



LYCOMING COUNTY

**STIPULATION AS
TO CUSTODY/MODIFICATION
SELF-HELP KIT**

REMEMBER

The law often changes. Each case is different. This self-help kit is meant to give you general information and not to give you specific legal advice.

INSTRUCTIONS

Document Titled Motion Cover Sheet:

Complete caption (heading) by printing clearly. Do not write.

Document Titled Order

The Caption is the heading at the top of the page and is also found on the documents entitled Motion Cover Sheet, Stipulation, the Petition To Proceed Without Payment of Costs and Fees, and the Order to Proceed Without Payment of Costs and Fees. If you and the other person who are involved in this action already have a custody action in Court, then you need to fill in the heading exactly as it appears on the other papers and be sure to use the same number.

If there is no custody action already, fill out the papers as follows. The first line is for the name of the Plaintiff. The Plaintiff is the person who is bringing the action. In this case, since it is a stipulation, you are both bringing the action, but the person who is going to have primary custody of the child is the person's name that you should put on the line marked Plaintiff. The other parent or individual involved in this Stipulation can be put on the line marked Defendant.

If you do not already have a custody action, a number will be stamped on the caption by the Prothonotary when you file these papers.

You do not need to write any more on the first sheet. The Judge will sign the Order and write in the date, after you file the documents.

Document Titled Stipulation

The Caption should be filled out the same as it was on the page entitled Order. Remember, if you already have a Custody Order, use the same caption.

1. Fill in the name and address of the person listed as the Plaintiff in Caption, again that is the generally the person who is going to be having primary custody.
2. The Defendant is the other individual, usually the other parent, who is a party to the Stipulation.
3. If this is a new (first time filing) action, circle custody. If you are changing an order that already exists, circle modification.
4. List the names and dates of birth of all the children for whom this Stipulation is being entered.
5. List the name and address of the Mother of the child or children.
6. List the name and address of the Father of the child or children.
7. List the relationship of the Plaintiff to the child or children. (For example: If the Plaintiff is the Mother, you write Mother. If the Plaintiff is the Father, you write Father and so forth.)
8. List the relationship of the Defendant as described in number 7.
9. If both parents are signing the Stipulation, check the letter A. If both parents are not signing the Stipulation, check the letter B and then explain why the parent is not signing. (For example: deceased or whereabouts unknown). The Court needs to know why the other parent isn't signing. If you don't fill this out, the Court may return this to you.
10. Name the people or person who will have custody of the child or children. If the Plaintiff and Defendant are sharing legal custody, list both names.
11. List the name of the person who will have primary custody, generally the Plaintiff.
12. List the name of the person who will have partial physical custody (visitation) of the child or children. List the days and times that visitation will take place.

13. You need to have the signature of the Mother and Father and any other signatures that may apply. For example: If another individual has had custody of the child such as a grandparent, they may be a party to this petition or if the Mother and Father are agreeing to give custody to a third party, the third party must sign.

14. All parties signing this Stipulation must initial each page.

15. If this is a modification of an existing Order, attach a copy of the Order to this document.

After the Stipulation is signed, you should make three (3) copies of the document. Take all of the copies and the original to the Prothonotary's Office on the first floor of the Courthouse for filing.

If you are financially eligible for Legal Services and not able to pay the filing fee required for the filing of these documents, then you must fill out the form entitled In Forma Pauperis (IFP). That form must be copied and the original and a copy taken with you to the Prothonotary's Office. If you are changing an order (modifying) you will be using the same number and you will not have to pay a filing fee.

The Stipulation and the IFP will be given a docket number by the Prothonotary (if you do not already have a docket number from a previous custody filing), and sent up to one of the Judges for a signature. You should take one copy with you after you file at the Prothonotary's Office. Ask the Prothonotary when you should return to pick up the signed copies. When you return, take your copy with you and ask the Prothonotary to conform your copy to the original that the Judge has signed (all copies will be file stamped on the second sheet and the Order will be conformed and file stamped).

Mail a copy of the conformed Order to the Defendant. Be sure you and the Defendant both have copies. If you need a copy for a school or other agency, you may pay the Prothonotary to make a machine copy for you.

CUSTODY TERMS

- LEGAL CUSTODY** - Means the legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious, and educational decisions.
- SHARED LEGAL CUSTODY** - Means the right of more than one individual to legal custody of the child.
- SOLE LEGAL CUSTODY** - Means the right of one individual to exclusive legal custody of the child.
- PHYSICAL CUSTODY** - The actual physical possession and control of a child.
- PRIMARY PHYSICAL CUSTODY** - Means the right to assume physical custody of the child for a majority of the time.
- PARTIAL PHYSICAL CUSTODY** - The right to take possession of a child away from the custodial parent for a certain period of time.
- SHARED PHYSICAL CUSTODY** - Means the right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.
- SOLE PHYSICAL CUSTODY** - Means the right of one individual to exclusive physical custody of the child.
- SUPERVISED PHYSICAL CUSTODY** - Means custodial time during which an agency or an adult designated by the Court, or agreed upon by the parties, monitors the interaction between the child and the individual with those rights.

**PERSON ACTING AS
A PARENT**

- A person other than a parent, including an institution, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

RELOCATION

- Means a change in residence of the child which significantly impairs the ability of a non-relating party to exercise custodial rights.

MYTHS AND REALITIES

MYTH: The father is the parent responsible for supporting the child.

REALITY: The law states that both parents have an equal obligation to support their children; however, the amount of the support obligation depends on many factors. The most important factor is the income of each parent. If the parties fail to agree to the amount of support each shall pay, the court, after taking evidence to a Hearing Officer, will make a recommendation. Child support orders may always be modified. If either party suffers a substantial change in his/her financial or employment status, the court will review the parties'

situations and may enter a new order which could increase or decrease either party's obligation. A child's right to support is an important legal right and should be protected vigorously.

MYTH: If a parent does not pay child support, then that parent does not have a right to spend time with the child.

REALITY: It is important for parents to understand that child support and the parental rights of custody are generally viewed as separate issues by the court. Where support payments are not being made because visitation is being withheld, the child is the one to suffer. A parent should not deny the non-custodial parent the right of visitation because they are behind in their support payments. The court will not prevent a parent from seeing a child just because the parent has not made support payments.

MYTH: If the child is living with the mother, and the mother and father have never been married, the mother has legal custody of the child and the father cannot take the child.

REALITY: Without a court order for custody, each parent has an equal right to have the child live with her/him and to make decisions about the child. A parent does not have legal custody of a child just because the child is living with her/him.

Legal custody requires a custody order from a court giving the person the right to make decisions about the child. A custody order spells out specific rights and responsibilities about physical custody, visitation, and decision-making for the child. There are various types of custody, including: legal custody, physical custody (actual physical possession and control of the child), partial custody (the right to take the child away from the custodial parent for a period), and visitation (the right to visit the child, usually under supervision). (Please see the definitions of custody terms immediately preceding this section.) It is important for any custody agreement to be entered as a Court Order.

MYTH: The mother will always be given custody of a young child, even if it is up to the court to decide.

REALITY: The court will award custody to either the mother or the father after considering what is in the "best interests of the child." Courts do not base the decision on how angry or bitter the parents are toward each other. The court determines the custody award based on what is in the best interests of the child.

MYTH: Once a court order is obtained regarding custody, it can never be changed.

REALITY: A court decision about custody may be changed by the court at any time, if one of the parents petitions to modify the court order, and if there is some reason to do so.

MYTH: If one parent has custody of the child, that parent can deny visitation to the other parent if they so desire.

REALITY: Even though one parent may have primary custody, the other parent is granted, except under unusual circumstances, partial custody rights. Although many custodial parents often express their desires that the non-custodial parent be denied contact "because he's always drunk and high," or, "because she's living with another man," such reasons alone will not be legally sufficient to eliminate a parent's right to be with her/his child. Only if it can be shown that a parent's addiction or tendency to physical violence or emotional instability, will have or has had a harmful effect upon the child, will the non-custodial parent's rights be limited. Usually, expert professional evidence is required to justify such a determination. The courts do, however, have the discretion to place conditions upon a person's right to spend time with the child. If, indeed, the court has evidence that the non-custodial parent may harm the child or act improperly toward the child, the court may restrict the visitation to a supervised setting.

_____,
(Name) Plaintiff

vs.

_____,
(Name) Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
: CUSTODY
: NO.
:

ORDER

AND NOW, this _____ day of _____, 20____, the Court enters
the attached Stipulation of the parties as an Order of this Court.

BY THE COURT,

J.

c: Plaintiff
Defendant

3. This stipulation governs custody of the following child(ren):

Name(s)	Date of Birth	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. The Mother of the child(ren) is _____,
(name)
currently residing at _____.
(address)

5. The Father of the child(ren) is _____,
(name)
currently residing at _____.
(address)

6. The relationship of Plaintiff to the child(ren) is that of _____.

7. The relationship of Defendant to the child(ren) is that of _____.

8. (Check either A or B):

_____ A. Both parents are signing this stipulation, as well as anyone else who has a current legal right to custody or partial custody of any of the children.

Plaintiff's Initials: _____

Defendant's Initials: _____

_____ B. Both parents have not signed this stipulation, for the following reason(s):

_____ Deceased

_____ Other parent's identity unknown.

_____ Whereabouts unknown

If you can't find the other parent, explain what efforts you have made to find him/her:

9. Legal custody of the child(ren) shall be:

_____ (a) Shared by both parties.

_____ (b) With _____
(names)

Plaintiff's Initials: _____

Defendant's Initials: _____

11. If you wish to relocate with the minor child, you must provide notice to every other individual who has custody rights to the child according to the following guidelines. Notice must be sent by certified mail, return receipt requested, and shall be given no later than sixty (60) days before the date of the proposed move, or the tenth (10th) day after the date that you have notice of relocation, if you did not know and could not reasonably have known of the relocation in sufficient time to comply with the sixty (60) day notice. The notice provided to every other individual who has custody rights to the child must conform to 23 Pa. C.S.A. §5537 and contain the following:

- (1) The address of the intended new residence.
- (2) The mailing address for the new residence.
- (3) Names and ages of all the individuals who intend to live in the new residence.
- (4) The home telephone number of the intended new residence, if available.
- (5) The name of the new school district and school.
- (6) The date of the proposed relocation.
- (7) The reasons for the proposed relocation.
- (8) A proposal for a revised custody schedule.
- (9) Any other relevant information.

You must send with the notice a blank counter-affidavit conforming to 23 Pa. C.S.A. §5337(d)(1), which can be used to object to the proposed relocation and the modification of a Custody Order.

The notice must warn the non-relocating party that if the non-relocating does not fill out and file with the court the counter-affidavit to object to the proposed relocation within

thirty (30) days after receipt of the notice, that the party shall be foreclosed from objecting to the proposed relocation and forever lose their right to stop the relocation.

12. This stipulation shall be submitted to the Court for approval as an Order of Court and shall continue in effect until further Order.

(Mother's signature)

(Date)

(Father's signature)

(Date)

(Other signature, if applicable)

(Date)

(Other signature, if applicable)

(Date)

Plaintiff's Initials: _____

Defendant's Initials: _____

COSTS FOR FILING CUSTODY ACTION

I. INTRODUCTION

In order to file a new Court action, there is a filing fee which must be paid to the Prothonotary. This fee changes from time to time. You may check with the Prothonotary to find out how much it costs to file a new custody action.

If your income would make you eligible for a free attorney and you don't think you can pay the filing fees or other costs, you may ask the Court to waive some or all of the costs. You will need to fill out another form, separate from the Stipulation As To Custody/Modification.

The form which you are required to fill out is the Petition To Proceed Without Payment of Fees and Costs. Once this is filed, the Court will consider the information in this Petition to decide whether to allow you to proceed without having to pay the filing fees.

If you can afford to pay the filing fee, you will have to do so. The Court waives these costs only in cases where income is extremely low.

II. FILLING OUT THE FORM

1. Order To Proceed Without Payment of Fees and Costs Caption.

Fill in the names of the parties (Plaintiff and Defendant) as you have done on the earlier forms. Do not write a docket number in the right hand side of the caption, as this will be assigned by the Prothonotary.

There is nothing more for you to fill out on this sheet of the form. If the Court grants the Petition, your custody action can proceed. If not, you will have to pay the costs in order to continue.

2. Petition To Proceed Without Payment of Fees and Costs

This section of the form is quite clear. You are asked to fill in facts about your personal situation and finances, employment, income, expenses, debts and assets. Be sure to include income from all sources, including government benefits like Public Assistance, unemployment compensation, and food stamps. Don't forget to list money which your spouse receives, if you are married; from your parents if they help you; from friends or other family members; or from an Order for child support. Be sure to include all payment obligations, such as utilities, groceries, clothing, transportation, and other categories of expenses. Finally, identify all persons who depend on your income for support, including children who live with you.

Sections 4 and 5 of this Petition are important. Be sure that you read these paragraphs. They require you to inform the Court of any improvement in your financial situation which might permit you to pay some or all of the costs at a later date. When you date and sign the Petition after paragraph 5, you are promising that the information you have filled in is true. There will be consequences if you make false statements.

You have now completed the forms necessary to request the Court to allow you to proceed without paying the costs. You need to place the Order to Proceed Without Payment Of Costs on top of the Petition To Proceed Without Paying the Costs. **You will need to make one copy of the Petition and two copies of the Order.**

If you did not make copies of the Stipulation and the Motion Cover Sheet, you should do so at this time. To prepare the forms having to do with costs, staple one copy of the Order to Proceed on top of one copy of the Petition To Proceed Without Payment of Costs. Staple the original forms which you filled out together in the same order with the Order on top) and leave the extra copy of the Order separate. (You will need the extra copy of the Order only if you are required to have the Defendant served by a Deputy Sheriff.) You are now ready to file all of the papers with the Prothonotary.

Plaintiff

vs.

Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
: CUSTODY
: NO.
:

**ORDER TO PROCEED WITHOUT
PAYMENT OF FEES AND COSTS**

AND NOW, this _____ day of _____, 20____, upon
consideration of the within Petition, it is hereby ordered that the Plaintiff shall/shall not be
permitted to proceed in this matter without payment of fees and costs.

BY THE COURT,

J.

Plaintiff	,	: IN THE COURT OF COMMON PLEAS OF
		: LYCOMING COUNTY, PENNSYLVANIA
		:
vs.		: CIVIL ACTION - LAW
		: CUSTODY
Defendant	,	: NO.
		:

PETITION TO PROCEED WITHOUT PAYMENT OF FEES AND COSTS

1. I am the Plaintiff in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct.

(a) Name: _____
 Address: _____

(b) Employment

If you are presently employed, state

Employer: _____

Address: _____

Salary or wages per month: _____

Type of work: _____

If you are presently unemployed, state:

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) My present income is from: _____

(d) The amount is: _____

I also receive: Amount

Food Stamps ___ \$ _____

Child Support ___ \$ _____

In the past 12 months, my household has changed. Prior to the change, income was available from _____ who resided with me.

He/she had an income from _____ in the amount of \$ _____.

We have not lived together since _____.

In the past 12 months, my own income has been from _____, in the amount of \$ _____.

HOUSEHOLD INCOME:

(e) At the present time, I am married to someone other than the Defendant, and we reside together.

Yes ___ No ___

Name: _____

His/her income is from _____ in the amount of \$ _____.

Others who help support my household.

Children: _____ Yes ____ No ____

Parents: _____ Yes ____ No ____

Others : _____ Yes ____ No ____

Transportation _____ Insurance _____

Clothing _____ Disposable Diapers _____

Food _____ Household Items _____

Child Support _____ Other _____

(f) Persons dependent upon you for support:

Spouse - Name: _____

Children in home:

Name: _____ Age: _____

Name: _____ Age: _____

Name: _____ Age: _____

Other Persons:

Name: _____

Relationship: _____

(List others at bottom of page)

4. I understand that I have a continuing obligation to inform the Court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: _____

Signature

Print Name Here *pro se*

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