

County of Berks

EMERGENCY PETITION FOR CUSTODY

FORMS AND INSTRUCTIONS

WARNING

Custody is civil litigation and is a very serious matter. It is highly recommended that you hire an attorney to represent you in any custody action. If you would like information about hiring an attorney, please call the Berks County Bar Association Lawyer Referral Service at 610-375-4591. If you choose not to hire an attorney, you may lose rights important to you. The court will expect you to follow the rules of procedure the same as though you had an attorney representing you. The information contained in this packet is not to be used as a substitute for professional legal advice.

Disclaimer

Court staff is not able to give you legal advice or help you fill out/complete these forms. The information in this packet is not a substitute for professional legal advice. The Court, the Berks County Bar Association and the Task Force for Self-Represented Litigants assume no responsibility and accept no liability for actions taken by users of these documents, including reliance on their contents.

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I. General Information

EMERGENCY RELIEF WILL ONLY BE AWARDED IF THERE IS A TRUE EMERGENCY. A true emergency is a risk that the other parent has or will run away from the County with the child without a known destination, the other parent has or plans to remove the child from Pennsylvania with no intent to return, a situation where no parent is available to care for the child, or if there has been physical harm or the threat of physical harm to the child.

IF THERE IS A THREAT OF IMMEDIATE HARM TO THE CHILD, YOU MAY WANT TO FILE FOR A PROTECTION FROM ABUSE (PFA) ORDER [the PFA Office is located on the 1st Floor of the Services Center 610-478-6208 ext. 5701 or 5702] OR YOU MAY WANT TO CONTACT BERKS COUNTY CHILDREN & YOUTH SERVICES (BCCYS) [BCCYS is located on the 11th Floor of the Services Center 610-478-6700].

A. Introduction

This packet of information has been created by members of the Berks County Bar Association. These materials are intended to assist individuals involved in a custody action by providing general information and legal forms. **IT IS HIGHLY RECOMMENDED THAT YOU HIRE AN ATTORNEY TO REPRESENT YOU IN ANY CUSTODY ACTION.** The information contained in this packet is not to be used as a substitute for professional legal advice. Even if you do not hire an attorney to begin your custody action, you can change your mind and choose to hire an attorney at any time. If you need help finding an attorney, you can contact the Berks County Bar Association Lawyer Referral Service by calling 610-375-4591.

B. Basic Procedure

This packet contains forms and instructions on how to file an emergency petition for custody. If there is not already a custody action, you will also need to file a custody complaint. You can get a packet and follow the instructions in that packet to start a custody action. **There are separate packets for Custody Orders, Modification of a Custody Order, Custody Agreements, Enforcing a Custody Order, Custody Relocation, Custody Exceptions, and Praecepto to Withdraw.**

STOP!! Read the next section carefully!

C. Presenting a Petition and Providing Notice

You need to follow the requirements of Berks County Rule of Civil Procedure 207.1 to present the Emergency Petition to the Court and to notify all other parties.

Rule 207.1 Presentation of Motions, Petitions and Applications

- (a) All routine motions, petitions and applications shall be filed in the prothonotary's office for transmission to the assigned judge for disposition.
- (b) All motions, petitions or applications necessitating personal presentation to the court should be made in the courtroom of the judge assigned to the case either at 9:30 A.M. or 1:30 P.M. on a day he is scheduled to sit. If the motion, petition or application is of such nature that opposing parties have a right to be heard, the moving party shall give each opposing party at least forty-eight (48) hours notice of the time when the moving party will appear and present such motion, petition or application, unless the emergency nature of the matter prevents such notice. In the latter situation, the moving party shall give as much notice as is reasonably possible.
- (c) No motion, petition or application shall be made or presented to any judge in chambers without pre-arrangement with that judge. No request for appointment in chambers shall be granted except for compelling reasons.
- (d) All motions, petitions or applications in cases which have not yet been assigned to a judge shall be filed with the prothonotary; the court administrator shall promptly assign a judge to the case.
- (e) All motions, petitions or applications which require immediate action in cases where the assigned judge is unavailable or in cases where no judge has been assigned to the case and the court administrator fails to assign a judge to the case in sufficient time to allow presentation to such judge shall be presented to the emergency motions judge in his courtroom at 9:30 A.M. or at 1:30 P.M. or by pre-arrangement with the emergency motions judge in his chambers.
- (f) A party presenting a motion, petition or application for an order or decree shall file with the motion, petition or application a proposed form of the order or decree sought, together with a certificate signed by the party presenting the motion, petition or application or his or her attorney of record, setting forth the name and current address of each party's attorney of record, and if no attorney has entered an appearance of record for a party, the name and current address of each unrepresented party.

(g) A party presenting a motion, application or praecipe for the entry of judgment shall file with the motion, application or praecipe a certificate signed by the party presenting the motion, petition or application or his or her attorney of record, setting forth the name and current address of each party's attorney of record, and if no attorney has entered an appearance for a party, the name and current address of each unrepresented party.

IF ALL PARTIES ARE NOT PROPERLY NOTIFIED, YOUR PETITION MAY BE DENIED.

D. Appealing the Judge's Decision

These Instructions do not cover appeals or the Pennsylvania Appellate Rules of Procedure. If you disagree with a Judge's decision in your custody case, you are strongly encouraged to hire a lawyer to advise you and prepare your appeal.

II. Instructions

(If you have not already done so, prior to beginning this Section, please detach the Forms at the end of this packet. Please note that the Forms at the end of the packet are in the same order as these instructions. You **MUST** use Forms 1, 2, 3 and 4.)

- A. Instructions for Completing Rule Returnable Order (FORM 1)
- B. Instructions for Completing the Proposed Order (FORM 2)
- C. Instructions for Completing the Petition for Emergency Relief (FORM 3)
- D. Instructions for Completing the Certificate of Addresses (FORM 4)

A. Instructions for Completing the Rule Returnable Order (Form 1)

Fill in only the caption at the top. The Judge will fill in the rest.

Caption:

- Neatly print or type the same name(s) you put in the caption of the petition above "Plaintiff(s)".
- Neatly print or type the name(s) you put in the caption of the petition above "Defendant(s)".
- Fill in the Docket number you put on the petition next to "No." on the right side of the caption. Leave this blank if there is no existing custody order and you are filing a Custody Complaint at the same time as your Emergency Petition.

DO NOT FILL IN ANYTHING FURTHER ON FORM 1

B. Instructions for Completing the Proposed Order (Form 2)

Fill in only the caption at the top. The Judge will fill in the rest.

Caption:

- Neatly print or type the same name(s) you put in the caption of the petition above "Plaintiff(s)".
- Neatly print or type the name(s) you put in the caption of the petition above "Defendant(s)".
- Fill in the Docket number you put on the petition next to "No." on the right side of the caption. Leave this blank if there is no existing custody order and you are filing a Custody Complaint at the same time as your Emergency Petition.

DO NOT FILL IN ANYTHING FURTHER ON FORM 2

C. Instructions for Completing the Petition for Emergency Relief – (FORM 3)

Although you are the one filing the Petition for Emergency Relief, you may be the “Plaintiff” or the “Defendant” depending on whether you were the one who filed the original custody action or whether you were the one the original custody complaint was filed against.

Neatly print or type the following information:

Caption:

- The name of the person or persons who originally filed the custody complaint above the word “Plaintiff(s)” (this may be you or the other Party – look at your existing Custody Order to be sure). If you are filing a complaint at the same time as this Petition, put your name here.
- The name of the person or persons who the original complaint was filed against above the word “Defendant(s)” (this may be you or the other Party – look at your existing Custody Order to be sure). If you are filing a complaint at the same time as this Petition, put the name of the person or persons you are filing against here.
- Fill in the Docket number next to “No.” on the right side of the caption – look at your existing Custody Order to get this number). If you are filing a complaint at the same time as this Petition, leave this blank and the Prothonotary’s Office will assign a number when you file the documents in their office.

IF YOU DO NOT HAVE AN EXISTING CUSTODY ORDER, YOU WILL NEED TO FILE A CUSTODY COMPLAINT IN ADDITION TO THIS PETITION.

Section 1.

- Put your name on the line in number 1 above the word “Name”.
- Put your address on the line above “Street – City – State – Zip Code – County”.

Section 2.

- Put the name of the person you are filing against in number 2 above the word “Name”.
- Put the address of the person you are filing against above “Street – City – State – Zip Code – County”.

Section 3.

- Put the date of the current custody order on the line in number 3 above the word “Date”. If you are filing a custody complaint with the petition and don’t have an existing custody order, write “complaint just filed” on this line.
- Put the name(s) of the child or children whose custody is provided for in the current custody order on the line(s) above “Name of Child”. If a new custody complaint is being filed put the names of the child or children listed in that complaint.

- Put each child's date of birth on the line above "Date of Birth".
- Check one of the two boxes indicating that you are attaching a complete copy of the current custody order to the Petition at the end or that you are filing a custody complaint at the same time as the Petition. (If you do not have a copy of your current order, the Prothonotary's Office has public use computers on the second floor of the Courthouse. You may be able to go there to print out a copy.) **YOU MUST ATTACH THE CURRENT CUSTODY ORDER OR FILE A CUSTODY COMPLAINT.**

Section 4.

- List all of the reasons you believe that an emergency exists, including specifically what happened, when it happened and what you are asking the Court to do – be as specific as possible.

Signature

- Sign your name on the line above "Petitioner's Signature".

Verification

- Put today's date on the line next to "Date".
- Sign your name on the line above "Petitioner's Signature" to verify that all the statements that you have made in the Petition For Emergency Relief are true and correct to the best of your knowledge. You may be subject to criminal penalties if you make any statements in your Petition that you know are not true.

The Verification **MUST BE SIGNED.**

NOTE: Before filing your completed documents, check with the Prothonotary's Office to find out what the filing fees are.

D. Instructions for Completing the Certificate of Addresses – (FORM 4)

Certificate of Addresses (Form 4)

When you file a Petition For Emergency Relief, you must provide the Prothonotary's Office with a document listing the correct addresses of all the parties so that they can mail the documents to all of the parties after the Judge signs the Order.

Caption:

- Neatly print or type the same name(s) you put in the caption of the petition above "Plaintiff".
- Neatly print or type the same name(s) you put in the caption of the petition above "Defendant".
- Fill in the Docket number you put on the petition next to "No." on the right side of caption.

- Put the name(s) and address(es) of all the Plaintiff(s) to the right of “Atty. for Plaintiff.” If the party is acting as their own attorney and representing themselves, put a comma and the words “Pro se” after that parties name.
- Put the name(s) and address(es) of all the Defendant(s) to the right of “Atty. for Defendant.” If the party is acting as their own attorney and representing themselves, put a comma and the words “Pro se” after that parties name.
- Sign your name on the line above “Signature”.
- File ALL 4 Forms in the Prothonotary’s Office in the following order: 1) Rule Returnable Order; 2) Proposed Order; 3) Emergency Petition; and 4) Certificate of Addresses.

III. Forms

- A. Rule Returnable Order (Form 1)
- B. Proposed Order (Form 2)
- C. Petition For Emergency Relief (Form 3)
- D. Certificate of Addresses (Form 4)

PLEASE DETACH THE FOLLOWING FORMS AND FILL IN THE FORMS WHILE GOING THROUGH THE INSTRUCTIONS.

PLEASE NOTE THAT YOU DO NEED TO FILL IN AND USE ALL THE FORMS THAT HAVE BEEN PROVIDED.

Plaintiff(s)	:	IN THE COURT OF COMMON PLEAS
	:	OF BERKS COUNTY, PENNSYLVANIA
	:	CIVIL ACTION – LAW
vs.	:	CHILD CUSTODY
	:	No.
	:	
Defendant(s)	:	Assigned to: _____, J.

RULE RETURNABLE ORDER

AND NOW, this _____ day of _____, 20 ____, upon consideration of the foregoing petition, it is hereby ordered that:

- (1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested.
- (2) The respondent shall file an answer to the petition within _____ days of this date.
- (3) The petition shall be decided under Pa. R.C.P. 206.7.
- () (4) Depositions shall be completed within _____ days of this date; or
- () (5) An evidentiary hearing on disputed issues of material fact shall be held on _____ at _____ before the undersigned Judge in the Berks County Courthouse/Services Center.
- () (6) Argument shall be held on _____ at _____ before the undersigned Judge in the Berks County Courthouse/Services Center.
- (7) Notice of the entry of this Order shall be provided to all parties by the petitioner.

BY THE COURT:

J.

FORM 1

Plaintiff(s)	:	IN THE COURT OF COMMON PLEAS
	:	OF BERKS COUNTY, PENNSYLVANIA
	:	CIVIL ACTION – LAW
vs.	:	CHILD CUSTODY
	:	No.
	:	
Defendant(s)	:	Assigned to: _____, J.

ORDER

AND NOW, this _____ day of _____, 20 ____, upon consideration of the
 Petition For Emergency Relief filed by the _____, it is hereby
 ORDERED and DECREED as follows:

- The Petition for Emergency Relief is DENIED.
- The Petition for Emergency Relief is GRANTED as follows:

BY THE COURT:

J.

Plaintiff(s)	:	IN THE COURT OF COMMON PLEAS
	:	OF BERKS COUNTY, PENNSYLVANIA
	:	CIVIL ACTION – LAW
vs.	:	CHILD CUSTODY
	:	No.
	:	
Defendant(s)	:	Assigned to: _____, J.

CERTIFICATE OF ADDRESSES

Pursuant to B.R.C.P. 207.1(f) (4), I hereby certify that the following are the parties to be served with copies of the accompanying Petition For Emergency Relief and that these are their addresses to the best of my knowledge, information and belief:

Atty. for Plaintiff:

Atty. for Defendant:

(Signature)