



# Hamilton County Juvenile Court Trial Packet

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# Your Case Has Been Scheduled for Trial

Coming to court for custody or visitation of your child is a very personal & emotional issue. It is important to understand that the court does not take cases personally or emotionally. The court only addresses legal issues. The court does not take sides with or against parents, but is impartial & makes decisions based on the best interest of children.

If the parties are not able to reach an agreement then the only way the court can resolve your dispute is to hold a trial. The court will make a decision regarding the custody or visitation of your child based on the evidence presented at trial. Although a lawyer is not necessary, you do have the right to counsel. Please be advised that the court cannot "help" you with your case.

1. A trial is a formal court proceeding. The court will apply Ohio law to the facts of your case. The court makes decisions based upon the evidence presented at trial & applying the law to the evidence presented.
2. **Please do not park at a meter on trial day.** Even if a party has filed for a continuance & you believe the trial will not go forward, only the Magistrate/Judge can make that decision. The trial may still be held & you will not be able to leave to feed your meter.
3. Neither the court's case manager (the person in court with the magistrate) nor anyone at Juvenile Court can help you with your case, give you legal advice, or convey messages from you to the magistrate. This would be unethical. If you need help with your case you may contact the Help Center – Juvenile Court Division at 513-946-9440. The clinic attorneys do not go to court with you, but can help answer your questions about trial and your case. You also have the right to hire a lawyer if you wish. Having a lawyer is not a requirement.
4. Prior to trial, you may be sent something called a discovery request(s). These appear as lists of questions for you to answer under oath, or requests for you to send documents to the person making the request. If you are sent a discovery request, you **MUST** comply within established time guidelines. Under Ohio law, failure to comply could result in not being permitted to call witnesses, or not being permitted to introduce documents at trial. It could also result in being ordered to pay attorney fees to the other side. Both parties are permitted to send requests for Discovery to each other. You have 28 days to return your signed & notarized responses to the opposing

party. If you have questions about what complying with a discovery request means, the attorney in the Help Center may be able to help you. It is your duty to determine what you must do to comply with a discovery request prior to the start of trial.

5. At trial, the person who filed first is also required to present their case first. However, everyone who files a petition, complaint, and/or motion, whether or not they filed first, is required to present evidence, such as witness' testimony or documents, sufficient to prove their case.

6. Each party is permitted to have witnesses testify for them at trial. Any witnesses that you intend to call must be subpoenaed to appear. If a subpoena is not issued and the witness fails to appear, the court will not grant a continuance for the appearance of the witness. Subpoenas are available in the Juvenile Court Clerk's Office. The court has the right to limit the number of witnesses called.

7. Written statements from witnesses who are not able to come to court to testify are not admissible because of hearsay rules.

8. If you have documents that you want to use as exhibits, you must be prepared with multiple copies. You must provide the original exhibits and a copy to the Court to have & to keep. You must also provide an additional copy for each of the other party(s) to have & to keep. You must make your copies before you come to court. The court cannot copy exhibits for you. Use the attached exhibit form shown in the last page of this packet to list your exhibits before coming to court. Your exhibits must be in the same order for each copy, & each exhibit must be numbered or lettered so that everyone can follow along during trial. If you do not have the exhibits & all necessary copies prior to the start of trial, you will not be able to enter the exhibits as evidence. You may not file your evidence with the Juvenile Court Clerk's Office. You may not enter evidence after the trial has concluded.

9. If you have evidence contained on your phone such as text messages, pictures, or videos, the evidence must be presented to the court in physical form. Text messages and pictures must be printed on paper and submitted as an exhibit as detailed above. Audio and video recordings must be played in court on a device that all parties can hear and see, and a copy of the recording or video must be provided as an exhibit to the court and all parties as detailed above. (two copies for the court, and one for each party to the case). The court will not look at or play any media on your phone. Examples of physical media copies that may be admitted as evidence are CD's, audio tapes, DVD, & flash drives.

10. Evidence that is submitted to the court will not be returned to you. You must make a copy to keep for yourself.

# Sole Custody Between Parents

1. In custody cases between parents, if there has been no prior determination of custody, both parents stand on equal footing. This means that neither parent has a legal advantage over the other parent.
  
2. The law requires the court to look at the BEST INTEREST of the child when determining which parent will be granted custody. The child's best interest must be proved by a preponderance of the evidence. These are the BEST INTEREST factors that you must present evidence of:
  - a) The wishes of the child's parents regarding the child's care;
  - b) The child's interaction & interrelationship with the child's parents, siblings, & any other person who may significantly affect the child's best interest;
  - c) The child's adjustment to the child's home, school, & community;
  - d) The mental & physical health of all persons involved in the situation;
  - e) The parent more likely to honor & facilitate court-approved parenting time rights or visitation & companionship rights;
  - f) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
  - g) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child;
  - h) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously & willfully denied the other parent's right to parenting time in accordance with an order of the court;
  - i) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

You are permitted to request that the court interview the child or children that are the subject of your case. The child(ren) shall be interviewed with no party present. The Court will notify you in their entry when to bring the child(ren) when the request for an interview is granted.

# Shared Parenting

1. Only PARENTS (mother & father) are able to enter into a Shared *Parenting* Plan under Ohio law. If contested, shared parenting must be proved to be in the child's best interest by a preponderance of the evidence.
2. **If a parent is interested in Shared Parenting, they must file a completed Shared Parenting Plan no less than 30 days before trial.** If you fail to properly file a plan, Shared Parenting cannot be considered. Blank Shared Parenting Plans are available in the Juvenile Court Clerk's Office on the 1<sup>st</sup> floor of 800 Broadway & must be fully filled out before filed.
3. Filing a **Petition** for Shared Parenting at the beginning of your case is not enough. A **Shared Parenting Plan**, as noted above, must be filed too. You must request that the other parent be served by the clerk's office at the time of filing your plan.
4. The factors the court is required to consider when determining whether or not Shared Parenting is in the best interest of the child are as follows:
  - a. The ability of the parents to cooperate & make decisions jointly, with respect to the children;
  - b. The ability of each parent to encourage the sharing of love, affection, & contact between the child & the other parent;
  - c. Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;
  - d. The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
  - e. The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.

## Joint Custody

1. Two non-parents, for example, two grandparents, or a parent & a non-parent can enter into a joint custody agreement under Ohio law. No particular form is required. If contested, joint custody must be proved to be in the child's best interest by a preponderance of the evidence.

## Non-Parent Custody

1. Non-parents do not have the same rights as parents. The law in Ohio states that parents have a paramount right to raise their own children.
2. A non-parent includes grandparents, aunts, uncles, step-parents, friends of the family; anyone who is not a parent.
3. In order to win custody from a parent, it is not enough for a non-parent to prove that it is in the best interest of the child to be placed in their care. The law requires that you first prove that one of the following applies:
  - the parents abandoned the child, or
  - the parents contractually relinquished custody of the child, or
  - the parents have become totally incapable of supporting or caring for the child, or
  - that an award of custody to the parent would be detrimental to the child.

It is not enough to prove that you can do a better job of raising the child than the parents can.

4. Examples include, but are not limited to, abuse, abandonment, & neglect.
5. To be awarded custody as a non-parent, you must prove one of the above factors regarding parents, AND prove that custody to you is in the best interest of the child or children. Proof must be by a preponderance of the evidence.



# Grandparent Child Care Power of Attorney or Caretaker Authorization Affidavit

1. These are legal documents that authorize grandparents to exercise authority over grandchildren living with them, but do not divest the parent of custody. No trial is necessary. No filing fee is required.
2. The **Grandparent Power of Attorney** can only be filed by a parent or legal custodian of a child (not the grandparent).
3. The **Caretaker Authorization Affidavit** can only be filed by a grandparent (not other family members) who has a grandchild living with them, after reasonable attempts have been made to locate or contact the child's parent, guardian, or custodian without success.
4. These forms & accompanying packets are available in the Juvenile Court Clerk's Office & are free to file. These documents must be signed, notarized, & filed within five (5) days of signing. They are also available on the Juvenile Court web site under forms.

# Custody Modification

If you are asking the court to modify a previous court order of custody, you must prove that there has been a change in the circumstance of the child, or of the child's caregiver since the last order of the court. A change in the circumstances of the proposed new legal custodian does not count. For example, if you are now drug free or have appropriate housing, etc., this is not the type of evidence that can be used to prove that there has been a change in circumstances in the child or the child's caregiver in a contested case.

Once a change of circumstances has been established, then you must prove that a change in custody is in the best interest of the child, using the same factors outlined above under "Sole Custody Between Parents." Best interest must be proved by a preponderance of the evidence.

# Visitation & Companionship Time

When determining parenting time for a parent or visitation for a grandparent, the court is required to review the following factors:

1. The prior interaction & interrelationships of the child with the child's parents, siblings, & other persons related by consanguinity or affinity, & with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
2. The geographical location of the residence of each parent & the distance between those residences, & if the person is not a parent, the geographical location of that person's residence & the distance between that person's residence & the child's residence;
3. The child's & parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, & the child's and the parents' holiday & vacation schedule;
4. The age of the child;
5. The child's adjustment to home, school, & community;
6. If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes & concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation;
7. The health & safety of the child;
8. The amount of time that will be available for the child to spend with siblings;
9. The mental & physical health of all parties;
10. Each parent's willingness to reschedule missed parenting time & to facilitate the other parent's parenting time rights, & with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

11. In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; & whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
12. In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section [2919.25](#) of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; & whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;
13. Whether the residential parent or one of the parent's subject to a shared parenting decree has continuously & willfully denied the other parent's right to parenting time in accordance with an order of the court;
14. Whether either parent has established a residence or is planning to establish a residence outside this state;
15. In relation to requested companionship or visitation by a person other than a parent, the wishes & concerns of the child's parents, as expressed by them to the court;
16. Any other factor in the best interest of the child.

Parenting or companionship time must be proved to be in the child's best interest by a preponderance of the evidence.

# Contempt

If a party disobeys a court order the other party may file a Motion for Contempt.

1. To be found in contempt, it must be proven that the accused party
  - a. Knew the court order existed,
  - b. Had the ability to comply with the order but violated the conditions, &
  - c. Lacks just cause or excuse for the violation.
  
2. The person who filed the motion for contempt must prove their case by clear & convincing evidence, so be sure you have solid evidence to back up your claims. Your motion must include dates & times of alleged violations, and/or any other specific information proving that there was a violation of the specific language of the court's current order.
  
3. If a party is found to be in contempt, the case must be continued to give the person an opportunity to comply with the order, make up visitation, & pay any fines & costs imposed by the court.
  
4. If a party is found in contempt, it may result in up to thirty (30) days incarceration, a \$250-\$1000 fine, &/or an award of the moving party's attorney's fees & any other relief the court deems equitable. A second finding of contempt may result in up to sixty (60) days incarceration. A third finding of contempt may result in up to ninety (90) days incarceration.

**HAMILTON COUNTY JUVENILE COURT, OHIO**

Case Number: \_\_\_\_\_

**EXHIBIT LIST**

*Child(ren) Names*

JUDGE/MAGISTRATE: \_\_\_\_\_

DATE AND TYPE OF HEARING: \_\_\_\_\_

PARTY 1: \_\_\_\_\_ ATTORNEY FOR PARTY 1: \_\_\_\_\_

PARTY 2: \_\_\_\_\_ ATTORNEY FOR PARTY 2: \_\_\_\_\_

PARTY 3: \_\_\_\_\_ ATTORNEY FOR PARTY 3: \_\_\_\_\_

Exhibit ID	Identified (yes/no)	Admitted/Denied/Withdrawn (circle one)			Description of Exhibits
		A	D	W	
		A	D	W	
		A	D	W	
		A	D	W	
		A	D	W	
		A	D	W	
		A	D	W	
		A	D	W	

