

MOTION FOR CHANGE IN VISITATION - PARENTING TIME

After a divorce/dissolution/visitation only case in Common Pleas Court or after a Juvenile Custody/Visitation case in Juvenile Court

There must be a current custody and visitation order to use these forms – you will need a different form if there is no order of custody or visitation

Type or Print all Forms - *If you are downloading the forms from the website, the forms are in PDF and can be typed online and then saved on your computer or flash drive for revision and printing. You can access these fillable forms at this website:*

<https://mail.oslsa.org:8889/home/admin@oslsa.org/Marietta%20Repository>

* All forms in **BOLD** must be signed in front of a notary.*

Forms to be completed by you

- Form 23 Motion - Tells the Court that you want to change your visitation or parenting time
- Form 28 Instructions for Service - Tells the Court where to send copies to the other party - *Certified Mail is the normal method of service for papers of this type*
- Affidavit 3 Parenting Proceeding Affidavit** – tells the Court where your child/ren have lived for the past 5 years

After completing the forms

- Make three (3) copies of each completed form.
- Take the originals and three (3) copies to Clerk of Common Pleas Court if the custody order was in a divorce, dissolution, visitation case filed in regular Common Pleas Court, OR take to the Clerk of Juvenile Court if this was originally a juvenile court case.
- If you cannot afford the filing fee, then use the enclosed **Poverty Affidavit** for the Court you are filing in.

After forms are filed

- Clerk will send you notice of any court dates. Attend all of these court dates.
- If you move, call the Clerk with your new address.

IN THE COURT OF COMMON PLEAS

Division
COUNTY, OHIO

IN THE MATTER OF:

A Minor

Name : Case No.
Street Address :
City, State and Zip Code : Judge
Plaintiff/Petitioner : Magistrate

vs./and

Name :
Street Address :
City, State and Zip Code :
Defendant/Petitioner :

Instructions: This form is used to request a change in the parenting time (visitation) order. A Request for Service (Uniform Domestic Relations Form 28) and a Parenting Proceeding Affidavit (Uniform Domestic Relations Form – Affidavit 3) must be filed with this Motion.

MOTION FOR CHANGE OF PARENTING TIME (COMPANIONSHIP AND VISITATION) AND MEMORANDUM IN SUPPORT

1. I, (name), request this Court change the existing parenting time (companionship and visitation) Order filed on this date (date filed) regarding the following minor child(ren):

Table with 2 columns: Name of Child, Date of Birth. Includes three rows of blank lines for entry.

Form 23

2. Select one:

_____ (name) is currently designated the residential parent and/or legal custodian of the child(ren).

The parties now have a Shared Parenting Plan.

3. I request that the Court change the parenting time (companionship and visitation) Order because:

4. I request that the Court change the existing parenting time (companionship and visitation) Order in the following way: _____

5. I believe that the changes I am requesting are in the child(ren)'s best interests.

Your Signature

Telephone number at which the Court may reach you
or at which messages may be left for you

IN THE COURT OF COMMON PLEAS

Division
COUNTY, OHIO

IN THE MATTER OF:

A Minor

Name

Case No.

Street Address

Judge

City, State and Zip Code

Plaintiff/Petitioner

Magistrate

vs./and

Name

Street Address

City, State and Zip Code

Defendant/Petitioner

Instructions: This form is used when you want to request documents to be served on the other party. You must indicate the requested method of service by marking the appropriate box.

REQUEST FOR SERVICE

TO THE CLERK OF COURT:

Please serve the following documents on the following parties as I have indicated below:

Defendant/Petitioner at the address shown above.

Certified Mail, Return Receipt Requested

Issuance to Sheriff of County, Ohio for Personal or Residence service

Other (specify)

Form 28

- Plaintiff/Petitioner at the address shown above.
 - Certified Mail, Return Receipt Requested
 - Issuance to Sheriff of _____ County, Ohio for Personal or Residence service
 - Other (specify) _____

- _____ County Child Support Enforcement Agency (provide address below):
 - Certified Mail, Return Receipt Requested
 - Issuance to Sheriff of _____ County, Ohio for Personal or Residence service
 - Other (specify) _____

- Other (address): _____
 - Certified Mail, Return Receipt Requested
 - Issuance to Sheriff of _____ County, Ohio for Personal or Residence service
 - Other (specify) _____

SPECIAL INSTRUCTIONS TO SHERIFF:

Your Signature

Affidavit 3

COURT OF COMMON PLEAS

_____ COUNTY, OHIO

Plaintiff/Petitioner

Case No. _____

Judge _____

v./and

Magistrate _____

Defendant/Petitioner/Respondent

Instructions: Check local court rules to determine when this form must be filed.
By law, an affidavit must be filed and served with the first pleading filed by each party in every parenting (custody/visitation) proceeding in this Court, including Dissolutions, Divorces and Domestic Violence Petitions. Each party has a continuing duty while this case is pending to inform the Court of any parenting proceeding concerning the child(ren) in any other court in this or any other state. **If more space is needed, add additional pages.**

PARENTING PROCEEDING AFFIDAVIT (R.C. 3127.23(A))

Affidavit of _____
(Print Your Name)

Check and complete ALL THAT APPLY:

1. I request that the court not disclose my current address or that of the child(ren). My address is confidential pursuant to R.C. 3127.23(D) and should be placed under seal to protect the health, safety, or liberty of myself and/or the child(ren).
2. Minor child(ren) are subject to this case as follows:

Insert the information requested below for all minor or dependent children of this marriage. You must list the residences for all places where the children have lived for the last **FIVE** years.

a. Child's Name:	Place of Birth:		
Date of Birth: _____	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female		
Period of Residence	Check if Confidential	Person(s) With Whom Child Lived (name & address)	Relationship
to present	<input type="checkbox"/> Address Confidential?	_____	_____
to _____	<input type="checkbox"/> Address Confidential?	_____	_____
to _____	<input type="checkbox"/> Address Confidential?	_____	_____
to _____	<input type="checkbox"/> Address Confidential?	_____	_____

Affidavit 3

b. Child's Name: _____ **Place of Birth:** _____
Date of Birth: _____ **Sex:** Male Female

Check this box if the information requested below would be the same as in subsection 2a and skip to the next question.

<u>Period of Residence</u>	<u>Check if Confidential</u>	<u>Person(s) With Whom Child Lived</u> (name & address)	<u>Relationship</u>
_____ to present	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____

c. Child's Name: _____ **Place of Birth:** _____
Date of Birth: _____ **Sex:** Male Female

Check this box if the information requested below would be the same as in subsection 2a and skip to the next question.

<u>Period of Residence</u>	<u>Check if Confidential</u>	<u>Person(s) With Whom Child Lived</u> (name & address)	<u>Relationship</u>
_____ to present	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____
_____ to _____	<input type="checkbox"/> Address Confidential?	_____	_____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CHILDREN, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

3. **Participation in custody case(s): (Check only one box.)**
- I **HAVE NOT** participated as a party, witness, or in any capacity in any other case, in this or any other state, concerning the custody of, or visitation (parenting time), with any child subject to this case.
 - I **HAVE** participated as a party, witness, or in any capacity in any other case, in this or any other state, concerning the custody of, or visitation (parenting time), with any child subject to this case. For each case in which you participated, give the following information:

Affidavit 3

- a. Name of each child: _____
- b. Type of case: _____
- c. Court and State: _____
- d. Date and court order or judgment (if any): _____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CUSTODY CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

4. Information about other civil case(s) that could affect this case: (Check only one box.)

- I **HAVE NO INFORMATION** about any other civil cases that could affect the current case, including any cases relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning any child subject to this case.
- I **HAVE THE FOLLOWING INFORMATION** concerning other civil cases that could affect the current case, including any cases relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning a child subject to this case. Do not repeat cases already listed in Paragraph 3. Explain:

- a. Name of each child: _____
- b. Type of case: _____
- c. Court and State: _____
- d. Date and court order or judgment (if any): _____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

5. Information about criminal case(s):

List all of the criminal convictions, including guilty pleas, for you and the members of your household for the following offenses: any criminal offense involving acts that resulted in a child being abused or neglected; any domestic violence offense that is a violation of R.C. 2919.25; any sexually oriented offense as defined in R.C. 2950.01; and any offense involving a victim who was a family or household member at the time of the offense and caused physical harm to the victim during the commission of the offense.

<u>Name</u>	<u>Case Number</u>	<u>Court/State/County</u>	<u>Convicted of What Crime?</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IF MORE SPACE IS NEEDED FOR ADDITIONAL CASES, ATTACH A SEPARATE PAGE AND CHECK THIS BOX .

Affidavit 3

6. Persons not a party to this case who has physical custody or claims to have custody or visitation rights to children subject to this case: (Check only one box.)

- I **DO NOT KNOW OF ANY PERSON(S)** not a party to this case who has/have physical custody or claim(s) to have custody or visitation rights with respect to any child subject to this case.
- I **KNOW THAT THE FOLLOWING NAMED PERSON(S)** not a party to this case has/have physical custody or claim(s) to have custody or visitation rights with respect to any child subject to this case.

a. Name/Address of Person <input type="checkbox"/> Has physical custody Name of each child: _____ _____	_____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____	_____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____
b. Name/Address of Person <input type="checkbox"/> Has physical custody Name of each child: _____ _____	_____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____	_____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____
c. Name/Address of Person <input type="checkbox"/> Has physical custody Name of each child: _____ _____	_____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____ <input type="checkbox"/> Claims custody rights _____	_____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____ <input type="checkbox"/> Claims visitation rights _____

OATH

(Do Not Sign Until Notary is Present)

I, (print name) _____, swear or affirm that I have read this document and, to the best of my knowledge and belief, the facts and information stated in this document are true, accurate and complete. I understand that if I do not tell the truth, I may be subject to penalties for perjury.

Your Signature

Sworn before me and signed in my presence this ____ day of _____, _____.

Notary Public
My Commission Expires:

INSTRUCTIONS FOR POVERTY AFFIDAVIT
- PRINT OR TYPE -

1. Fill in whether this is a *GENERAL* division Common Pleas Court case (after a divorce or dissolution or visitation only action) or a *JUVENILE* Division case (the original order is out of a juvenile court)
2. Fill in the name of the county where the Court is.
3. Fill in the name of the Minor Child(ren) involved in this action OR the Plaintiff and Defendant as it appears on your papers.
4. Fill in the Case Number and the Judge of the action if you know it, leave it blank if you don't.
5. Fill in your name.
6. Sign your name ONLY IN FRONT OF A NOTARY if the affidavit is correct.

MAKE 2 COPIES AND TAKE WITH THE MOTION TO THE COURT

PLEASE NOTE: FILING WITH A POVERTY AFFIDAVIT DOES NOT MEAN YOU DO NOT HAVE TO PAY COURT COSTS. IT ONLY MEANS THAT YOU DO NOT HAVE TO PAY IT IN ADVANCE. THE COURT WILL DETERMINE WHO IS TO PAY COURT COSTS AT THE TIME OF THE HEARING.

IN THE COURT OF COMMON PLEAS
1) GENERAL OR JUVENILE DIVISION
2) NAME OF COUNTY, OHIO

In The Matter of:

3) NAME OF CHILDREN

3) NAME OF PLAINTIFF,

Plaintiff,

vs.

3) NAME OF DEFENDANT

Defendant.

Case No. 4) CASE NUMBER

Judge _____

AFFIDAVIT OF INABILITY
TO PREPAY COURT COSTS.

I, 5) FILL IN YOUR NAME, being first duly cautioned and sworn, depose

and state:

1. That I am a party in interest in the above-captioned action; that I have a meritorious cause of action but am unable to give security or a cash deposit to secure costs.
2. That I am unable to afford the hiring of an attorney to represent me in this matter.
3. That I own no liquid assets or property of any substantial value to prepay costs.

6) SIGN YOUR NAME IN FRONT
OF NOTARY ONLY

Sworn to and subscribed in my presence this _____ day of _____,
20_____.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ DIVISION

_____ COUNTY, OHIO

In The Matter of:

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

Case No. _____

Judge _____

AFFIDAVIT OF INABILITY TO
PREPAY COURT COSTS

I, _____, being first duly cautioned and sworn,
depose and state:

1. That I am a party in interest in the above-captioned action; that I have a meritorious cause of action but am unable to give security or a cash deposit to secure costs.
2. That I am unable to afford the hiring of an attorney to represent me in this matter.
3. That I own no liquid assets or property of any substantial value to prepay costs.

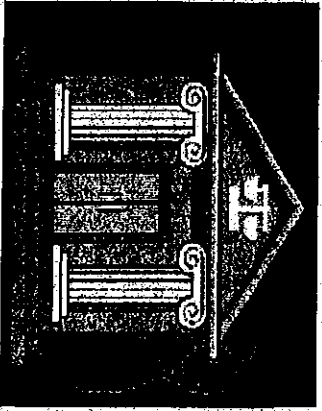
Sworn to and subscribed in my presence this _____ day of _____,
20_____.

NOTARY PUBLIC



REPRESENTING YOURSELF IN COURT

A CITIZENS GUIDE



Preparing Your Case

If you do decide to represent yourself, you need to manage all aspects of your case.

- ☑ **Familiarize yourself with the local court rules.** Rules and procedures vary slightly from court to court, and you need to know the rules that apply in the court that will hear your case. Obtain a copy of the local rules from your court.
- ☑ **Make sure your filings and documents conform to local standards.** Generic forms and sample filings are available in books and on the internet. However, these generic documents may not conform to the standards of the court that will hear your case. To make sure that your documents will be accepted, ask your court for forms and sample filings.

☑ **Respond to all inquiries on time.** During trial preparations, you may receive inquiries from the court or the opposing party. For example, the opposing party may be entitled to "discovery"—to learn about evidence or testimony you plan to introduce (you may be entitled to the same). If you fail to respond to such inquiries, you may limit your ability to present your case.

☑ **Rules about admissible evidence are complicated.** There are many possible reasons that evidence or testimony you think is relevant and important may not be admissible in court. Since questions about what evidence is admissible are legal questions that are often contested, neither court staff nor the judge may answer them ahead of time. This can be frustrating for non-attorneys: if your case will involve contested evidence, consider again whether you need an attorney.

☑ **Make sure evidence you plan to use will be acceptable and available in court.** If your case will involve evidence—documents, pictures, cost estimates, receipts, or other items—you must prepare it for court use. In particular, you must

- ♦ bring at least three copies of all documents (for the court, for the opposing party, and for yourself); and

- ♦ be able to verify that documents are what you say they are or contain accurate information.

☑ **Make sure any witnesses are prepared and available in court.** If your case will involve testimony from witnesses, you need to work with them before you and they appear in court. Make sure your witnesses know what you will ask, and instruct them to answer truthfully. And remember that your witnesses must be

- ♦ present at your trial (they may not, for example, prepare written statements or appear by telephone); and
- ♦ prepared to answer questions from the opposing party or his or her attorney.

When you decide to represent yourself, you take on full responsibility for your case. You need to handle legal questions as well as deadlines, documents, evidence, witnesses, and any other issues that may come up. Even a seemingly simple case can demand a lot of your time and attention.

In the Courtroom

At the trial or hearing itself, you need to present your case in its strongest way. Here are some simple tips:

☑ **Make a good impression.** Dress appropriately. Arrive on time with all your materials.

☑ **Respect the court.** Stand when the judge enters or leaves the courtroom and when you speak to the judge. Address the judge as "Your Honor."

☑ **Respect the opposing party.** Never argue with the opposing party in front of the judge. Use respectful terms of address.

☑ **Speak clearly and succinctly.** Be prepared to state your case in a few sentences. Listen carefully and answer questions directly.

☑ **Be prepared.** Courts are very busy. You want to present your case in the strongest way, but you also want to help the proceedings move efficiently. The better prepared you are, the better the case will go.

The Role of the Judge

Your case will be heard and decided by a judge (or a magistrate). Keep in mind that the role of the judge is to be an impartial referee in the dispute between you and the opposing party. Among other things, this means that

- The judge may not help you present your case.** Helping you—by pointing out possible mistakes or by letting you know what you need to do next—would be unfair to the opposing party. When you represent yourself, you take on the full responsibility of presenting your case.
- The judge may not speak with you about your case when the opposing party is not present.** This is true even if the issue you want to speak with the judge about seems like a simple procedural question. Again, such communications would be unfair to the opposing party.
- The judge will decide the case on the basis of the facts presented in court and the applicable law.** The judge may only consider the facts as they are presented in court, through evidence and testimony. You need to make sure that all facts supporting your case are properly presented. The judge also needs to follow the laws that apply. Sometimes the law dictates which facts the judge may and may not consider. You need to make sure that you present the facts that the law requires or permits.

Legal Advice

It is always a good idea to consult with an attorney and be represented by an attorney in court.

- The law is complex. Attorneys are trained professionals who understand the law and how it relates to your case.
 - Even matters that initially look simple may raise complicated issues.
 - Your interests will be best protected by a legal professional.
- Attorneys can be expensive, but consider this:**
- What might you lose if your case goes badly? Paying for an attorney may be a good investment.
 - Meet with several attorneys to discuss your case and their fees—don't let one consultation make up your mind.
 - You may qualify for legal aid or help from legal clinics or other programs—be sure to investigate the resources in your community.
- Ohio courts and judges will provide a fair hearing for your case whether or not you are represented by an attorney, and it is your right to represent yourself if you so choose.
- When you bring a case to court without the help of an attorney, you are taking on a complex task that is normally done by highly trained professionals. You may do yourself a disservice.

For help with finding an attorney, you might turn to your local bar association. Your local bar association is:

Asking Court Staff

Court staff may not give legal advice. You may have questions that court staff are not permitted to answer.

- Court staff may not**
 - ✗ provide you with legal research;
 - ✗ tell you what sorts of claims to file or what to put on forms;
 - ✗ tell you what to say in court;
 - ✗ give an opinion about how a judge is likely to decide your case;
 - ✗ give you information that they would not give to the opposing party;
 - ✗ tell you about a judge's decision before it is issued by the judge.
- Court staff may**
 - ✓ answer questions about how the court works;
 - ✓ explain terms used in the court process;
 - ✓ give you information from your case file;
 - ✓ provide you with court forms and sample filings and documents.

Court staff are there to help those who use the court. They can usually tell you *how* to do things, but may not advise you about *what* you ought to do. Please be courteous to staff and respect the limits on what they may do for you.

How to Change or Enforce an Existing Visitation Order



What You Must Prove And How to Present Your Case at the Hearing

What to do to Enforce or Modify a Visitation or Parenting Time Order?

When you have a visitation/parenting time order and are being denied visitation as that order allows . . . you should file a Motion for Contempt For Denying Visitation.

When you want to change an existing visitation schedule, you must file a Motion to Modify Visitation.

26 26 26

Where to File

If your visitation/parenting time order was issued as part of a divorce or dissolution, you must file in the same court of common pleas that issued your divorce decree.

If you were never married to the parent of your child and your visitation/parenting time order was issued by a juvenile court, you must file in same juvenile court that issued the original order.

26 26 26

What You Need to Prove to Modify an Existing Visitation or Parenting Time Order

You must provide the Court with a reason or reasons for your request. You must convince the Judge or Magistrate that:

1. Circumstances have changed since the date of the previous court order setting visitation
2. As a result of those changes, it is only fair to you and in the best interest of the child or children to change the previous visitation schedule.

Example of circumstances that would justify a change in visitation:

- You obtained a new job which requires you to work during the hours you are scheduled to visit with your children.
- Your children are enrolled in some activity that is scheduled during the time you are supposed to visit with them.

You must also provide the Court with a proposed visitation or parenting time schedule.

Some counties have a standard visitation schedule. Check with the clerk of courts to see if your county has a standard schedule. If the court has such a schedule and it is good for you, indicate that you would like to get a "Standard Visitation Order".

If the standard visitation schedule will not work for you or your county does not have one, please write down the visitation schedule you would like the Court to approve (including all major holidays).

Some Factors the Court Looks at When Setting Visitation or Parenting Time Schedules:

- The distance between each parent's residence.
- The health and safety of the child
- The amount of time the child will have to spend with siblings.
- The mental and physical health of all parties.
- Each parent's willingness to reschedule missed visitation and to help to other parent easily exercise visitation rights.
- The age of the child.
- The child's adjustment to home, school, and community.

What You Need to Prove to Enforce an Existing Visitation or Parenting Time Order

1. You have an existing visitation or parenting time order from the Court you are currently before.
2. The parent of your child is not following some part of that order or is interfering with your rights under the order.

Example of things that constitute contempt of court

Your ex-spouse has custody of the children AND has not allowed you to visit with your children or has purposefully done things to make it difficult for you to visit with your children.

- When you come to get your child or children, they are not at the house and your ex-spouse will not tell you where they are.
- Your ex-spouse has moved and refuses to tell you the new address.

CAUTION:

You cannot force a parent to exercise visitation rights if they chose not to do so. A contempt motion on this basis will not be granted.

You cannot deny the other parent visitation because he or she failed to make child support payments. Child support and visitation are considered separate. In fact, you could be found in contempt of court if you took such action.

The Court Hearing

Be on time!

When the Court tells you the date and time of the hearing, MARK THIS DATE IN YOUR CALENDAR. If you do not show up at the hearing, the Court will automatically dismiss your motion.

What to bring?

- ✓ Court's previous Visitation Order (If contempt motion - mark the part of the order that you think is not being enforced.)
- ✓ Witnesses who can who can testify (from what they have seen or heard) that what you tell the Court is true.
- ✓ Any evidence that will prove to the Court:
 - that circumstances have changed (contract of new employment, etc.) OR
 - that you are being denied visitation (letters you wrote reminding the other party of your right to visitation or diary/written notes regarding problems with visitation - including exact dates visitation was denied)

What to do when it is your turn to speak?

Modification

1. Explain generally to the judge or magistrate:
 - what has changed since the first order was issued (you got a new job, etc.),
 - how this change has interfered with you or the other parent's right to visit with your child, and
 - how a change in the visitation schedule would improve the situation.
2. Tell the Court what you want them to do: increase or decrease amount of visitation time, change the time or place of visitation, etc.

Contempt:

1. Identify the exact portion of the previous visitation order that you think has been violated.
2. Explain to the Court when and how the order was violated. Be specific and to the point. . . provide dates and times for each act that violated the order.

3. Present evidence and witnesses. Show the Court any evidence you may have to prove that a violation occurred (copies of visitation records that you may have kept, etc.)

If you have a witness who can back up what you are saying, ask the witness to state his/her name and relationship to you and then have them tell the Court what they know or have observed.

4. State what you want the Court to do: enforce (make the other party comply with) the previous order, punish the other party for not complying with the visitation order, increase or decrease amount of visitation time, or change the time/place of visitation

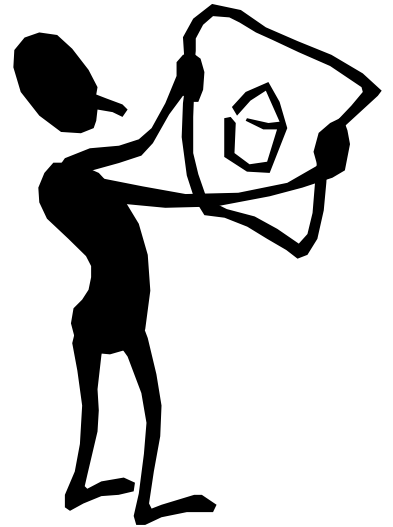
Tip: If your children do not want to testify in Court, ask the Judge/Magistrate to speak to the children in her office alone after she has heard all of the other witnesses. The Judge Probably will not let either you or your ex-spouse hear what the children say.

Prepared by:

NAPFL Equal Justice Fellow
Ohio State Legal Services Association
© 2001

Representing Yourself in Court?

How to Use Photographs,
Letters, Business Records,
and Other Evidence to Help
Prove Your Case



What is Evidence?

Evidence is anything you use to prove your claim. Evidence can be a photograph, a letter, documents or records from a business, and a variety of other things. All evidence that is properly admitted will be considered by the judge.

Your case probably will be decided by a judge. If there is a jury, it will look at admitted exhibits during its deliberations.

For example:

- **In a request for change of custody**, the child's school records could be introduced as evidence that the child's grades have dropped or he/she has missed a significant amount of school while living with the other parent.
- **In a domestic violence or stalking civil protection order case**, a photograph of any injury you suffered or a threatening letter written by your abuser may help your case.
- **In a divorce case**, a copy of tax return documents or documents showing who has title to a car may be introduced as evidence.

Why Use Evidence?

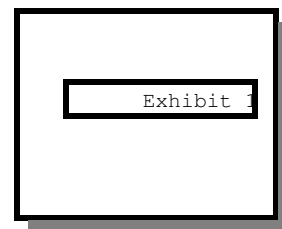
- ➊ Evidence is more **believable and trustworthy** than what a person says. For example, in a domestic violence case, if you say that your ex-boyfriend has left you threatening messages but he testifies that this is an absolute lie, the judge may not know whom to believe. However, if you submit a tape recording of one of these messages the judge will be more likely to believe you.
- ➋ Evidence may make something **easier to understand**. “A picture is worth a thousand words.” Some things are hard to explain in words, while a drawing or photograph is descriptive and clear.

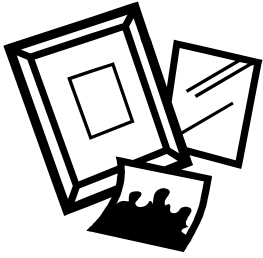
How Do I Present Evidence to the Court?

Each court is different, but in most courts, you can't just walk into court with a photograph or document and show it to the judge or jury. There are many things you must do before the court will even look at the evidence you have. Further, there are many different types of evidence, and the rules for using each type of evidence are different. Once you follow these rules, your evidence will be “admitted”.

Steps to Follow to Admit Evidence

- ➔ Before you ever go to court, think about the evidence you want to use to prove your case. Mark each piece of evidence with an exhibit number (attach a sticker labeled “Exhibit 1,” “Exhibit 2,” etc.)
- ➔ Bring these marked Exhibits with you to court. When you want to show the court one of the exhibits, do the following things:
 - ➊ Show the exhibit to the other party or the other party's attorney.
 - ➋ Then “lay the foundation” for the evidence. To do this, you must show that the evidence is relevant to your case and authentic (not a forgery). Depending upon what you want the court to consider, follow the rules listed in this pamphlet for “laying the foundation” - explaining why and how the exhibit is connected to your case.
 - ➌ Either you or your witness must testify about the exhibit.
 - ➍ Ask the court to admit the exhibit into evidence. The other party or attorney may object to the exhibit for some reason. Try to answer these objections as best you can. If you can't, let the judge decide.
 - ➎ If there are no objections from the other party, or the judge has ruled in your favor, ask the court to “admit the Exhibit into evidence.”





Laying the Foundation for Photographs

1. Explain why a photo is connected to your case. For example:
“This photo shows the injury I suffered after my ex-boyfriend punched and kicked me.”
2. Explain how you know about what is in the photo. For example:
“I had my sister take this photograph within 2 hours after the incident occurred and went to get the film developed myself the following day.”
3. Explain that the photo is timely. For example:
“At the bottom right-hand corner of the photo is the date on which it was taken. As you can see, the photo was taken on the same day that the incident occurred, which is also the same day the police arrested my ex-boyfriend.”
4. Explain that the photo “fairly and accurately” shows what is depicted in the photo as it appeared on the date relevant to your case. For example:
“This photo is a fair and accurate depiction of how my face and side looked two hours after the incident and for the next two weeks.”

TIP

When using photographs, it is best to use color photos and enlarge them, if possible.

Foundation for Letters

1. Explain why the letter is connected to your case. For example:
“This is the letter that I received from my ex-boyfriend shortly before he beat me up.”
2. Explain when and how you got the letter. For example:
“This letter was shoved under the door to my apartment some time before 6 p.m. on Wednesday, January 2, 2001. I found it on the floor when I came home from work that day.”
3. Prove that the signature is that of a party to the case. Ways to prove this:
 - **Explain to the court: that you are familiar with the other party’s signature, how you came to know that person’s signature, and that it is your opinion that the signature on the letter is the other party’s signature.**



- **Call a witness who is familiar with the party’s signature, and ask the witness:**
“Do you know the other party in this case? Are you familiar with the party’s signature? How?”

Then show them the letter and ask “Is this the other party’s signature?”

- **Call the person who signed the letter.**
Show the witness the document, and ask the witness if that is his or her signature. (Only do this if you think they will admit to it).

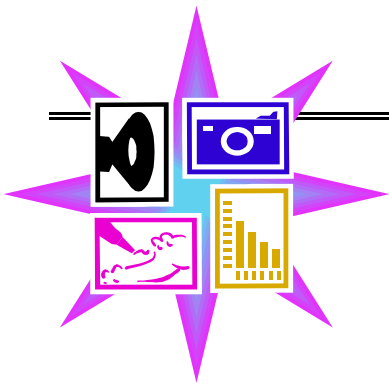
4. Explain that the letter is in the same condition now as when you received it. (“The letter was kept in a safe place and nothing has been changed since I received it.”)

TIPS

Do not read anything from the letter until the court has admitted it into evidence.

If the other party objects to the letter saying that it is hearsay, respond by saying: “The letter shows the letter writer’s state of mind.”

Laying the Foundation for Documents and Records From Businesses



1. Explain how the document or record is related to your case.
2. Call a witness from the business/agency that produced the record, ask the witness what his or her responsibilities are at the business/agency and how he or she is involved in record keeping.

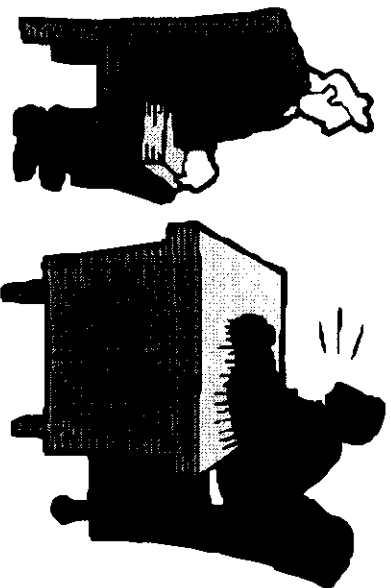
3. Show the witness the record and ask him/her if it is a record from the business/agency.

4. Ask the witness:
 - Was the record made by a person with knowledge of the acts or events appearing on it.
 - Was the record made at or near the time of the acts or events appearing on it.
 - Is it the regular practice of the business/agency to make such a record, and
 - Was the record kept in the course of a regularly conducted business activity.

TIP

If the record is certified (a statement is attached to the record stating that it is in fact a record from a public agency or it has an agency seal on it) you do not need to do anything before you show it to the judge. Just let the judge know it is certified.

How to Handle Witnesses When You Are Representing Yourself



When Should I Bring a Witness to Court?

It is always a good idea to bring a witness with you simply to tell the Court that you are an honest person or to confirm that what you are telling the Court is true.

In most cases that come before the Court, both sides are telling a different version of the same story. The Court knows that each side may be telling the version that best serves his or her own interests. The testimony of a witness (someone not involved in the case directly) will make your side of the story more believable.

In some types of cases, you are required by law to bring a witness. For example, in divorce cases, many Courts require a that you bring a witness to testify that you are a person known to have good character in your community (that you are an honest and good person).

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What If My Witnesses Can't Come to the Hearing?

Your witness must come to the hearing! A handwritten note from a person will not be accepted by the Court—the witness must show up at the hearing and testify live. Live testimony is required so that the other side has an opportunity to ask questions of your witness as well.

To make sure your witnesses will show up, make sure you call them the week of the hearing and again the day before the hearing to remind them.

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Who Should I Bring as a Witness?

→ People who know you and your reputation in the community.

→ People who know about the situation that brought you to the Court from things they have seen or heard. Only use witnesses after you have talked to them and are sure that they will tell the Court what is helpful to your case.

While it is okay to have a friend or family member be a witness for you, it is always best to have someone who does not favor one side over the other. With family members and friends, the Court may assume that the person is testifying for you simply because they like you and want you to win.

~ ~ ~

How Do I Prepare My Witnesses?

→ Think about what is the most valuable thing each witness could say on your behalf.

→ Write down a few questions that will help the witness get the idea across.

→ Practice with your witness ahead of time, so you know what answers will be given.

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What Should I Do With My Witnesses at the Court Hearing?

- Start by asking the witness their name and address.
- If your witness is a professional, you should ask what their job is, what their educational degrees are, and how long they have been doing their job.
- Then ask specific questions about what information they have about your case.

With your own witness, it is not okay to ask "leading questions." Leading questions give the witness the answer you want them to say.

You must keep your questions open-ended. *Open-ended questions are Who, What, Where, When, How, and Why questions.*

Examples to use:

- How would you describe my husband's condition when he dropped the children off at your house?
- What did my husband do when he would pick the children up from day care?

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What About the Other Side's Witnesses?

The other side will question them first. The judge will give you an opportunity to "cross examine" them (that is, ask them your own questions). You do not have to ask any questions if you think the witness will only repeat what was already said.

When asking questions of the other side's witnesses, you are allowed to ask leading questions. Leading questions have Yes or No answers.

Examples to use:

- Was my husband ever drunk when he dropped the children off at your house?
- Didn't my husband yell and swear at the children when he came to pick them up from day care?

~ ~ ~

Rules To Follow When Questioning Witnesses

- Keep your questions short.
- Never ask a question when you do not know what the answer will be—the answer could hurt your case more than help it.
- If you don't get the answer you were expecting from a witness, do not argue with them or accuse them of lying. It makes you look bad before the judge. Remember . . . politeness at all times!
- If a witness refuses to answer a question, ask the judge to make the person answer.

~ ~ ~

Samples of Questions to Ask My Witnesses

- What is your name?
- What is your address?
- How long have you known me?
- During the time that you have known me, have you become familiar with my reputation in the community?
- Do I have a reputation for good character and honesty in the community?
- From what you know about me, am I someone the Court can rely upon to tell the truth?
- You have heard what I have said in Court. To the best of your knowledge, do you know it to be true?
- Please explain how you know this to be true.

Prepared by:

NAPIL Equal Justice Fellow
Ohio State Legal Services Association
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In addition to the forms in this packet, you may find additional forms and informational pamphlets to help you on the internet at the following website:

www.ohiolegalservices.org

Click on “For the Public”

Locate and click on the legal area that you would like to review – use the “search this site” box if you are not sure which area to review

You can also search this website to learn how to access the local legal services program for your area