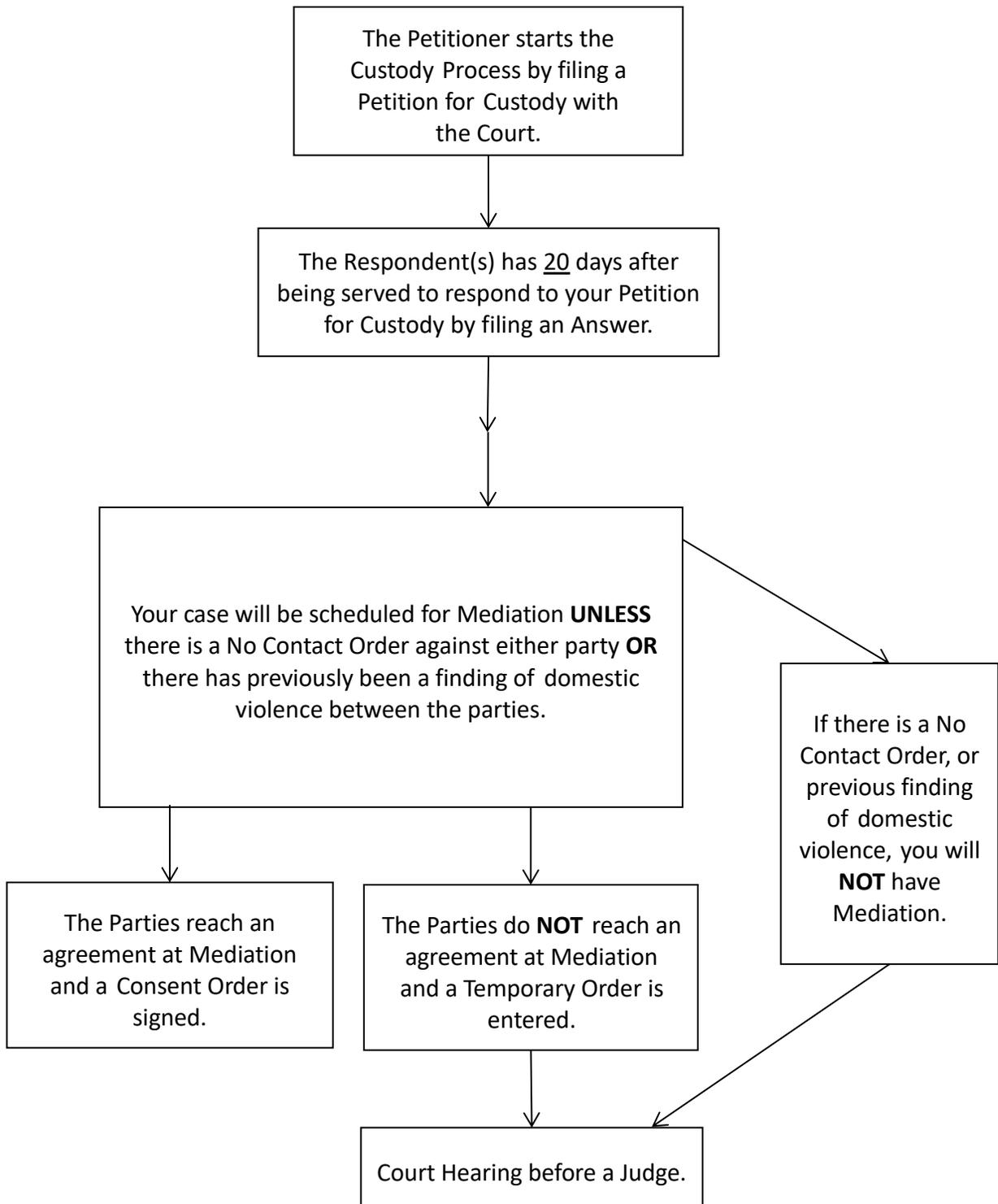
What If I Have a Protection From Abuse Order That Includes Custody?



If you have a Protection from Abuse Order (PFA) that includes a custody provision, including a contact schedule, you should consider filing a Petition for Custody soon after the PFA Order is issued. This is because the custody order in a PFA is only *temporary* and will expire after one year (or sooner if the order says that). In contrast, a Custody Order, once issued, will replace the PFA custody order and will remain in place, unless changed, until the child is an adult. Filing a Petition for Custody as soon as possible after the PFA order is granted will start the custody process. It can sometimes take six months or longer before a hearing is scheduled following the filing of a custody petition. If the custody or visitation provisions of the PFA order expire before a custody order is issued, then the parents will have “Joint Natural Custody” and will not have a legally enforceable order (explained immediately above).

Overview of Process for Custody Cases

CUSTODY PROCESS



Finding a Lawyer and Other Resources

● *Finding a lawyer:*

If you have questions about what options you have or what you should do, you should talk to an attorney. An attorney can represent you throughout the process.

Another possible option is to talk over your case with an attorney and get more limited help. You could ask the attorney if he or she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

- You can get help with finding an attorney by visiting the Legal Help Link (LHL) at <https://delegalhelplink.org>. In New Castle County, Delaware Volunteer Legal Services (DVLS) provides free legal services to domestic violence victims. In Kent and Sussex Counties, Community Legal Aid Society, Inc. (CLASI) provides similar services.
- Also, the Delaware State Bar Association (DSBA) sponsors a lawyer referral service. See www.dsba.org/resources/public-resources
- If you choose not to have an attorney or cannot afford one, you have the right to represent yourself.

● *Other Resources*

Resource Center. There is a Resource Center in each county in Family Court to assist you with obtaining information and forms for custody cases. Family Court staff can provide help with identifying forms that you need to fill out and file. However, Family Court staff cannot give you legal advice or fill out the form for you.

Family Court:

New Castle County (302) 255-0300

Kent County (302) 672-1000

Sussex County (302) 855-7400

Delaware Volunteer Legal Services

Delaware Volunteer Legal Services and Delaware Law School, Widener University provide legal services to some victims of domestic violence seeking custody of a child. Clients must be eligible for services. Contact the Legal Help Link at the numbers provided above for an evaluation and determination of services.

Victim Advocacy Programs

Volunteer advocates, who are *not* lawyers, are available to provide supportive, non-legal services, to victims of domestic violence.

New Castle County 255-0420

Kent County 672-1075

Sussex County 856-5843

Delaware Coalition Against Domestic Violence (800) 701-0456

Domestic Violence Coordinating Council 255-0405

24-hour Domestic Violence Hotlines:

New Castle County 762-6110

Kent & Sussex Counties 422-8058

New Castle County Crisis Hotline 761-9100

Kent & Sussex Crisis Hotline (800) 262-9800

Delaware Coalition Against Domestic Violence (800) 701-0456

Domestic Violence Coordinating Council 255-0405

24-hour Child Abuse and Neglect Hotline:

1-800-292-9582

Attorney General:

New Castle County 255-0112

Kent County 739-4211

Sussex County 856-5353

2. THE PROCESS FOR CUSTODY CASES

IMPORTANT REMINDERS:

- You should carefully read these instructions before filling out any forms.
- All forms must be neatly filled out by hand or typed. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** Forms are available on the Delaware Family Court Website at <https://courts.delaware.gov/family/> and in the Family Court Resource Centers.
 - Some forms are required for all cases. Other forms are needed only in some cases. Read the information in this part carefully so you know what you are supposed to do and when.
- There are sample forms available for you to look at on the Delaware Family Court Website at <https://courts.delaware.gov/family/> and in the Family Court Resource Centers.
 - The sample forms are given as examples to help you understand how to fill out the actual forms in the Forms Packet.
- The **PETITIONER** is the person who files the Petition for Custody.
- The **RESPONDENT** is the person responding to the Petition.

- Just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the Court Hearing to prove why the Court should give you what you want.
- **You should think about finding a lawyer to help you.** Each case is different, and *you* must determine for yourself how the law applies to your case.
 - If you do not have an attorney to represent you in this lawsuit, you may represent yourself. Please know that this process may take a lot of time, may be difficult, and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.
 - See the list of attorney resources on page 12 at the beginning of this packet.
- **Court Staff cannot give you legal advice.**
- There are other resources identified on page 12-13 in this packet that may also help you.

OTHER IMPORTANT TIPS:

- Keep a copy of every document and court paper.
- Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.
- Bring the folder with your papers with you every time you go to Court.
- When you file a document with the Court:
 - Always include the full case name and file and petition numbers (if there are any).
 - Bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” (Having a paper “clocked-in” means that the Court will stamp on the copy the time and date you filed your papers.)
 - Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document.
- **Making Copies:** There is a lot of paper in a court case. Consider available options for making copies as cheaply as possible. You may make copies at the Resource Centers but there is a small fee.
- **Always bring your photo identification** with you (such as your driver’s license, or a state-issued photo identification card) whenever you get a Court form notarized.
 - If you do not have a photo identification, you can get one from any office of the Delaware Division of Motor Vehicles. You do not need to be a driver to obtain this identification. This website explains the process for getting a state-issues photo Id: <https://www.dmv.org/de-delaware/id-cards.php>

- **Mailing Documents:** When you must mail something, it is a good idea to use both regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the mail. If you cannot afford to pay for “certified mail” you can ask for a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.

Starting A Custody Case

FILING FORMS TO ASK FOR CUSTODY

The first step in the process is to file the required forms. This process is explained here.

- Forms are available on the Delaware Family Court Website at <https://courts.delaware.gov/family/> and in the Family Court Resource Centers.

What Forms Do I Need to File? (Information on each form is given below this list).

- You **MUST FILE** these forms to ask for Custody:
 - * **A Petition for Custody Form 345**
 - * **A Custody Separate Statement Form 346.**
 - * **Information Sheet Form 240**
 - A Petitioner *must* file a court information form for all petitions filed with the Court. **Form 240.** The information sheet asks the Petitioner to identify the Respondent, and to provide other identifying information about the Petitioner and Respondent. This information can help the process server find and serve the Respondent.
 - * **Custody, Visitation, and Guardianship Disclosure Report Form 364**
- **Situational Forms** are needed in some cases but not others, depending on the situation:
 - * **Affidavit of Parentage. Form 154.**
 - Filing this form is required if parentage has not been adjudicated as to each child. Adjudication means there is a Court order confirming the identity of the parents.
 - In cases in which the Court must decide parentage, the form *must* be filed with the Court.
 - * **Affidavit that a Party’s Address in Unknown Form 241**
 - If the Petitioner does not know where the Respondent lives, he or she should fill out **Form 241.**
 - * **Consent Order for Custody or Visitation**
 - **You need to file this form only if the parties agree on custody or visitation.**

- * **Waiver of Rights under the Servicemembers' Civil Relief Act**
 - **You need to file this form only if the Respondent is in the military.**

* **PETITION FOR CUSTODY** *(file the original and one copy)*

You MUST file this form in a custody case

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- **Who Can File for Custody?** This is explained on pages 8-9 of this packet.
- **How many custody petitions do I need to file?**
 - You need to file only one petition if you and the other parent have one or more children together. (You file for custody of all shared children on the same petition.)
 - You must file separate petitions if you have a child or children with different fathers or mothers. For example, if two of your children have one father and another child has a different father, you must file two petitions, one for each father.
- **Guidance on Filling out the Form**
 - **Who is the Petitioner?** The parent who started the case by filing a Petition for Custody is called the Petitioner.
 - **Who is the Respondent?** The other parent is called the Respondent.

Sometimes you need to identify people other than a parent as a Respondent. The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, all who have a legal relationship to the child must be notified. By naming a person as a Respondent, you are asking the Court to notify him/her of the petition. In custody cases, the following people should be named as Respondent(s):

- Any parent of the child;
- Any guardian of the child or the person with whom the child is living;
- Any Guardian Ad Litem of the child;
- Any organization having custody of the child (for example, the Division of Family Services).

If you fail to identify a respondent, your petition is incomplete and you may have to start the process over, including paying another filing fee.

- **The Petition must give the Court information about the facts of your case and what custody arrangement you believe is in the Interests of your Child.**
 - **You have to decide for yourself what to say in the Petition.** This Packet gives you information but cannot give you legal advice.

- **To prove a custody case**, in your Petition and at your hearing with a Judge, you need to explain:
 - What type of custody and parenting arrangements you want and why? (The types of custody are explained on page 5 of this packet.) You should include the following information:
 - where the child lives (residential placement);
 - how much time the child spends with each parent (schedule);
 - which parent or parents make important decisions for the child



There are special rules for cases with domestic violence, which are explained on pages 28-29.

- What specific facts prove that your custody request is in the best interests of your child?
 - A Judge will determine custody based on what is in the best interests of the child.
 - Custody law allows a Court to consider relevant information that could affect the welfare of the child.



- This includes evidence of domestic violence.
 - The Court will not consider parents' conduct that does not affect the child. Furthermore, the Court does not believe one parent is better than the other because of his or her sex.
 - The law on best interests of a child is explained in detail at pages 6-7 above.
- When writing down your statements of facts, you should list each of your main points in **numbered paragraphs**. This will make it easier for the Court and the Respondent to understand why you think you should have custody of the child. An example of numbered paragraphs can be found on the Sample Petition for Custody found on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
 - If you need more space to write, **you may attach additional pages** to the Petition for Custody. Be sure to state on the Petition that you have attached more pages, so the Court and the Respondent will know to look for additional information.
 - **You must sign your Petition for Custody in the presence of a Notary Public**
 This means you must go to a person authorized under Delaware law to verify the identity and signature of a person or authorized Court staff. A notarized document has been marked with a stamp (or "seal"), indicating that the signature on the document is legitimate. A notary must watch you sign, and then the notary places the stamp near your signature.

* **Custody Separate Statement Form.** *(File the original and one copy)*

You MUST file this form in a custody case

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so the Court can determine if it has authority to decide your Petition for Custody. If all of your children have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if your children have **lived apart** from each other sometime during the past five years, you must complete a separate form for each child. For example, if last year, your daughter resided with you and your son resided with the other parent, you will have to file two Custody Separate Statements, explaining where each child lived.

* **Information Sheet Form** *(File the original and one copy)*

You MUST file this form in a custody case

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- This form gives the Court general information about the parties so that the Court can notify the parties about upcoming proceedings and maintain up-to-date records.

Custody, Visitation, and Guardianship Disclosure Report

It is recommended that this Report be filed along with the Petition for Custody. Otherwise, the Report must be completed before any mediation conference takes place.

- *Note: If there is no mediation, then the parties must complete, exchange, and file the Report at least seven (7) days before their first custody or visitation proceeding.*
- See page 18 for additional information about the Disclosure Report.

SITUATIONAL FORMS

* **Affidavit of Parentage**

Filing this form is required if parentage has not been adjudicated as to each child. Adjudication means there is a Court order confirming the identity of the parents.

- In cases where the Court must decide who qualifies as a parent, the form *must* be filed with the Court. (See the introduction section or some ways to qualify as a parent at page 8).

* **Affidavit that a Party's Address is Unknown Form** *(File the original and one copy)*

You need to file this form ONLY if you do not know where the Respondent lives.

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- You must provide the Court with each Respondent's current address. If you do not know where the Respondent currently lives, you must try to locate him or her if it is safe to do so. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If, after looking for the Respondent(s), you cannot find his/her current address, you must complete this form. **Do not complete** this form until you have made an effort to locate the Respondent(s).
- If you feel that trying to locate the Respondent or comply with requirements of the form would not be safe or put you at risk, you may file the form without meeting those requirements.
- You must complete this form before you publish notice of the matter in the newspaper. Please see pages 22-23 for more information regarding Notice by Publication.



* **Consent Order for Custody, Visitation Form** *(file one original)*

You need to file this form ONLY if all parties agree upon custody and visitation.

You have the option of reaching a voluntary agreement. The Petitioner and the Respondent may voluntarily agree on how to resolve the case. When this happens, the Court will issue a "Consent Order."



NOTE: You do not have to reach an agreement. It is up to you to decide whether you want to enter into an agreement. An agreement is valid only if it is entered into voluntarily and consented to by both parties. Such an agreement will be presented to the Court and if the Court agrees and adopts the agreement, it is called a Consent Order.

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- On this form you need to describe for the Court the following things:
 - Which parent or parents will have legal custody of the child;
 - Either Joint Custody or Sole Custody (See pages 25-26 for information about the types of custody),
 - Where the child will be living;
 - Which parent will have visitation with the child;
 - What the visitation schedule will be.

- When describing the visitation schedule, be as specific as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for transporting the child to and from the visits.
- Try to be specific and write down exactly what your agreement is. An agreement that is detailed can be helpful because the arrangements and schedule for the child are clear. This can promote cooperation, reduce conflict between the parents and avoid future disagreements. In contrast, a vague agreement such as “visitation shall be by agreement of the parties,” may make it easier to reach an agreement now, but it fails to actually resolve the schedule and other issues for custody of a child. For more information about visitation, please see pages 45-47.
- Both parents must sign the Consent Agreement and have it notarized.
- Before you file the Consent Agreement, the Petitioner and the Respondent may have to meet with a Court employee (a mediator) to review the terms of your agreement.
- Once you have filed your agreement with the Court, it will be forwarded to the assigned Judge who will review your agreement. If the Judge finds that the agreement is in the best interests of the child, then he or she will sign the agreement and it will become a Court order, called a Consent Order.
- Once the Judge signs the Consent Order, it is a Court Order. The Petitioner and Respondent MUST follow the instructions in the Order. The Court will mail a copy of the signed order to the Petitioner(s) and the Respondent(s).
- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify custody. See pages 31 for more information on how to change a custody order.

*** Waiver of Rights Under the Servicemembers’ Civil Relief Act Form.** *(File the original and one copy)*

You need to file this form ONLY if the Respondent is in the military.

- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- If the Respondent is in the military, the Respondent must file an Answer, and Affidavit of Appearance **or the Petitioner must have the Respondent sign this Form.**
- If the Respondent does not file one of these documents, the Petitioner must file a **Motion to Appoint an Attorney.** This process should be started as soon as possible because of the time that it takes. The Court will not schedule your custody hearing until this process is completed.
- If there are multiple Respondents who are in the military, a separate form must be filed for each Respondent.

How Do I File the Forms?

- You **MUST** file the **ORIGINAL** and **ONE (1) COPY** of each form above with the Court. You file by handing in the documents to the Court.
- Make a copy of each completed form for your records.
- Have your set of copies “clocked-in” for your file. Having a paper “clocked-in” means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.

Where Do I File the Forms?

The Petition and necessary forms may be filed with the Family Court in any county in the State of Delaware. The paperwork will be transferred to the county that has jurisdiction to hear the matter (**the county where the child currently lives**). If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- In Kent and Sussex Counties **you may file your papers at the Resource Centers** on the first floor of the Family Court buildings.
- In New Castle County, **you may file your papers at the Resource Center** on Lower Level 1 of the Leonard L. Williams Justice Center.
 - Or, IF you have all of the forms completed, you do **NOT** have any questions, you have made the necessary copies, and all required notarizations have been obtained, **you may file your papers at the Central Filing and Payment Center** located on the first floor of the Leonard L. Williams Justice Center. There is no staff assistance at the Central Filing and Payment Center.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed.

FILING BY EMAIL

You may also file your petition and required forms by email. The required forms are those referenced beginning on page 15 in this packet.

To file by email, you must send the petition and required forms to: FC_CustodyVisitation@delaware.gov.

For more information on filing by email, please review the Civil Filing by Email FAQ: <https://courts.delaware.gov/family/faqs>

What Are the Filing Fees?

- A filing fee is charged for each Petition. The filing fee can differ depending on the type of Petition you are filing.
- For information about fees, you can look at the Family Court website at <https://www.courts.delaware.gov/forms/download.aspx?id=27108>.
- Fee information is also available at the Family Court Resource Centers.
- **If filing in person**, the filing fee can be paid in cash, by credit card, by check or by money order made payable to “Family Court.” **If you are filing by email**, you may only pay by credit card. Family Court staff will call you for credit card information. It is important that you include your phone number in the email communication to the Court. **Your petition will not be considered filed until the filing fee is paid.** If you are unable to pay by credit card, you may file by mail enclosing a check or money order with your petition. **If you are filing by mail**, you may only pay by check or money order.
- **FAMILY COURT WILL NOT ACCEPT YOUR PAPERS WITHOUT THE FILING FEE.** There are additional costs if you must publish notice of this action. (See pages 22-23 for more information of when publication is necessary).
- **Can the fee sometimes be waived?**
 - You may be able to have the filing fees waived by the Court if your financial situation makes it difficult for you to pay the costs. If you are indigent, fill out an Affidavit in support of *Application to Proceed In Forma Pauperis* (fee waiver). **Form 257P**. This is a detailed financial information form which requires supporting documentation of your financial situation.

Service of Process

- The delivery of the Petition for Custody and any related forms you file is called **Service of Process**.
- **The Respondent must receive a copy of the Petition for Custody.** (Or, if there is more than one Respondent, each Respondent must receive a copy.)
- The way that you accomplish Service of Process depends on how much information you can give the Court about where the Respondent lives.
- Determine from the following options how Service of Process should be accomplished in your case.
 - **If the Respondent lives in Delaware and you know his or her address**, a Process Server (someone whose job is delivering Court papers) will give a copy of your Petition and other forms to the Respondent(s). This is called Personal Service. You do not need to fill out any additional paperwork.
 - **If the Respondent does not live in Delaware and you know his or her address**, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s).

110 Galaxy Drive
Dover, Delaware 19903
(302) 674-3600

○ **Sussex County**

Sussex Living
1196 S. Little Creek Road
Dover DE 19901
(302) 346-5444

- If the Respondent lives in another state or country and you do not know the Respondent's address, you must publish the notice in that location (not in Delaware). If you are required to publish in an out-of-state newspaper, you should select a newspaper that is widely distributed in the area where the Respondent(s) lives (or last lived if you do not know the address) **AND** the newspaper should be one the Respondent(s) would most likely read.

*** Filing an Answer to the Petition** (*File the original and one copy*)

- Once the Respondent has been served with the Petition for Custody, the Respondent has 20 days from the date of service (the date that the Court papers are delivered to the Respondent) to respond by filing an Answer to the Petition for Custody. If there is more than one Respondent in your case, each Respondent must file his/her own separate Answer.
- In the Answer to a Petition for Custody, the Respondent must reply separately to each statement in the Petition. The Respondent can either:
 - **Admit** that a statement is true or correct; or
 - **Deny** that a statement is correct; or
 - **State** that the Respondent “**has no information** on which to admit or deny the statement.”
 - If the Respondent disagrees with a statement, he or she may also explain the reason for disagreeing.
- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- **Custody, Visitation, and Guardianship Disclosure Report**
 - It is recommended that this form be filed along with the Answer to the Petition for Custody. Otherwise, before a mediation conference, each party must complete the written disclosure report. Each party must bring a completed Report to the mediation conference, unless it was filed with the Petition for Custody, the Answer to the Petition or was otherwise filed prior to mediation. If there is no mediation, the parties must complete, exchange, and file the Disclosure Report with the Court at least seven (7) days before their first custody or visitation proceeding.

Automatic Court Order Preventing Permanent Removal of Child from Delaware

- When a Petition for Custody is filed, Family Court immediately enters an automatic Court Order called a Preliminary Injunction that applies to **both Petitioner and Respondent**.
 - It becomes effective on the Petitioner as soon as the Petition for Custody is filed (Petitioner will receive a copy of the Preliminary Injunction when the Petition is filed.)
 - The Preliminary Injunction becomes effective upon the Respondent at the time the Respondent is served with the Petition.
- The Preliminary Injunction prohibits any party from removing a child from the jurisdiction of the Delaware Family Court without receiving permission from the other party or the Court.
 - The purpose of the Preliminary Injunction is to prevent a person from permanently removing the child from Delaware, or from removing the child for a period of time that would interfere with the other person's right to spend time with the child and participate in the child's life.
 - **NEITHER THE PETITIONER NOR THE RESPONDENT MAY RELOCATE (MOVE) THE CHILD TO ANOTHER STATE OR TAKE THE CHILD OUT OF DELAWARE FOR A PERIOD OF TIME THAT WOULD CAUSE FAMILY COURT TO LOSE LEGAL AUTHORITY (JURISDICTION) TO DETERMINE THE CUSTODY CASE.**

**SEE FAMILY COURT WEBSITE OR RESOURCE
CENTERS FOR THE SAMPLE FORMS**

3. WHAT KEY LAWS APPLY TO CHILD CUSTODY?

There are Different Types of Custody:

- Sole Legal Custody. This means one parent alone makes major decisions about the child, such as health care, religious upbringing, where to attend school and what activities to do.
 - Even when one parent has sole legal custody and significant involvement in the everyday care of and responsibility for the child, the other parent may have frequent and meaningful contact (time) with the child. *Time with the child is a separate issue from decision-making.* The parent who does not have sole custody is also entitled to be informed of important events and developments in the child's life unless a Court decides this is not appropriate. See 13 Del. C. §727.
 - Note that a parent with sole custody does not terminate (end) the other parent's rights. Terminating a parent's rights to a child can only happen after a Court decides under very strict guidelines that this is the right

thing to do. This packet does not deal with termination. For information on this topic, see Termination of Parental Rights Instruction Packet: <https://courts.delaware.gov/forms/download.aspx?id=28648>

- Joint Legal Custody. Joint legal custody means the parents make major decisions about the child, such as health care, religious upbringing, where to attend school and what activities to do. Joint legal custody is NOT about the amount or proportion of time a child spends with or lives with each parent.
- Primary Physical Placement. This means the place where the child lives (staying overnight) a majority of the time.
- Shared Physical Placement. This is when a child spends almost equal time living with each parent. The Delaware Child Support Formula defines shared placement as an average of at least 164 overnights (approximately 45%) annually in each household.
- Visitation/Contact/Parenting Time. These are the legal terms in Delaware for the time a parent spends with a child when the other parent (or a guardian) has primary physical placement. Visitation (and/or contact) may or may not be overnight. It may be supervised or unsupervised and can include communication such as mail, telephone, texting, email and video connections, such as Skype or Facetime.
 - The Family Court Contact Guidelines provide a general framework for visitation arrangements. See Appendix A of this packet for the Guidelines.
- Guardianship. This is when a person other than a parent has the legal right to make decisions about and/or live with the child. Guardianship is different from custody and has different legal standards. Guardianship is also different from foster care. (In a foster care situation, the State of Delaware has legal custody of the child, even though the child may be living in a foster home placement.)
- See information about Guardianship available at <https://www.courts.delaware.gov/family/guardianship/index.aspx>



For specific laws for awarding custody that apply in a case with domestic violence, See pages 28-29 in this packet

Best Interests of the Child Laws Apply to Determine Custody

To prove your custody case, in your petition and at your hearing with a Judge, you need to explain

- What types of custody and parenting arrangements you want AND
- What specific facts show that your custody request is in the best interests of your child.

A Judge will determine custody based on what is in the best interests of the child. The important issues in custody are all decided by considering what is in the best interests of the child. These include:

- where the child primarily lives;
- how much time the child spends with each parent;
- which parent or parents make important decisions for the child.

The Court can consider other things, too. In fact, custody law allows a Court to consider any relevant information that could affect the welfare of the child. To determine what is best for a child, the Court must consider all relevant factors that can impact a child. This includes the list of factors in the Delaware statute, 13 Del. C. §722, explained here:

(1) The wishes of the child's parent or parents

- This is often an important factor to take into consideration and to communicate to the Court. What would you like the Judge to order for custody of your child? Why? Make sure you understand the difference between legal custody, residential placement and contact as you address these important issues. (See types of custody described immediately above at pages 25-26).

(2) The wishes of the child

- The Court will consider the wishes of the child if the child is old enough and mature enough to have an intelligent opinion. Note, young children may prefer a parent for reasons the Court typically will not give great weight to (i.e. "I want to live with my dad because he lets me stay up late!" or "I want to live with my mom because she lets me eat ice cream for dinner!").

(3) The relationship of the child to parents, grandparents, siblings, persons cohabiting, other residents in the household, or other person who may affect the child's best interests.

- The quality of the relationship between a parent and a child is a very important consideration for awarding custody. The Court will also look at the child's relationship to other people living in the same space as the parent or other individuals who are involved in the child's life.
 - What are the facts you can explain to a Judge that show a parent has a positive healthy relationship with the child? How much time does the parent spend with the child? Who cares for the child? Which parent gives daily care to the child such as feeding, bathing, putting to bed, or helping with homework? Who manages the child's health care and other activities? Does the child trust and have a strong emotional connection with the parent? Who does the child look to for help? What other support is provided by other people living in the same space as the parent seeking custody? This support can take the same forms as listed above, including emotional closeness.

- Are there facts that show that a parent is doing something that is not good for the child? Or neglecting the child? Or harming the child?
- As part of your trial, you may need family members or other individuals residing in the household to testify as to their relationship with the child and/or if a parent relates to the child in a way that is good for the child. Be sure to have subpoenas served on all necessary witnesses. For information about subpoenas see page 40 below.

(4) The child's adjustment to his or her home, school and community

- What facts can you explain to show how the child is doing now, with the care they now have by a parent or others? Consider the child's grades, sports, activities, and home life. Consider bringing copies of report cards and other relevant evidence to the Court about the child's progress in school.
 - You may need to subpoena neighbors, family members, counselors, coaches, teachers (teachers only when necessary), or other witnesses having information about the child's adjustment to home, school or community. For information about subpoenas see page 40 below.

(5) The mental and physical health of all people involved

- What are the child's physical, mental or health needs that the parents must address. What is the mental or physical health of each parent that may or may not affect his or her ability to parent?
 - You may need to subpoena necessary health records or witnesses who can testify as to this factor. For information about subpoenas see page 40 below.

(6) Past and present compliance by both parents with their rights and responsibilities to their child

- This factor includes the kind and quality of care by a parent for the child currently and in the past. It also raises the question of whether a parent has supported the child in ways that matter: financially; practically (as in getting the child to school, medical care, or other activities reliably); and emotionally.



(7) Evidence of domestic violence

- Domestic violence must be considered by a Court as a factor in determining custody. That means the Court must think about how the abuse impacts the child. This includes abuse by one parent against the other parent and by a parent against a child. (See 13 Del. C. §706A).
 - The specific words in the statute are "Any evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the Court in

determining the legal custody and residential arrangements in accordance with the best interests of the child." (See 13 Del. C. §706A.)

- Note that the law does not say the domestic violence must have resulted in a criminal action, or a Protection from Abuse Order. The Court *must consider any evidence* of domestic violence in deciding custody.
- The law also says that if a Court decides to award custody to a party despite evidence of domestic violence against that party, the Court has must explain why it is doing so, in writing. The statute says:
 - "If sole or joint custody is awarded to, or if primary residence of a child is placed with, a party notwithstanding evidence that the party has committed acts of domestic violence against the other parent, against the child or against any other person living in the child's household, the Court shall make specific written findings in support of the decision to award custody or primary residence to that party." (See 13 Del. C. §706A.)
 - Domestic violence is broadly defined to include physical or sexual abuse or threats of physical or sexual abuse by one parent against the other parent and against any child living in either parent's home, or against any other adult living in the child's home. (See 13 Del. C. §703A.)
 - The definition of domestic violence is not limited to the acts listed above. Domestic Violence can include behavior that causes fear and emotional distress. More generally, acts that exert power and control over a victim can qualify as domestic violence.
 - **Rebuttable Presumption Against Custody to "Perpetrator of Domestic Violence."** The Court must consider evidence of domestic violence in custody cases. In addition, in some cases, the type of offense committed by a parent means a Judge cannot award certain types of custody to the offending parent.
 - More specifically, there is a presumption against awarding joint or sole custody to a "perpetrator of domestic violence" if that parent commits and is convicted of a certain type of crime and the victim of the crime is 1) the other parent; or 2) any child they have together; or 3) any person residing in the child's home. See below for the "types of crimes" that trigger a presumption.
 - **What does the presumption mean?**
 - Except under certain circumstances explained below, the presumption means the Court CANNOT award joint or sole legal custody of the child to the offending parent (who will not be allowed to make major decisions concerning the child).
 - Also, in such cases the Court CANNOT award the offending parent primary residential placement (meaning the child cannot live primarily with that parent).
 - **When does the presumption apply?**



- It is important to understand who fits the legal definition of a “perpetrator of domestic violence.” The entry of a Protection from Abuse Order against a person does not fit this definition and does not trigger a presumption.
- Delaware Law defines a perpetrator of domestic violence as "any individual who has been convicted of committing any of the following criminal offenses in the State, or any comparable offense in another jurisdiction, against the child at issue in a custody or visitation proceeding, against the other parent of the child, or against any other adult or minor child living in the home." (underlining added)
 - Any felony level offense;
 - Assault III;
 - Reckless endangering II;
 - Reckless burning or exploding;
 - Unlawful imprisonment II;
 - Unlawful sexual contact III;
 - Criminal contempt of a PFA based on an assault or other physical abuse, threat of assault or other physical abuse or other action placing petitioner in immediate risk or fear of bodily harm; or
 - Child abuse in the third degree.

- **The presumption can be rebutted.** This means it can be overcome if the offending parent can prove certain things, as explained next. If the presumption is rebutted, the Court may grant custody to the parent who has committed domestic violence.

- The presumption can be rebutted if the parent:
 - Completes a batterer’s intervention program;
 - Completes an alcohol or substance abuse program (if applicable); and
 - Demonstrates to the Judge that it is in the child’s best interests for the parent to receive primary placement or legal custody. (13 Del. C §705A)



- **Remember:** Even if the presumption does NOT apply, the Court must consider evidence of domestic violence in determining custody. See explanation above at pages 28-29.

(8) **The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.**

- The Court may conduct a criminal history check of parents, as well as of any other person who lives in the home of either parent and anyone else who has a significant relationship with the child. Parties should also conduct a criminal history check and present evidence of the criminal history of any party or other resident of the child's household. The Judge may obtain and consider this information in the course of making a custody decision.

(9) Any other information about the best interests of the child.

For example, the Court may consider any of the following

- Previous contact between parent and child;
- Parents' ability to communicate;
- Geographical proximity of the parents (regarding home, school, or daycare);
- Housing arrangements;
- Parents' work schedules;
- Number and age of siblings;
- Drug and alcohol history;
- Prior parental interaction; or
- Other relevant factors as the Court deems appropriate.

How Can Custody Be Modified (Changed)?

A party seeking to change an existing custody order may file to Modify Custody Order (Form 348) setting forth facts supporting the requested change (called a "modification") according to the legal rules below. The requirements for modifying a child custody or visitation order depend on the circumstances.

- An order concerning "*visitation*" may be modified at any time in the best interests of the child.
- An order concerning *legal custody* or *residential placement* of the child entered by agreement of the parties may be modified whenever doing so is in the best interests of the child (the best interests standards is explained at pages 6-7 above).
- However, if the Court issues an order regarding legal custody or residential placement after a full hearing, then custody can be modified only under certain circumstances, explained here:

(1) If the application for modification is filed within 2 years after the Court's most recent order concerning these matters, the Court cannot modify its prior order unless it finds, after a hearing, that continuing enforcement of the prior order may endanger the child's physical health or significantly impair his or her emotional development.

(2) If the application for modification is filed more than 2 years after the Court's most recent order concerning these matters, the Court may modify that earlier order after considering:

- Whether any harm is likely to be caused to the child by a modification of that earlier order, and, if so, whether that harm is likely to be outweighed by the advantages, if any, to the child;
- The compliance of each parent with prior orders of the Court concerning custody and visitation and compliance with his or her duties and responsibilities including whether either parent has been subjected to sanctions by the Court since the prior order was entered; and
- The best interests of the child factors explained on pages 6-7 in this packet.



(3) The safety of all parties is of vital importance. Acts of domestic violence can lead to modifications of custody or visitation as explained here:

- A *visitation* order can be modified to protect a child or the child's parents if domestic violence has occurred since the Court issued the order. No arrest or conviction needs to occur for the Court to modify the order.
- A *custody* order can be modified if a parent who has custody committed domestic violence after the Court issued the order. No arrest or conviction needs to occur for the Court to modify the order.
- **Relocation** (moving to a new location with the child). Prior to a parent relocating his or her residence, consideration shall be given to the effect that the relocation may have on the existing contact schedule. If the relocation may result in a change in the child's school, travel time to school, extracurricular activities, or may otherwise adversely affect the child's best interests, the parent choosing to relocate must obtain written approval from the other parent or a Court Order prior to relocating. When a proposed relocation meets the criteria of Section 734 of Title 13 and a party seeks an order from the Court, the Court must consider Section 734's relocation factors in addition to the best interest factors.

4. REQUIRED PARENT EDUCATION CLASS

What is the Parent Education & Certificate of Completion Requirement?

Parents are required to take a parent education class and file a Certificate of Completion with the Court.

- **All parents with children up to the age of 17 must take a Parent Education Class**, unless they apply to the Court to have the requirement waived ("excused") for a good reason, and the Court then approves the request. For more information on a waiver, please contact Legal Help Link (LHL) at <https://delegalhelplink.org>

- The classes must be approved by the state, and must be at least *four* hours long, in total. A listing of available classes is available at the Family Court Resource Centers and on the Court’s website: <https://courts.delaware.gov/family/ParentEd/>
- You should register for the Parent Education Classes **AS SOON AS POSSIBLE** because the classes tend to fill quickly, and you may be placed on a waiting list.
- Once you have completed the Parent Education Class, the teachers of the course will give you a Certificate of Completion.
- You must file the **ORIGINAL** Certificate of Completion of the Parent Education Class with the Family Court.

What Happens If I Do Not Attend a Parent Education Class?

- In a **divorce case**, if a Certificate of Completion is not received within 180 days of the date of the filing of the Petition, the Petition will be dismissed.
- In any **custody or visitation case**, failure to attend the class may be considered when deciding the case or may result in the Court dismissing the case.



Additional Class Required in Some Cases with Domestic Violence

- If a parent has a demonstrated history of domestic violence, both parents must attend a domestic violence related class. Parents may not attend the same domestic violence class. (See 13 Del. C. 1507 (h)).
- This class is only required in these types of cases.

Can the Requirement of Attending Classes Be Waived?

- A requirement of attending either a parenting class or a domestic violence class can be waived for a good reason. If the Petitioner wants the Court to do so, he or she must file a Motion, asking the Court to waive the requirement and showing there is a good reason why he or she should not have to take the course. A general (“generic”) motion form is available online and in the Resource Centers and can be used for making this request. For more information on a waiver, please visit Legal Help Link (LHL) at <https://delegalhelplink.org>.
 - A party may also file a Motion requesting the Court recognize a comparable education program. The Motion must attach the program's curriculum. The generic motion form is available online and in the Resource Centers.

5. MEDIATION

What is Family Court Mediation?

Family Court Mediation is a process in which people, usually parents, try to resolve disputes. They are assisted by a Family Court Mediator. In a custody case, the mediator helps parents communicate to see if they can come to an agreement that is good for the children about:

- Where their children will reside,
- The time the children will spend with each parent,
- Each parent's access to information, and
- The role of each parent in making important decisions in each child's life.



Please know that **you are NOT required to reach an agreement at Mediation**. It is up to you to decide. You can reach an agreement voluntarily. You do not have to agree to anything that makes you feel uncomfortable or unsafe, or that you think is not good for the children. You are free to decide that no agreement is possible at this point.

Who Must Attend Mediation?

- **Generally**, parents must attend mediation for custody cases, except in cases where there is domestic violence, as explained next.



- **Exception in cases with domestic violence:**

- Family Court Mediation conferences are prohibited in child custody or visitation or support cases when:

- One of the parties has been found by a Court to have committed an act of domestic violence against the other party in any legal proceeding (including in a Protection from Abuse proceeding, or in an earlier custody proceeding, or in a criminal proceeding).

- Either party has been ordered to stay away or have no contact with the other party.

- In either of these cases, a victim of domestic violence who is represented by counsel can request mediation (13 Del. C. §711A).



- **Exception in cases where one party is a sex offender**

- The Court will **NOT** schedule Mediation if one of the parties is a sex offender as defined by Delaware law. There are no exceptions to this rule (13 Del. C. §728A).



- **What if I don't feel safe participating in a mediation conference, but my case does not fit these exceptions?**

- A party may file a motion to request that Mediation be bypassed. You do not have to proceed with Mediation if you don't feel safe and feel engaging in the process places you at risk of harm or compromises your ability to freely negotiate without coercion, pressure, and threats.

- **What happens in cases not scheduled for mediation?** There will be no Mediation conference and your case will be scheduled for a hearing before a Family Court Judge.

What are the Rules of Conduct for Parents in Mediation?

There are rules of conduct for mediation that each parent must follow.

- The parties must be respectful of each other and take turns talking and listening. That way each person can explain what he or she thinks is best for the child or children. This allows the parents to explore whether they can agree on a custody and visitation arrangement that is good for the children.
- The Mediation will be terminated if these rules are not followed.

What is the Role of the Family Court Mediator?

A Family Court Mediator has several different jobs.

- **The Mediator can give you information** about the processes and options you have in Family Court concerning custody of your child and may be able to answer some questions you have. However, the Mediator CANNOT give you legal advice. For legal advice, you need to consult with an attorney of your choosing.
- **The Mediator helps parents have a discussion** to see if it is possible to come to a voluntary agreement about what arrangements are in the best interests of the child.
- If you do not reach an agreement, **the Mediator *may* recommend a temporary order** concerning custody of the children to the Judge assigned to your case. It is up to the Judge whether to accept the mediator's recommendation, or make changes to it, or schedule a hearing.

Decisions for temporary orders are made based on the information provided in the case, including any information in the Custody Petition and Answer, in the Custody Disclosure Report and any other information given by the parents in the Mediation process.

How Do I Prepare for Mediation?

- **Because a Court Order will likely be issued after Mediation**, whether it is a Consent Order or a Temporary (Interim) Order, come to Mediation prepared to discuss how the Court should award custody and why.
- **Be realistic when asking for the terms of a custody order.** The law says that it is better for a child to have at least some contact with both parents unless that contact would endanger the child's physical health or emotional development. The focus is on what is in the child's best interest and safe for the child and the parents.

Bring Required Custody, Visitation & Guardianship Disclosure Report

- Before a Mediation conference in a case for custody, visitation or guardianship, each party must complete a written Custody, Visitation, and Guardianship Disclosure Report. You must attach any documents that the instructions require. Unless the

report has already been submitted to the Court, each party shall bring a completed report to the Mediation conference. At that time, the information contained in the report will be notarized.

- If there is no Mediation, the parties must complete, exchange, and file the Custody, Visitation, and Guardianship Disclosure Report with the Court at least seven (7) days before their scheduled Court appearance (hearing, trial or mediation conference).

May I participate in Mediation by Phone?

If a party lives more than 100 miles from the courthouse, or if there is another good reason that makes that party's appearance difficult, the Mediator may allow participation by telephone. If either party wants to participate by phone or wants the Mediator to postpone the hearing (called a "continuance"), a written request must be made. To request telephonic participation in mediation, file Form 539.

What if the Parties Reach Agreement Prior to Mediation?

- If the parties come to an agreement before the Mediation conference, they must submit that agreement before the scheduled conference, or else they must appear for the conference.

What Happens If You Reach Agreement in Mediation?

If you reach an agreement in Mediation, the Mediator will write up what the parents agree to. A Judge of the Family Court will review the proposed agreement, the criminal history of the parties and any information regarding Protection from Abuse orders. If approved by the Court, the agreement will then become an order of the Court. There are several types of orders available at mediation:

- **CONSENT ORDERS**

- If, at the end of Mediation, you and the other parent reach an agreement, the Mediator will type your agreement into a document and the Petitioner and the Respondent will sign the agreement. The Mediator will also sign the agreement. Then, the Mediator will give your signed agreement to a Judicial Officer. The Judicial Officer will decide whether your agreement should become a Court Order, called a **Consent Order**. **See directly above information on Court approval of agreements.**
- If the Judicial Officer decides your agreement should become a Consent Order, the Judicial Officer will sign the agreement and the Consent Order will be mailed to the Petitioner and the Respondent. You will **NOT** have to go to a hearing with a Judge. Usually, the Judicial Officer will sign a Consent Order proposed by a Mediator.
- Once a Consent Order is signed by a Judicial Officer, it is a Court order and both parties **MUST** follow the terms of the Order.

- **NOTE: IF A CONSENT ORDER IS ISSUED, THIS CONCLUDES YOUR CUSTODY/VISITATION CASE.**

- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify custody. See page 31 of this packet for more information about changing a custody order.
- **TEMPORARY ORDERS**
 - As an alternative, you and the other parent may reach a temporary agreement at Mediation. This kind of agreement is made with the intent that it should only last until the Judge makes a decision after your Court Hearing. If you do this, the Mediator will type your temporary agreement into a document and you and the other parent will sign the temporary agreement. The Mediator also will sign the temporary agreement. Thereafter, the Mediator will give your signed temporary agreement to a Judge. The Commissioner will decide whether your temporary agreement should become a Court order, which is called an Interim Consent Order.

What Happens If You Do Not Reach Agreement in Mediation?

- If you do not reach an agreement, the Mediator may recommend a temporary order concerning custody of the children to the Judge assigned to your case. It is up to the Judge whether to accept the Mediator’s recommendation, make changes to it, or schedule a hearing.
 - As explained above in the description of the role of the mediator, decisions for temporary orders are made based on the information provided in the case, including any information in the Custody Petition and Answer, in the Custody Disclosure Report and any other information given by the parents in the mediation process.
- The temporary order will remain in place until the Judge issues a new temporary or permanent order, or until the Petition is dismissed, whichever happens first.

Mediation and Special Circumstances

In some cases, Mediation may not be the best next step to take. If the Mediator determines that it would be difficult for the parties to mediate the dispute, the parties will be notified. In that case, the matter will be heard by a Judge.

6. HEARING WITH A JUDGE

This section gives you information on going to a hearing with a Judge in a custody case. You should read this carefully. There is additional information available on the Family Court website (<https://courts.delaware.gov/family>) or in the Resource Centers that you should also review carefully if you do not have an attorney representing you. Specifically, you should review a document called “Practice Guidelines,” which has additional information regarding a hearing for *any* Family Court case.

What is the Process Before Having a Hearing with a Judge?

- **There is a Case Management Conference.** The Judge will hold a conference as soon as possible after the case is filed, but not later than 60 days after mediation, or if the case does not go to mediation, 90 days from service on the respondent. This is called a “*case management conference*,” and it can serve many purposes. The Judge can evaluate the issues in the case and provide guidance on moving the case forward. The Judge can also enter temporary (“interim”) orders at that time. In addition, the Judge can talk to the parents about a possible agreement on custody (called a settlement of the case).
 - For more details, you can review Family Court Civil Rule 16.2(a) available at <https://www.courts.delaware.gov/rules/pdf/FamilyCourtCivilRulesAmendmentEffJan2018.pdf>
- The Judge will issue a scheduling order that will provide deadlines and will give you dates for future conferences and hearings.
- **There also may be a separate pre-trial conference**, regardless of whether you have an attorney. At the conference, the Court will assist the parties in simplifying the issues, if necessary, and perhaps settling the case, if appropriate. The Court will ensure the prompt scheduling of the trial. See Rule 16.2(b) available at the link above.
- It is important for you to follow the instructions and Orders of the Court (such as discovery requirements). If you fail to appear at a scheduled conference, are unprepared for the conference, or do not obey an order, the Court can impose sanctions, which are punishments that can include fines and Court costs.
- If the Petitioner fails to appear for any required hearing the Court may dismiss the matter (the case ends if this occurs).
- If the Respondent fails to appear for a hearing the Court may enter a default order granting the requests of the petitioner (if deemed appropriate by the Court).

Scheduling A Court Hearing

- **A Hearing will be scheduled by the Court ONLY if:**
 - The Mediation was unsuccessful (there was no agreement, or a temporary agreement was reached); OR
 - Mediation was not required.
- **Notification**
 - The Court will notify you when your hearing is scheduled, either by mailing a **Notice** to inform you of the time and date of the Court Hearing, or in person at a Case Management Conference.
 - You can also choose to have notification sent through email. The email will be encrypted (in code) for confidentiality reasons.

What If I Cannot Attend the Hearing on the Scheduled Date?

- You must attend the scheduled hearing, once you receive notice of it.
- * **If you cannot attend for an unavoidable and good reason, you must notify the Court IMMEDIATELY by filing a Motion for a Continuance.** *(File one original and mail one copy to the Respondent.)*
- A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Centers.
- In this Motion, you must state very specific reasons why you cannot attend the hearing. You must have an unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day.
 - Before you file the Motion for Continuance, you must contact the Respondent or the Respondent’s lawyer to obtain a position as to your request for a continuance. You will need to state in your Motion whether the Respondent agrees (consents) or disagrees (opposes) with the continuance request. If you are unable to obtain Respondent’s position by the time that the Motion is filed, you will need make a statement in the Motion that you have been unable to obtain Respondent’s position on the continuance.
 - If there is a no-contact order, you should NOT contact the opposing party. In that case, bring the motion to the Court and staff will mail it for you.
 - Your motion should also include the number of times a continuance of the matter has been sought.
- Because the law is very strict when it comes to rescheduling, these motions are not always granted.
- You will be notified by the Court if your Motion for Continuance has been granted.
- Unless the Court grants a continuance, you MUST attend Court on the day of your scheduled hearing.
- **If you fail to appear at your hearing, the Court may dismiss your custody petition or enter an order in favor of the other party.**

Preparing for the Hearing

- **The Court hearing is a trial in front of a Judge:**
 - The Petitioner and the Respondent will each be given an opportunity to tell the Judge their side of the case about what is in the best interests of the child. Witnesses may be called to explain the facts of the case that they know about. The Petitioner and the Respondent need to be prepared for trial.
- **Plan.** You need to think about and plan what you want to say and show to the Court. At the trial, you must prove that the custody arrangements you are asking for are in the

best interests of the child. What facts will help you prove to the Court that your proposed custody arrangements should be ordered?

- The best interests of the child law are explained on pages 6-7 of this Instruction Packet. You should review that information before the hearing, so you are prepared to present your case to the Court.
- The Court must consider domestic violence as a factor in determining what custody arrangements are best for the child. See pages 28-29 above for detailed information about evidence of domestic violence and the potential impact of domestic violence on a Court's decision about custody.



- **TESTIMONY BY WITNESSES:**

- You can help prove your case through testimony—which is when a person under oath tells the facts to the Judge and that person has first-hand knowledge of the facts. The person testifying is called a *witness*. The Petitioner and Respondent can testify as witnesses and so can other people who know the child and the family.
- Witnesses can include:
 - A family member,
 - Friend,
 - Neighbor
 - Doctor,
 - Therapist,
 - Police Officer,
 - Coach,
 - Teacher, or
 - Child (see immediately below for more on testimony of a child)
- If a child is a witness, an interview may be scheduled outside of the Court, and attorneys may sometimes be present.
- The specific words of the statute that deals with getting the child's version of the events are:

“The Court may examine a child outside the presence of the parties for the purpose of obtaining the child's testimony and ascertaining the truth of a matter asserted by a party to the proceeding. The Court may permit counsel to be present at the examination, and to also examine the child. The Court may permit a party who is not present for the examination to submit questions of fact for the Court to use in ascertaining the testimony of the child.”
- Witnesses must appear in person at the hearing to testify. A letter or affidavit is NOT accepted by the Court as proof in a custody case.

- **If you want to call a witness to testify, you need to make sure the witness is present in Court.**

- A witness can come in voluntarily or can be served a subpoena (explained next) that requires attendance at the hearing.
- YOU CAN BRING A WITNESS TO YOUR HEARING TO TESTIFY. A WITNESS CAN TESTIFY VOUNTARILY EVEN IF THE WITNESS HAS NOT BEEN SUBPOENAED.

SUBPOENAS: It is important that all witnesses are served with a subpoena (which is an order to appear in Court) prior to trial to ensure their appearance on the day of your hearing.

- Any person, who is over the age of 18 and is not a party to the case, can serve a subpoena on a witness. Subpoenas (with instructions) can be obtained from the Family Court prior to the trial.
 - A party can also request that the Court “process server” serve the subpoena prior to the hearing. The Court, however, can’t guarantee that the subpoena will be served prior to a hearing. If a witness is not served with a subpoena within a reasonable period of time before trial the Court may not grant a continuance or reschedule the hearing so that a witness can testify.
 - NOTE: you should serve subpoenas as soon as possible.
- **OTHER EVIDENCE** can be presented to the Court by the Petitioner or Respondent such as:
 - **Photographs,**
 - **Text Messages, E-mails or Phone Messages,**
 - NOTE: a party may request permission from the Court prior to trial to bring a cell phone to Court on the day of the trial for this purpose.
 - If you have information on an electronic device that you wish the Court to view as evidence during the hearing, you must first obtain permission from the Court to bring the electronic device into the Courthouse. Place your cell phone or other electronic device in a locker available in the parking garage at the courthouse. When you check in for your hearing or prior to the day of the hearing, you can request permission to bring in the device by completing a request form. Once you have permission, you will be accompanied through security by a Family Court Security Officer. The judicial officer will determine how the device will be stored and secured throughout the proceeding.
 - Be sure to set aside enough time for this process.
 - **Medical Records** (certified according to the rules of evidence)

- You may either subpoena the person who has the medical records, or another qualified witness, to testify and bring the records to Court, OR
- You may obtain “certified” copies of the medical records (if so, you do not need a witness). The certification for medical records must come from the custodian of the medical records or other qualified person working for the doctor or hospital and must establish the following:
 - (1) that the report (record or data in any form, of acts, events, conditions, opinions or diagnoses), was made at or near the time by a person with knowledge;
 - (2) was kept in the course of a regularly conducted business activity; and
 - (3) was the regular practice of that business activity to make the memorandum, report, record or data.

(See DRE 803(6) & D.R.E. 902(11) or D.R.E. 902(12).)

- **Report Cards or School Records,**
- **Criminal Conviction or Guilty Plea** (the documents must be certified if they are from any Court, other than the Delaware Family Court),
 - A criminal conviction or plea agreement related to domestic violence, child abuse, drugs, DUI or other criminal history is relevant to the Court’s custody determination.
 - You may obtain a certified copy of a conviction or guilty plea from the Court that issued that order by asking the clerk or authorized Court employee to sign and confirm its accuracy (certification). For example, if your case is in New Castle County, Delaware and the other party was convicted of an assault in the Delaware Superior Court, you may go to the Prothonotary’s office located in the Leonard L. Williams Justice Center and ask the Clerk to “certify” a copy of the conviction. If the conviction or guilty plea is from a different state, you will need to contact the Clerk of the Court in that state for a certified copy. Some states allow you to obtain a certified copy from their web page. There is often a small fee associated with obtaining a certified copy (See Delaware Rule of Evidence DRE 902(4)).
- **911 Calls** (A certified copy of the 911 call may be obtained from the 911 call center by subpoena).
- **It is very important that you bring with you on the day of trial a minimum of four (4) copies of each item of evidence.**
 - To meet the legal requirements of the admission of evidence at a hearing you should speak with an attorney. THERE ARE RULES THE COURTS FOLLOW FOR EVIDENCE TO BE ADMITTED. Simply bringing a *copy* of your evidence may not work. Evidence won’t be accepted unless it satisfies the legal rules for being admitted at trial.

Going to a Hearing with a Judge

- * **Bring to Court an Affidavit of Non-Military Service Form.** Complete the form and bring it to Court with you on the day of your hearing.
 - **ONLY** complete this form if the Respondent(s) is **NOT** in the military.
 - If there is more than one Respondent, you must complete a separate form for each person.
 - A Sample Form is available on the Family Court Website at <https://courts.delaware.gov/family/> or in the Resource Center.
- **Agreement on the Day of Trial.**
 - Sometimes, the parties will reach an agreement on the day of the trial, even if they have not been able to do that earlier. If so, the parties or their lawyers may be permitted to advise the Court *on the record* (in open Court) so that the agreement may become an order of the Court.
 - If the parties do not reach an agreement, the Judge will hear the case.
- **What Happens at Court?**
 - **The Court Hearing is a trial in front of a Judge.** The Petitioner and the Respondent will each be given an opportunity to tell the Judge their side of the case and explain what is in the best interests of the child. Witnesses may be called to explain the facts of the case that they know about.
 - **At the hearing, each parent must prove why it is in the child's best interests for the Court to award custody as requested** in either the Petition for Custody or the Answer to the Petition for Custody.
 - The best interests law is explained on pages 6-7 of this Instruction Packet.
 - A factor the Court must consider in determining what custody arrangements are best for the child is *evidence of domestic violence*. See pages 28-29 above for detailed information about evidence of domestic violence and the potential impact of domestic violence on a Court's decision about custody.
 - The Judge may not be aware of the evidence of domestic violence previously presented to the Court either in the civil or criminal context. As a result, be prepared to prove acts of domestic violence at the time of the custody trial or to provide copies of criminal convictions or plea agreements.
 - **The Judge expects you to follow the same rules attorneys must follow.** It is important that you are familiar with this procedure, so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.
 - Family Court has a *Practice Guidelines Pamphlet* that explains generally what the Court hearing procedure is and should answer many of the



questions you have about the procedure. It will be helpful to read this information before your scheduled hearing.

- This information is on the Family Court website at:
<https://courts.delaware.gov/family>

- **Preliminary Matters.** The parties should be prepared to advise the Court of any preliminary matters at the beginning of the case. For example, renewing requests on motions filed that have not been decided, separation of witnesses (having witnesses excluded from the hearing until they testify so they don't hear the other evidence), stipulations (agreements between the parties that certain facts are true), special evidence issues or other matters that the Court should know about before the trial begins.
- **Opening Statements.** The Judge may allow the parties or their lawyers to make a brief opening statement or address preliminary matters.
- **Presenting Your Case.**
 - The Petitioner will go first and present her or his case. The Petitioner will testify and present evidence. The Respondent will be able to ask questions of (cross-examine) any of the petitioner's witnesses or object to any other evidence the Petitioner presents during her or his case.
 - After the Petitioner is finished with her or his case, the Respondent will present evidence, at which time the Petitioner may cross-examine any of Respondent's witnesses or object to any of respondent's evidence. The Judge may ask both the Petitioner and the Respondent questions.
 - The Petitioner and the Respondent will each be given a chance to present evidence related to the best interests factors including *evidence of domestic violence*. (See pages xx above for detailed information about evidence of domestic violence).
- **Closing Statements.** The Court may allow brief closing statements by the parties or their attorneys.



The Final Custody Order

- After both sides have presented all of their evidence, the Judge will consider all evidence and decide legal custody, residential placement, and contact in keeping with what is in the best interests of the child.
- At the trial, one of two things can happen.
 - The Judge can announce his/her decision at the end of the hearing after considering all of the information in which case you will leave the courthouse knowing the Custody Order; OR
 - The Judge can "reserve decision" until a later time. When the Judge reserves decision, he/she considers all of the information presented

during the hearing and issues a written order explaining the custody arrangement sometime after the hearing.

- Regardless of how the Judge issues the order, you should receive a copy of the decision and order in the mail.
 - Once the Court has entered a Custody Order, the Petitioner and the Respondent(s) should follow the terms of the Order. In other words, you should do what the order tells you to do. The Court will not enforce any agreements made by the parties that are not in the Order.
 - If circumstances change, the Petitioner and the Respondent(s) may, under some circumstances, ask to change the order by filing a Petition to modify custody. For information on how to change a custody order, please see the section on modification of custody, on pages 31 of this packet.

THIS IS THE END OF THE CUSTODY INSTRUCTION PACKET.

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APPENDIX A

CONTACT GUIDELINES

Parents are encouraged to create an agreed equitable written contact schedule that fits their circumstances and their children's lives, provided it can be accomplished safely. The following serves as a possible schedule when the parents cannot agree. Be sure to take into consideration protections afforded to survivors of domestic violence and their children. See section #3 ***What Key Laws Apply to Determine Child Custody*** contained in the instruction portions of this packet for information related to domestic violence. Nothing herein prohibits the parents from changing the schedule upon mutual agreement. In the event of conflicting dates and times, holidays and school breaks shall take priority.

If a child indicates a strong opposition to being with one parent, it shall be the responsibility of both parents to appropriately deal with the situation by calmly discussing with the child his or her reasons, and to work together to alleviate any issues without confrontation or argument. If they cannot resolve the problem, the parents are encouraged to seek the immediate assistance of a counselor or other professional or may file a motion requesting Court-ordered counseling. It is the absolute affirmative duty of both parents to encourage compliance with any such Court order.

The Court's goal is to have the children spend as much quality time with each parent as possible.

The guidelines are based on the assumption that both parents are competent and effective parents and that the child is safe with each parent. In the event that the parties attend a mediation conference and are unsuccessful in reaching either an interim or permanent agreement on the issue of parental contact, the mediator may recommend an alternative schedule considering the circumstances of the case as presented during that mediation.

It is with this background that the following guidelines will be applied after considering the factors in 13 Del. C. §722:

1. The wishes of the child's parent or parents as to his or her custody and residential arrangements;
2. The wishes of the child as to his or her custodian(s) and residential arrangements;
3. The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
4. The child's adjustment to his or her home, school and community;
5. The mental and physical health of all individuals involved;
6. Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
7. Evidence of domestic violence as provided for in Chapter 7A of this title; and
8. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense

In addition to the 13 Del. C. §722 factors, the following factors may be considered:

1. Previous contact with parents
2. Parents' ability to communicate
3. Geographical proximity with regard to home, school and daycare
4. Housing arrangements
5. Parents' work schedule
6. Number and age of siblings
7. Drug and alcohol history
8. Prior parental interaction
9. Other relevant factors as the Court deems appropriate.

For those children who have had more care by one parent than the other, the Court should consider whether such overnight visitation should be phased in.

Birth to 18 months: Every other weekend, beginning 6:00 p.m. on Friday through 6:00 p.m. Sunday and two-week nights for a minimum of three hours with the parent seeking contact. Each parent shall be entitled to two non-consecutive weeks of vacation. A parent shall give a minimum of thirty (30) days written notice to the other parent prior to the first parent exercising his or her vacation.

18 months to 5 years: Two overnights per week and every other weekend from 6:00 p.m. on Friday through Monday morning with the parent seeking contact. Each parent shall be entitled to two non-consecutive weeks of vacation. A parent shall give a minimum of thirty (30) days written notice to the other parent prior to the first parent exercising his or her vacation.

5 years and up: Shared contact schedule which may be extended to alternate weeks.

1. **Holidays:** _____ shall have the children on the holidays in Column 1 in odd-numbered years and the holidays in Column 2 in the even-numbered years. _____ shall have the children on the holidays in Column 1 in the even-numbered years and the holidays in Column 2 in odd-numbered years:

Column 1

Easter or other religious holidays
 Fourth of July
 Halloween
 Christmas Day

Column 2

Memorial Day
 Labor Day
 Thanksgiving Day
 Christmas Eve

With the exception of Christmas and Halloween contact, holiday contact shall be from 9 a.m. until 6 p.m. the day of the holiday. Halloween contact shall begin at 5 p.m. and end at 8 p.m. on Halloween. Christmas Eve contact shall begin at 6 p.m. on December 24th and end at noon on December 25th. Christmas Day contact shall begin at noon on December 25th and end at 6 p.m. on December 26th. When a holiday falls on a Monday immediately following a contact weekend, the parent that had contact for the weekend shall be entitled to keep the children continuously from 6 p.m. Friday until 6 p.m. Monday.

2. **Mother's/Father's Day:** On Mother's Day and Father's Day, no matter whose turn for contact, the children shall be with the parent whose holiday is being celebrated from 9 a.m. until 6 p.m.

3. **School Breaks (Winter and Spring)**: Winter and Spring Breaks shall be shared equally between the parents by dividing the breaks equally or rotating the breaks.
4. **Summer Vacation**: With the exception of children under the age of 5 years, the parents shall alternate contact weeks in the summer with the schedule beginning the first Friday in June and concluding the last Friday in August. _____ shall select their weeks first in odd numbered years and _____ shall select their weeks first in even numbered years. The parent whose choice it is that year shall give the other parent written notice of his/her summer week selection between March 1st and April 1st. The parent who has the child for the week shall be responsible for taking the child to his or her extra-curricular activities, summer school, and providing summer care for that week.
5. **Late pick-up**: Both parents shall have the children ready for pick-up at the start of all contact periods. The children and the parent have no duty to wait for the other parent to arrive for contact more than thirty (30) minutes, unless notified. The parent who arrives more than thirty (30) minutes late without prior notification for a particular contact, forfeits that contact, unless the other parent agrees otherwise.
6. **Drop-off**: Neither parent shall return the children early from contact unless the parents agree to a different drop-off time in advance. The parent or other adult well-known to the children must be present when the children are returned from contact.
7. **Canceling contact**: Except in emergency situations, parents must give one another at least twenty-four (24) hours advance notice when canceling a contact period.
8. **Medical treatment and emergencies**: If the children become seriously ill or injured, each parent shall notify the other parent as soon as practicable. If the children become ill or injured during contact, the parent shall contact the other parent to secure treatment unless the situation is a medical emergency.
9. **Communication**: Both parents shall be entitled to reasonable communication with the child while the child is in the other parents' care (including but not limited to telephone, e-mail, mail and text messaging). Neither parent shall interfere with the communication between the children and the other parent. Long distance calls from an out-of-town parent shall be at that parent's expense.
10. **Transportation**: Unless otherwise ordered or mutually agreed, parents shall have shared responsibility for transportation of the children to and from their home for contact periods and may use another adult well-known to the children for picking up or dropping off the children when necessary. Any person transporting the children shall not be under the influence of alcohol or drugs, and must be a licensed, insured driver. All child restraint and seat belt laws must be observed by the driver.
11. **School work**: Parents shall provide time for children to study and complete homework assignments, even if the completion of work interferes with the parent's plans for the children. Both parents are responsible for providing all of the school assignments and books to the other parent. Summer school which is necessary for a child must be attended, regardless of which parent has the child during the summer school period.

12. **Extracurricular activities**: Regardless of where the children are living, their continued participation in extracurricular activities, school related or otherwise, should not be interrupted. The parent with whom the children are staying shall be responsible for providing transportation to activities scheduled during contact with that parent. Each parent shall provide the other parent with notice of all extracurricular activities, complete with schedules and the name, address and telephone number of the activity leader, if available.

13. **Relocation**: Prior to a parent relocating their residence, consideration shall be given to the effect the relocation may have on the existing contact schedule. If the relocation may result in a change in the child's school, travel time to school or extracurricular activities or otherwise may adversely affect the child's best interest, the parent choosing to relocate shall obtain written approval from the other parent or a Court Order prior to relocating. When a proposed relocation meets the criteria of Section 734 of Title 13 and a party seeks an order from the Court, the Court must consider Section 734's relocation factors in addition to the best interest factors.

14. **Notice of change of address**: Both parents shall give written notice to the other parent immediately upon any impending change of address and/or phone number. The written notice must include the new mailing address and phone number (in the event the mailing address is a Post Office Box, the written notice must include a physical address and/or direction to the new residence), unless a restrictive order has been obtained from the Court. A copy of the notice shall also be provided to the Family Court in the appropriate county.