

# INSTRUCTIONS FOR FILING AN ANSWER AND COUNTERCLAIM IN RESPONSE TO A PETITION FOR LEGITIMATION

This packet contains forms for people responding to a *Petition for Legitimation*. This packet is for those who wish to file an *Answer and Counterclaim for Custody and Child Support*. The Respondent/ Defendant in the case (presumably you) must file an answer to the *Petition* you were served with. If you would also like to request relief from the Court, such as custody of the child or child support, you must also file a counterclaim.

There are two options available to you for responding to a *Petition for Legitimation*: (1) you can hire a lawyer who will prepare your paperwork and represent you in court, or (2) you can use the forms included in this packet and represent yourself in court. It is advisable to speak with a lawyer before filing any action with the Court; this case is no exception to that rule. There are often more issues involved in a custody case than you might realize if you fail to get legal advice. However, you may want to review the form in this packet before you talk to a lawyer, so that you will be able to make the best use of your time with the lawyer.

## **YOU MAY ESPECIALLY NEED AN ATTORNEY IF:**

- The case is contested OR an attorney represents the opposing party.
- You or your child are victims of family violence against you by the opposing party.
- You want a custody or visitation arrangement that does not exactly fit these forms.
- You think you may have difficulty getting financial information from the opposing party.

**Whether your case is contested or uncontested, you should speak with a lawyer before signing a *Settlement Agreement* or filing any other documents with the Court.**

State law, O.C.G.A. § 15-19-51, prohibits court personnel (including staff attorneys, law clerks, calendar clerks, Clerk's Office staff, and Sheriff's Department staff) from giving legal advice or answering legal questions. This rule also applies to the Cobb County Law Library.

A custody case can be a very complicated process. If you want a court to grant the relief that you have requested, **you must complete each and every paragraph in this packet that applies to your case (but not any paragraph that does not apply to your case)**. When you are ready to file your *Answer and Counterclaim for Custody and Child Support*, you must file it with the Clerk for the Superior Court of Cobb County and mail a copy to the opposing party (or the opposing party's attorney if he has one).

Please keep in mind that you may need to submit other forms to the Court in addition to this packet either initially or as your case progresses. At a minimum, you are required to submit a *Domestic Relations Financial Affidavit*, a *Child Support Worksheet*, and a *Parenting Plan*. The Cobb County Law Library offers many of these sample forms and documents.

## HEARINGS

- **Temporary Hearing (Rule Nisi)**

A temporary hearing is not required. However, if your case will not be ready for a final hearing (because you do not have a signed agreement and do not expect to have one soon), there may be issues that need to be decided on a temporary basis before the final hearing. In that situation, you may ask the Court to schedule a *Rule Nisi* temporary hearing. Temporary issues may include child support and custody and visitation with the children while the case is pending.

To schedule a *Rule Nisi* temporary hearing, you should complete a *Rule Nisi* form which has its own separate instructions. If you know you want a temporary hearing when you are getting ready to file your *Answer and Counterclaim*, you can copy, sort, and file the *Rule Nisi* form with your other paperwork. You should take the original copy of the *Rule Nisi* and at least one copy to the office of the judge assigned to your case. The judge's staff will schedule a date for the *Rule Nisi* and fill out that part of the *Rule Nisi* form. Sometimes the judge's staff will mail notice of the hearing date to both parties. However, to be on the safe side, you should also mail a copy of the hearing notice to the Petitioner. Then, you should file a *Certificate of Service* with the Superior Court Clerk's Office (showing that you mailed or delivered proper notice to the Petitioner).

- **Final Hearing**

The judges schedule these final hearings in different ways. You should check with the staff for the judge assigned to your case. Sometimes the judge's staff will mail notice of the hearing date to both parties. However, to be on the safe side, you should also mail a copy of the hearing notice to the Petitioner. Then, you should file a *Certificate of Service* with the Superior Court Clerk's Office (showing that you mailed or delivered proper notice to the Petitioner).

- **Before Hearing Dates**

Whether temporary or final, you must prepare your case to be presented to the Court before your hearing dates. You are your main witness. You must also gather other evidence (such as documents and photographs), and you must arrange for any other witnesses that you want to have testify at the hearing. You must also prepare the proper documents to be provided to the judge at (or soon after) the hearing.

For a temporary hearing, you may use *Affidavits* from witnesses, so that they do not have to testify in person. However, there are special procedures for this. See *Uniform Superior Court Rule 24.5*. At the final hearing, *Affidavits* are not proper evidence. Your witnesses (if any) must testify in person at the hearing.

Be sure to bring a *Parenting Plan*, *Domestic Relations Financial Affidavit*, and *Child Support Worksheet* to the hearing. The Cobb County Law Library has materials to help you prepare for the hearings. You should also talk to a lawyer about the hearing to learn more about how to present your case.