

## INSTRUCTIONS FOR LEGITIMATING YOUR CHILD

### YOU MAY NEED AN ATTORNEY IF:

- The case becomes contested and the child's mother has a lawyer.
- You cannot find your child's mother to serve her with your papers.
- You think you will have difficulty getting information and documents from the child's mother.

**Even if the child's mother is cooperating with you, you should talk to a lawyer before you sign any settlement papers or file anything in Court.**

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### **STEP 1: Complete the Domestic Relations Filing Information and Final Disposition forms**

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

#### The filing information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says ☐ Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a divorce, you will check "☐ Paternity (includes legitimation)."
- e. In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

### The final disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how your case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the Judge.
- b. Leave the second line, "Docket #," blank. The clerk will assign this number.
- c. Write your name where it says "Reporting party."
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner's Attorney, you will check the box which says ☐ Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

### **STEP 2: Complete the Petition for Legitimation, Custody and/or Visitation.**

#### Paragraph 1: Father's County of Residence

Check the box, and fill in the name of the county in which the father lives.

#### Paragraph 2: Children to be Legitimated

Fill in the names, dates of birth, and places of birth for the children whom you wish to legitimate.

#### Paragraph 3: Jurisdiction and Venue

**About Venue:** The word venue originally meant neighborhood. Today, venue means the proper place to hold a trial based on issues such as fairness and convenience to the parties, as well as the county's connection to the events in dispute. The law which governs venue in legitimation actions is O.C.G.A. § 19-7-22(a).

Choose one of the following letters:

*Choose a)* if the children live with their mother at an address known to you, and if no other person has custody or guardianship of the children. Fill in the mother's name, and the name of the county where she lives.

*Choose b)* if someone other than the child's mother has legal custody or guardianship of the children, and you know this person's address. Write down how that person is related to the child, e.g. Grandmother, Aunt, Uncle, etc. Then write down that person's name and the name of the county where he or she lives.

*Choose c)* if the mother or other person having legal custody or guardianship lives out of state or cannot be found within the state.

*Choose d)* if there is an adoption pending regarding the child(ren). Write down the name of the county where the adoption petition was filed.

## Paragraph 4: Service of Process

### **About Service of Process**

Serving the Defendant with the complaint and other papers filed against him or her is *essential*. Without proper service, the Court has no jurisdiction (authority) to decide the case. In our legal system, a Defendant has a Constitutional right to receive notice that he or she has been sued. For this reason, the preferred method of Service is that someone physically put the legal papers into the Defendant's hand. Because this is not always possible, there are exceptions.

Choose one of the following provisions

a) Acknowledgement of Service

Check box a) if the child(ren)'s mother will sign the Acknowledgement of Service which is on page nine (9) of the forms packet. You will need to give the child's mother or other legal guardian or custodian a copy of your completed Petition for Legitimation, Custody, and/or Visitation have him/her sign the Acknowledgement of Service. By signing this form, the Defendant is letting the Court know that he/she has received a copy of your petition and, therefore, will not need to be served with a copy of your petition by the sheriff. The Acknowledgement of Service and Consent to Legitimation is located on pages ten to thirteen (10-13) of the forms packet.

b) Waiver of Venue and Jurisdiction and Acknowledgement of Service

Check box b) if one of the following statements is true:

- The child's mother or other legal custodian or guardian lives in Georgia but does not live in the county where you are filing; or
- The child's mother or other legal custodian or guardian lives in another state and will consent (agree) to let you file your Petition in Georgia.

In either of these situations, the child's mother or other legal custodian or guardian must sign the Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction, which is on page seventeen (17) of the forms packet.

c) Service by the Sheriff. Use this paragraph if the child's mother or other legal custodian or guardian lives in the county where you are filing, but will not sign any papers. In this situation, s/he will be served by the Sheriff, using the Certificate of Service form, which is on page fifteen (15) of the forms packet. You will also use the Rule Nisi form, which is on page sixteen (16) of the forms packet.

d) Service by Publication for a Georgia resident: Use this paragraph if the child's mother or other legal custodian or guardian lives in Georgia, but his or her exact whereabouts are unknown. In this situation, you will use all of the Service by Publication forms, which are on pages eighteen through twenty-two (18-22) of the forms packet.

e) Service by Publication for an out-of state defendant: Use this paragraph if the child's mother or other legal custodian or guardian is NOT a Georgia resident, and his or her exact whereabouts are unknown. In this situation, you will use all

of the Service by Publication forms, which are on pages eighteen through twenty-two (18-22) of the forms packet.

#### Paragraph 5: Mother's Consent

Choose one of the following letters. If the mother has passed away, you will need to choose two letters.

Choose a) if the mother or other legal custodian or guardian will agree in writing to let the children be legitimated and to share custody with you. The mother's consent form is on pages ten to thirteen (10-13) of the forms packet.

Choose b) if the mother or other legal custodian or guardian will consent to let the children be legitimated and to allow you to visit with the child(ren). The consent form is on pages ten to thirteen (10-13) of the forms packet.

Choose c) if the mother has passed away.

Choose d) if there is no other legal parent, legal custodian, or legal guardian for the child(ren).

Choose e) if the mother or other legal custodian or guardian opposes the legitimation of the child(ren).

#### Paragraph 6: Change of Name

Check the box if you want to change the child(ren)'s surname(s) to yours. Fill in the child(ren)'s current surname in the first blank. Fill in your surname in the second blank.

#### Paragraph 7: Legal Custodian of the Children

Choose a) if the children live with their mother. Insert the date which the child(ren) first came to live with her.

Choose b) if the children live with someone other than their mother. Check the box beside the word "legal custodian" or "legal guardian" to indicate whether the person has custody or guardianship. Insert the name of the custodian or guardian, and how this person is related to the children (aunt, grandmother, uncle, etc.). Write down what type of guardianship or custody the person has: temporary or permanent guardianship from the Probate Court, permanent custody from the Superior Court. Fill in the date on which this custody or guardianship was granted.

#### Paragraph 8: Custody

In this paragraph, state how you want custody to be arranged. There are two types of custody: legal custody and physical custody. Legal custody means the authority to make

decisions about the children. Physical custody means the physical care of the children—who are the children living with. There are three ways to divide up custody:

1. Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.
2. Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about a decision, one parent will be the “tie-breaker.”
3. Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

#### Paragraph 9: Visitation

Choose a) if you want to draft your own visitation schedule. You may write it down in the blanks provided or attach it as a separate exhibit.

Choose b) if you want to use the visitation schedule which is included in the forms packet on page thirty (30).

### **STEP 3: Complete the Verification Form**

By completing the Verification form, you are swearing that everything you said in your complaint is true. The Verification form is located on page seven (7) of the forms packet. Insert your name as Plaintiff and your spouse’s name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

### **STEP 4: Complete the Plaintiff’s Affidavit required by O.C.G.A. 19-7-43(d)**

This Affidavit is located on pages eight to nine (8-9) of the forms packet. In the caption, fill in the county where you are filing, and the names of the Plaintiff and Defendant. Underneath the title of the document, fill in the county. Then fill in your name.

Paragraph 1: Fill in the name(s) of the child(ren), along with their date(s) of birth and place(s) of birth.

Paragraph 2: Fill in your current address.

Paragraph 3: Fill in the current address of the defendant.

Paragraph 4: Fill in the approximate dates on which the child(ren) were conceived as a result of your sexual intercourse with the defendant.

Paragraph 5: Fill in the names of the child(ren).

Paragraph 6: No action is needed for this paragraph.

Paragraph 7: Fill in the names of the child(ren).

Paragraph 8: Fill in the names of the child(ren) and the address at which he/she/they reside.

Paragraph 9: Fill in the names of the child(ren).

Sign the affidavit in the presence of a notary public.

## **STEP 5: Attach other necessary documents**

1. Service/Venue Forms (Choose one of the following letters):
  - a. Acknowledgment of Service and Consent to Legitimation (pages 10-13 of the forms packet) and Rule Nisi (page 16 of the forms packet).
  - b. Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction (page 17 of the forms packet) AND Rule Nisi (page 16 of the forms packet).
  - c. Certificate of Service AND Rule Nisi (pages 15 and 16 of the forms packet).
  - d. Motion for Service by Publication AND Affidavit of Due Diligence AND Order for Service by Publication AND Notice of Summons—Service by Publication (Pages 18-22 of the forms packet).See the instructions on page three (3) of this document to help you decide which ones apply to you.
2. Final Order (pages 31-35 of the forms packet).
  - a. **Caption:** Fill in your full name as the Plaintiff and your spouse's full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.**
  - b. **Contents of Order:** (You will use the numbers from your Child Support Worksheet)
    - i. Child's Current Name—In the first blank, fill in the current name of the child.
    - ii. Father's Name—In the second blank, fill in the name of the father.
    - iii. Child's New Name—In the third blank, fill in the child's new name.
    - iv. **Custody and Visitation—Leave these paragraphs blank so that the Judge can fill them in.**
    - v. Names of Children (Paragraph 1)—Fill in the names of the children and their dates of birth.
    - vi. Name of Custodial Parent (Paragraph 2 a)—Fill in the name of the Custodial Parent.
    - vii. Name of Non-custodial parent (Paragraph 2 b)—Fill in the name of the Non-custodial parent.
    - viii. Parenting Time (Paragraph 2 c)—Fill in the number of days which the non-custodial parent will visit with the child(ren).
    - ix. Gross income of Husband/Father (Paragraph 3 a)—Fill in the gross income of the Husband.
    - x. Gross income of Wife/Mother (Paragraph 3 b)—Fill in the gross income of the Wife.
    - xi. Non-custodial parent's adjusted income (Paragraph 4 a)—Fill in the adjusted income of the non-custodial parent.

- xii. Custodial Parent's adjusted income (Paragraph 4 b)—Fill in the adjusted income of the custodial parent.
- xiii. Combined adjusted income (Paragraph 4 c)—Fill in the amount of the parties' combined adjusted income.
- xiv. Basic Support Obligation (Paragraph 5)—Fill in the amount of the Basic Child Support Obligation which is listed on the "Child Support Obligation Schedule Table" based on the parties' Combined Adjusted Income. This table can be found at <http://www.georgiacourts.org/aoc/publications/sb382.htm>. Move the bar on the far right-hand side of the screen about one-third of the way down the document in order to see this table.
- xv. Basic Child Support Obligation/Custodial Parent (Paragraph 6 a) Fill in the amount of the Basic Child Support Obligation for the Custodial parent.
- xvi. Basic Child Support Obligation/Non-custodial parent (Paragraph 6 b)—Fill in the amount for the Basic Child Support Obligation for the Non-custodial parent.
- xvii. Health Insurance (Paragraph 7)—Check the box to show whether health insurance is available at a reasonable cost. Fill in the name of the parent who is responsible for maintaining health insurance for the children.
- xviii. Presumptive Amount of Child Support/Custodial Parent (Paragraph 8 a)—Fill in the Presumptive Amount of Child Support for the Custodial parent.
- xix. Presumptive Amount of Child Support/Non-custodial Parent (Paragraph 8 b)—Fill in the Presumptive Amount of Child Support due to the Non-custodial Parent.
- xx. Presumptive Amount of Child Support/Custodial Parent—Fill in the Presumptive Amount of Child Support due to the Custodial Parent.
- xxi. Title II Social Security Benefits (Paragraph 9)—Fill in the amount of benefits which the child receives each month under Title II of the Federal Social Security Act on the Obligor's account.
- xxii. **Special Circumstances (Paragraph 10)—Leave this area blank because the Judge has discretion on whether and how to use deviations from the Presumptive Amount of Child Support. The Judge will fill in this part of the Order.**
- xxiii. **Final Amounts (Paragraphs 11 and 12)—Leave these areas blank. If the Judge alters the Presumptive Amount of Child Support based on Special Circumstances, the final amounts may be different from the numbers on your Child Support Worksheets and Schedules.**
- xxiv. Name of the Non-custodial Parent—Fill in the name of the Non-Custodial Parent.

3. Income Deduction order AND Income Deduction Order Notice (pages 39-40 of the forms packet). **All divorce decrees must contain an income deduction order unless:**
  - a. The Court issuing the Order finds there is good cause not to require immediate withholding; or
  - b. A written agreement is reached between both parties which provides for an alternative arrangement.

## **STEP 6: Produce the required financial documents.**

Along with the divorce packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.
2. Domestic Relations Financial Affidavit (pages 23-29).
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.
7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any Court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

## **STEP 7: Pay the filing fee.**

Unless you are able to have your filing fee waived, there is an filing fee in Southern Judicial Circuit. You must pay this fee when you file your Petition for Legitimation unless you also file a Poverty Affidavit. If the defendant needs to be served by the Sheriff, there will be an additional fee.

## **STEP 8: File the forms.**

You should make two copies of all of your documents. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed



and will give you your copy for your records. The original will remain with the Court. The other copy will be given to your spouse.

### **STEP 9: Prepare your case for trial.**

In most civil cases, **pretrial discovery** is conducted. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

**Interrogatories** are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the Court.

**Depositions** are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be "impeached," or discredited by referring back to the deposition testimony.

**Requests for Production of Documents** are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party's tax returns, bank statements, or other important documents.

**Physical and Mental Examinations** may be used only with the Court's permission, when a party's physical or mental condition is an issue in the trial, and when the requesting party can show "good cause," i.e., the information is extremely important and cannot be otherwise obtained.

**Requests for Admissions** are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

### **STEP 10: Receive the final judgment**

If the Court finds that legitimation is in the best interests of the child(ren), it will issue a final order legitimating the child(ren). This will give you the same rights as a father who was married to the mother of his children. The child(ren)'s surname will be changed to your surname, and your name may be added to the birth certificate if it is not already listed.