

How to Get an Order of Custody and Visitation

How do I get an order of Custody or Visitation?

The first step is to file a Custody Petition in Family Court. You can get a blank copy online or at the Petition Processing desk in Family Court. Whichever county your child has lived in for the past 6 months is where you should file. Below is a list of the family court buildings in which you can file for custody.

Erie County: One Niagara Plaza, 4th Floor, Buffalo, New York.

Niagara County: 775 3rd St, Niagara Falls, NY 14301 OR 175 Hawley Street, Lockport, NY 14094, depending on which location you live closest to

The forms can be found on the court website at:

<https://ww2.nycourts.gov/forms/familycourt/custodyvisitation.shtml>

What should I include in my Petition?

Your custody petition must state what you are asking the court for and why it is in the child(ren)'s best interests that you be awarded custody. Section 12 is an important part of the petition. In section 12, explain what you do for your child(ren) that makes you a good parent and give the reasons why you should be awarded custody. Also list in section 12 any concerns regarding the other parent. Use additional paper if necessary.

How do I file my petition?

In Erie County, go to Petition Processing on the 4th floor of Family Court located at 1 Niagara Plaza, Buffalo NY 14202. In Niagara County, you can go to either of the 2 courthouses 775 Third St., Niagara Falls NY 14301 or 175 Hawley St., Lockport NY 14094. You will proceed to Petition Processing in each respective courthouse.

Tell the window clerk you want to petition for custody and visitation. The window clerk will then check the Family Court records to make sure there are no previous court orders in the case and that there isn't a court case pending. The clerk will review your petition and file it.

The Child has always lived with me, does that mean I have sole custody?

No. In New York State, both parents have custodial rights to the Child. It isn't until you obtain an order from the court that gives you sole custody that you have authority to make all decisions for the Child.

What is Custody?

Custody is the legal right to make decisions for a child regarding the child's medical, school and religious needs. The parent who has 'residential' custody of a child makes the majority of the day to day decisions, and the child usually attends school from the residential parent's address. Visitation is separate and apart from custody and is the schedule by which the child is with each parent. The case law now refers to this as "parental access time" with the child instead of visitation.

Will my child have a say in all of this?

The Court will appoint an Attorney for the Child to represent the child's wishes. The Attorney for the Child must zealously advocate for what the child wants. The Attorney for the Child is not a court evaluator and is not investigating the case to determine what is in the best interests of the child. The Attorney for the Child can only substitute their judgment, and advocate for something other than what the Child wants, when the child's stated position would put the child at imminent risk of physical or emotional harm.

Will Neighborhood Legal Services handle my case?

In any action affecting custody, a parent who cannot afford a lawyer has the right to have the court appoint a lawyer. In Erie County Family Court, the Court will refer you to the Assigned Counsel Program. In Niagara County Family Court, the Court will refer you to the Public Defender's office. You may still apply to Neighborhood Legal Services to see if we can assist you.

How do I get a court appointed lawyer?

When you go to court for the first time, the Judge will give you a referral for an attorney. The Judge will set a new date for you to come back to court with the lawyer. The Judge's clerk will give you the Order of Referral to the Office of Assigned Counsel (in Erie County) or the Public Defender's Office (in Niagara County).