INSTRUCTIONS FOR FILING CHILD CUSTODY CASE

WHO CAN USE THESE FORMS?

You may use these forms only if all of the following are true:

- You and the defendant are the biological parents of the children. (Both parents must be listed on the children's birth certificates. If not, see page 10 of these instructions.)
- You are not married to the other parent of the children.
- The children are living with one or both parents.
- There is no custody order currently in effect (other than in a Domestic Violence case).
- The courts of Alaska have the authority (jurisdiction) to decide custody of the children. For Alaska courts to have jurisdiction, the children usually must have lived in Alaska for the last six months. (Other ways for the courts to get jurisdiction are described in Alaska Statute 25.30.300.)

If any of the above are not true, you should talk with a lawyer for advice.

NOTE: If you are a person under the age of 18 and you are not legally emancipated, you may use these forms to petition for custody, but you must notify the court clerk of your age when you file your petition.

TABLE OF CONTENTS

SECTION 1

INFORMATION ABOUT FILLING OUT FORMS

- Type or print neatly in black ink.
- Fill in all information. Do not leave any spaces blank. If you do not know the information, write "Do Not Know."
- Write "none" or "N/A" (not applicable) where appropriate.
- At the top of the front page, fill in the city where the court is located. Then fill in your name as plaintiff. Fill in the other parent's name as defendant. Leave the "Case No." line blank.
- If more space is needed, attach additional pages. On each added page, do the following:
  - sign your name at the end of each page you attach
  - write the case title in the bottom left corner of each attached page (for example: Smith v. Jones)

SECTION 2

STEPS FOR FILING CASE

NOTE: These forms and instructions are for parties who are not represented by attorneys.

Step 1. Fill out the following forms (which are attached to these instructions):

a. ***Complaint for Custody of Minor Children*** **(DR-420)**

See Section 3 (page 7 of these instructions) for information about legal custody, physical custody, visitation and child support.

b. ***Information Sheet (DR-314)***

c. ***Case Description Form*** **(CIV-125S)**

(1) On the first line of the form, write the case number.

(2) In the "Domestic Relations" section in the right column, check the box for "Custody (CISCUS)."

d. ***Child Custody Jurisdiction Affidavit*** **(DR-150)**

If you believe that disclosure of some of the information on this form would jeopardize your health, safety, liberty, or that of your children, you are not required to serve a copy of this form on the other party. Instead, file this form with the court along with court form DR-151 (available online or from the court clerk's office). AS 25.30.380(e)

e. ***Child Support Guidelines Affidavit*** **(DR-305)**

For information about how to fill out this form and DR-306, you should read the booklet DR-310, *How to Calculate Child Support*, which is available at the clerk's office and on the court system's website.

f. ***Shared Custody Child Support Calculation*** **(DR-306).**

This form is required only if you are requesting shared physical custody.

There are two other types of physical custody described on page 8: divided and hybrid. If you request divided custody, you must attach form DR-307. If you request hybrid custody, you must attach form DR-308. Get DR-307 or DR-308 at the court or on the court system website.

You must sign the two affidavits in front of a notary public. A court clerk can provide this notary service for you (at no charge) when you bring the documents to court. You must bring a photo ID with you for the notarization.

Step 2. After completing and signing the forms, make two copies of every form. One copy is for you. The other copy will be served on the defendant as explained in Step 5.

Step 3. File the original forms at the nearest court and pay the filing fee in the amount specified in Administrative Rule 9(b). If you cannot afford this fee, ask the clerk for form TF-920, *Request for Exemption from Payment of Fees*.

Step 4. *Summons*. When you file the *Complaint*, the clerk will issue a "*Summons*" that directs the defendant to answer your *Complaint*. The clerk also may give you two copies of a Pretrial Order. One copy is for you, and one is for you to serve on the defendant. Be sure to read your copy. This order has important instructions about how your case will proceed.

Step 5. Serving the Defendant. You must arrange to have the documents listed below "served" on the defendant. "Served" means to have these documents given to the defendant by a process server, certified mail (restricted delivery), or in another way allowed by court rule. See the booklet *How to Serve A Summons* (CIV-106).

The following documents must be served on the defendant:

a. A copy of the *Summons*

b. A copy of each document you filed with the court (all the documents listed in Step 1)

c. A blank *Answer Packet* (DR-440)

d. A copy of any Pretrial Order issued by the court in your case.

REMEMBER: If the documents are served on the defendant by certified mail, it is very important that you keep the green postal card returned to you by the Post Office. This card is proof that the defendant was served by certified mail with restricted delivery, and you will be required to submit the card to the court if the defendant does not file an *Answer* to your *Complaint.*

Step 6: Keep a copy of all documents for yourself.

Step 7. Defendant's *Answer***.** The defendant has 20 days from the date he/she is served with the summons to file an *Answer* with the court.

- If the defendant files an *Answer*, the defendant also must send you a copy of the *Answer*.

  Agreement. If the defendant's *Answer* agrees with everything you requested in your *Complaint* or if you and the defendant can reach a written agreement resolving all issues concerning the children, you do not need to ask for a trial. Instead, you should ask the court to set a hearing to review your agreement

and enter a custody judgment. You can use parenting plan form DR-475, (available online and at the court), to document your agreement.

In some courts, mediation at a reduced cost is available to help you resolve any differences and reach a mutually acceptable agreement without a trial. If you are interested, ask the court clerk if mediation is available in your community.

Trial Setting. When the defendant sends you the *Answer*, ask the clerk how to get your case set for trial.

- In some courts, your case will be set automatically for trial after the defendant's *Answer* is filed. The court will send you an Order which will set the trial date and establish deadlines for other things you must do before the trial.
- In other courts, you will need to file a *Memorandum to Set Civil Case for Trial* (form CIV-200). See Section 5 (page 13 of these instructions) on how to complete the CIV-200 form. After the *Memorandum to Set* is filed, the court will send you an Order which will set the trial date and establish deadlines for other things you must do before the trial.

- If the defendant does not file an *Answer*, you can ask the court for a default judgment against the defendant. A "default judgment" is a judgment issued in your favor because the defendant failed to answer your complaint. See Section 4 (page 11 of these instructions) on how to obtain a default judgment.

SECTION 3

INFORMATION ABOUT LEGAL CUSTODY, PHYSICAL CUSTODY, VISITATION, CHILD SUPPORT, AND THE PFD

In determining custody and visitation, the judge must decide what is in the best interests of the child. See page 22 for a list of factors the judge must consider in making this determination. You must be prepared to explain to the judge how your proposal for custody and visitation is in the best interests of the child. See the parenting agreement form (DR-475, available online and at the court) for examples of the issues you should think about when preparing your custody and visitation proposal.

Note: If either party has a history of perpetrating domestic violence, it will affect the court's custody decision. See page 23.

Legal Custody (Decision Making).

Legal custody means the right and obligation to make decisions about a child's upbringing, including schooling, medical care, and financial matters. There are two types of legal custody.

> Sole legal custody means that only one parent is given the legal authority to make decisions about the child. If the parents do not agree on a decision about the child, the parent with sole legal custody has the right to make the final decision.
>
> Shared legal custody means that both parents are given the legal authority to make decisions about the child. The parents share responsibility in making the major decisions affecting the child's welfare.[1]
>
> - Alaska's legislature has expressed a policy favoring shared legal custody regardless of the physical custody arrangement. The legislature has stated that "it is in the public interest to encourage parents to share the rights and responsibilities of child rearing" and that "it is the intent of the legislature that both parents have the opportunity to guide and nurture their child . . ."[2]
> - However, shared legal custody is appropriate only when the parents can cooperate and communicate regarding the child.[3] If the parents cannot discuss these matters cooperatively and share decision making, shared legal custody will not be awarded.

[1] Bell v. Bell, 794 P.2d 97, 99 (1990).
[2] Section 1 ch. 88 SLA 1982.
[3] Farrell v. Farrell, 819 P.2d 896, 899 (Alaska 1991).

Physical Custody.

Physical custody means where a child actually lives. As a general matter, it is very rare for a child to live with one parent 100% of the time. For purposes of calculating the amount of child support, Civil Rule 90.3(f) describes four types of physical custody:

- Primary physical custody means that the children reside with one parent more than 70% of the year.
- Shared physical custody means that the children reside with each parent for a specified period of at least 30% of the year. If you want shared physical custody, you must describe when the children will reside with each parent. If either parent is planning a move to another community in the near future, you should explain how shared custody will be continued. See AS 25.20.090 on page 24 for factors the court must consider in determining whether to award shared custody.
- Divided physical custody means that each parent has primary custody of at least one child and the parents do not share custody of any of their children.
- Hybrid physical custody means at least one parent has primary custody of at least one of the children, and the parents share custody of at least one of their children.

Visitation.

Visitation is the right of a parent and child to contact and visit one another when the child is residing or visiting with the other parent. It is generally desirable that minor children have frequent and continuing contact with both parents so that both parents can maintain a good relationship with the children and share the rights and responsibilities of child rearing.

In the Visitation section on page 3 of your complaint, describe what you think is a reasonable visitation schedule. Be prepared to explain to the judge why your proposal is in the best interests of the child. The following are some things to consider in your visitation proposal:

- ✔ The importance to the child of having an opportunity to build and maintain a relationship with the other parent
- ✔ Whether there should be overnight visits during the week
- ✔ Weekends
- ✔ Holidays and birthdays
- ✔ Summer vacations
- ✔ Special family functions
- ✔ Where the parents live
- ✔ Costs of travel (who will pay for the children's trips)
- ✔ What if one of the parents moves
- ✔ Age of the children
- ✔ School attendance and school activities during visitation

Be sure to check the second box in the Visitation section of the complaint if you are concerned about your safety or your children's safety when with the other parent (for example, if there is a history of domestic violence, child abuse, sexual abuse, alcohol or drug abuse, etc.). Then explain what restrictions you want placed on the other parent's visitation.[4]

Child Support.

- The law requires that both parents financially support their children.[5]
- Support is paid on behalf of the children, not for the benefit of the custodial parent.
- The Alaska Supreme Court has established guidelines in Civil Rule 90.3 which judges must follow to determine the amount of child support.
- Normally, child support stops when a child reaches age 18.[6] However, you can ask that support continue to be provided for each child while the child is 18 if the child is (1) unmarried, (2) actively pursuing a high school diploma or equivalent level of training, and (3) living as a dependent with a parent. You can ask the court to order that the support be paid to the parent with whom the child is living or directly to the 18 year old. Check the box in Section 9(a) of the complaint if you want support continued while the children are 18.
- Income Withholding**.** The court will be required to order immediate income withholding from the person ordered to pay child support and order the support paid through the Child Support Enforcement Division (CSED) unless one of the three exceptions authorized by statute[7] applies. For an explanation of those exceptions, see form DR-10 (available at the court). If there is a reason why the court should not order immediate income withholding, be sure to write that in Section 9(c) of the complaint.
- You may want to request the services of the Alaska Child Support Enforcement Division (CSED). If you do, CSED will maintain records of support payments and enforce the support order. For example, CSED will serve an order enforcing the income withholding order described above on the employer of the parent ordered to pay support. If income withholding is ordered but you do not apply for CSED's services, you will have to serve the appropriate court orders on the employer. Once the employer has been served (by CSED or by you), the withheld money must be paid to CSED.

  For more information about CSED, read the attached information sheet (DR-316).

  If you want to request CSED's services, fill out the attached application form (DR-315) and file it with your complaint.
  If the parent with custody of the children is receiving assistance from the Alaska Temporary Assistance Program (ATAP), child support payments must be made to CSED.

[4] See AS 25.20.061 about the types of restrictions the court can impose in proceedings involving domestic violence.
[5] AS 25.20.030.
[6] Child support also stops if a child is emancipated (for example, if the child marries or obtains a court order of emancipation under AS 09.55.590).
[7] AS 25.27.062(m).

Alaska Permanent Fund Dividend (PFD).

You should ask the court to designate which parent will apply for the Alaska PFD on behalf of the children while they are minors (under age 18). If both parents apply for the children, the Department of Revenue will not send the dividends to either one. The Department will hold the dividends until they receive a court order directing who should receive the dividends or until one parent withdraws the applications he/she filed on behalf of the children. 15 AAC 23.223(h).

Parent Information in Section 1 of Complaint.

If there is a question or disagreement about who is the father of the children, that question will need to be resolved before the court decides the custody case.

For example, if the person listed as the father on page 1 of the *Complaint* is not listed as the father on the birth certificate of each child, but both parents agree that he is the father, you can do either of the following:

1. File an *Affidavit of Paternity* with the Health Analytics and Vital Records office. This affidavit form (VS-16) is available at courthouses and at Vital Records offices. Both parents must sign the affidavit.

2. State in both the *Complaint* and the *Answer* in your custody case that he is the father. If both the plaintiff and the defendant agree in their pleadings (the *Complaint* and the *Answer*) that he is the father, there will not be a paternity issue in the case.

If the defendant's *Answer* denies or questions paternity, the court probably will require that this issue be resolved before the custody case can proceed. The following are two ways to get paternity established:

3. Apply to the Child Support Enforcement Division (CSED) for a determination of paternity. The forms for this are available at CSED offices and on the CSED website: www.childsupport.alaska.gov See 15 AAC 125.212 – .259 in the Alaska Administrative Code for a description of this procedure.

4. Ask the court for an order establishing paternity. You can find forms to establish paternity and learn more here: http://www.courts.alaska.gov/shc/family/shcpaternity.htm.

The court also may allow the paternity question to be contested as part of the custody case.

If the defendant is named as the father in the *Complaint* but not on the birth certificate, and the defendant does not file an *Answer*, the court may or may not be willing to enter a *default* custody judgment and child support order in the case.

SECTION 4

HOW TO OBTAIN A DEFAULT JUDGMENT
(If Defendant Fails to Respond to the Complaint)

If the defendant does not file an Answer, you may obtain a default judgment[8] by doing the following:

1. Prepare an application for entry of default. Use form DR-425, *Default Application – Child Custody*, available online or at the clerk's office. You must sign the application in front of a notary public. A court clerk can provide this notary service for you (at no charge) when you bring the application to court. You must bring a photo ID with you for the notarization.

2. Attach proof of service showing that the defendant was served with the summons and other documents. Proof of service will be one of the following:

   - an original Return of Service completed by the process server
   - the original green postal card returned by the Post Office
   - the original Affidavit of Publication

   For more information about proof of service, see the booklet CIV-106, *How to Serve a Summons.* The booklet is available online.

3. If the defendant filed any written response with the court (for example: a letter), you must send a copy of your *Default Application* and all attachments to the defendant by first class mail. You then must file a certificate of service with the court certifying that you did this and when you did it.

4. Keep a copy of the *Default Application* and the proof of service of the summons, etc. for yourself.

5. File the original *Default Application* and the proof of service with the court.

6. The court then will schedule the case for hearing and send you a notice of the hearing. At the hearing, the court will decide whether it is in the best interests of the child to grant the requests you made in your complaint. See pages 14-17 for some suggestions about how to organize the information you will need to present to the judge.

[8] Civil Rule 55.

At the hearing, be prepared to tell the court the following:

a. Why your custody proposal is in the best interests of the child. See page 22 for a list of the items the court must consider in making this decision.

b. Why your proposal concerning visitation for the other parent is fair and in the best interests of the child.

c. Any information about the defendant's financial ability to pay child support. For example, information about:

- the defendant's current, or most recent, employment
- how much the defendant usually makes or can make
- the type of work the defendant does
- defendant's education and training
- whether the defendant is supporting other children

If you can bring documentation to support the above information, you should do so. Otherwise, you will be asked to testify under oath about the accuracy of the information.

7. At the end of the default hearing, the judge may require you to prepare proposed findings of fact and conclusions of law and a proposed judgment. There are forms for this available at the clerk's office (form DR-460 and DR-465). Civil Rule 78(a)

SECTION 5

HOW TO GET A TRIAL DATE

Ask the clerk which of the following procedures applies to your case:

- In some courts, the court will automatically set a trial date after the defendant files an *Answer*.
- In other courts, one of the parties must request that a trial be set. See Civil Rule 40(b). The form for requesting a trial date is called a *Memorandum to Set Civil Case for Trial* (CIV-200). Find the form online or ask the clerk for a copy.

  a. At the top of the form, fill in the court location, plaintiff's name, defendant's name and case number.

  b. Fill out the rest of the form as follows:

    (1) Paragraph one is a statement that tells the court the defendant has filed an answer and that the case is ready to be heard by a judicial officer.

    (2) Estimated time for trial. Usually these hearings take from one hour to one day, depending on the number of witnesses each side calls and the judge permits to testify.

    (3) Jury demanded. Check the "No" box. There are no jury trials in custody cases.

    (4) Nature of case. Check the "Other" box and write "Custody" on the blank line.

    (5) Legal preference. Check the "No" box. There is no scheduling preference for these trials.

    (6) Names and addresses. Fill in the names, addresses and telephone numbers of all parties and attorneys.

    (7) Date and sign the form.

  c. Fill out the "Certificate of Service" box on the original. On the first blank line, write the date you will mail or hand-deliver a copy of the form to the opposing party.

  d. Make two photocopies of your completed form. Keep one copy for your records. Mail or hand-deliver one copy to the opposing party or the party's attorney.

  e. File the original *Memorandum to Set* with the court in person or by first-class mail.

SECTION 6

PREPARING FOR THE CUSTODY TRIAL

A. Comply with pretrial order.

The court will send you an Order which will set the trial date and establish deadlines for other things you must do before the trial. Be sure to follow all the deadlines set out in the order, including discovery, witness lists and submission of child support financial information. If you do not comply with the Order, your trial will be delayed.

NOTE: If you do not understand how to comply with the pretrial order, you may want to consult with an attorney.

1. Discovery. Discovery is the exchange of information and all documentary evidence between parties before trial. Civil Rule 26 sets out the rules that the parties must follow regarding what information must be given to the other parent and when the information must be given.

2. Witness List. The court usually orders each parent to file with the court an alphabetical list of all the witnesses that the parent intends to have testify at trial. The list must also include each witness' address and telephone number. There is no court form available for this. You must send a copy of the list to the other parent.

   NOTE: If you plan to testify, you should also list yourself as a witness.

3. Submission of Financial Information Necessary to Calculate Child Support. If you have not already filed the DR-305 *Child Support Guidelines Affidavit* **and** proof of income (tax returns and pay stubs), do so now! Be sure to send a copy of the Affidavit and proof to the other parent.

B. Prepare Outline.

The outline is a very important step. Read the *Complaint* and *Answer*. Then make a list of the issues that are in dispute and identify the documents and witnesses that will support each of your points. You can use the Trial Outline on page 17 of these instructions.

Be sure to refer to this outline during your trial to make sure you remember to tell the judge the important facts.

Things to include in this outline:

1. Why you believe it is in the best interests of the children for you to have custody of them. The following are examples of items you might want to discuss:
   - who have the children lived with
   - who has been the primary care giver for the children
   - how are the children doing
   - why you are a responsible parent
   - do either of the parents have substance abuse problems and how does that affect the children

   See Section 9 for a complete list of the things the court must consider in determining the best interests of the children.

2. What amount of visitation the other parent should be allowed, and your proposed visitation schedule. You must be able to explain to the judge why your visitation schedule is reasonable and in the children's best interests. If you propose that the other parent get no visitation, you must be prepared to explain to the judge why that would be in the children's best interests.

3. Why your proposed child support amount is correct, whether or not the amount is disputed.

4. If the other parent disputes the court's authority to decide custody of the children, bring witnesses and/or documents to show that the children have lived in Alaska for the last six months.

5. For each issue in your outline, list the witnesses and documents you will submit to support your claims.

C. Contact Witnesses.

A witness should be someone who has information about why it would be in the best interests of the children to be placed in your custody. For example, you might want to ask family members, social services representatives or baby sitters to testify as witnesses for you.

If you want to have witnesses testify, it is your responsibility to arrange to have the witnesses present at the time of the trial. If a witness cannot appear in person, you can ask the court for permission to have the witness testify by telephone. You must get this permission before the hearing. Ask the court clerk how to get the court's permission and how the call will be set up. Note: You will have to pay for the call. You must make these arrangements as far in advance of the trial as possible.

D. Subpoena Witnesses if Necessary.

When you ask people to testify for you, some may tell you that they are unable or unwilling to testify without a court order. If that happens, you may ask the court to issue a subpoena (a court order that requires the person to appear and testify). See CIV-109, *How to Subpoena a Witness,* available online and at the clerk's office. Note: You must pay a witness fee to each witness you subpoena.

E. Collect Supporting Documents.

You must also bring to the trial any documents you want the court to consider. Examples of documents you might want to bring with you:

- financial records to help decide the amount of child support (information about your income or the other parent's income such as tax returns and pay stubs)

- the children's birth certificates (for example, if there is a dispute about who is the father of the children)

Note: You may not be able to use some kinds of documents at the trial. For example: letters or affidavits from people who are not present to testify. The court probably will not let you present such letters and affidavits as evidence because the other party would not have a chance to ask the writer questions about the document.

F. Prepare an Opening Statement.

The judge may ask you to make an opening statement, so you should be prepared to give a brief summary (2-3 minutes) of the testimony you and your witnesses will give.

TRIAL OUTLINE

Issues	Witnesses Who Will Support This Issue	Documents That Will Support This Issue
It is in the best interest of the children for me to have custody because:		
Proposed visitation schedule for other parent: summer vacation _____ holidays & birthdays: _____ weekends: _____ other: _____		
Reason for proposed child support amount (if disputed):		**Child Support Guidelines Affidavit** **Both parents' income tax returns.** **Both parents' pay stubs.**
Other Issues:		

SECTION 7

CUSTODY TRIAL

If you have difficulty hearing, tell the clerk and ask to use the assisted listening equipment available in the courtrooms.

On the date set for the trial, both parents must be present and ready to give the court their evidence supporting their positions on custody, visitation and child support. All witnesses supporting their requests must also be present.

A. Day of Trial.

Be sure to get to court a little early on the day of your trial. This will give you time to become familiar with the courtroom. Also be sure all your witnesses are there.

In small towns and villages the court may be only a single room and yours may be the only case scheduled. In cities there will be a courthouse with several courtrooms. If you cannot tell from your notice of trial or from the posted court calendar which courtroom your trial will be in, ask the court clerk or receptionist for directions.

You may have to wait before your case is called because there may be other cases scheduled before yours.

B. During Trial.

Each party will have the opportunity to present evidence. You must present your own case at the trial. Court rules state that no one except you (or your attorney if you have one) can represent you in court.

Your case must be presented first, followed by the defendant's case. After each of your witnesses have testified, the defendant will have a chance to cross-examine (question) the witness about the testimony.

When all of your witnesses have finished testifying, the defendant will have a chance to present the defendant's case and witnesses. You then will have a chance to cross-examine each of the defendant's witnesses.

Before beginning to testify, each party and each witness will be placed under oath and will have a continuing obligation to speak only the truth.

Some suggestions for presenting your case:

1. If the judge asks for an opening statement, it should be brief (2 to 3 minutes) and to the point, a summary of what you want and why the judge should order it.

2. Make sure you have talked with your witnesses about why you want them to testify. Remind them that they need to talk about things they have personally seen, not things you or someone else told them. For example, they could testify about how long you have been the primary caregiver or about facts that show how well you have provided for the children.

3. Some judges will allow your witnesses to present a statement of what they want the court to know, other judges will require that you ask questions of your witness to present their testimony. Try to ask open ended questions rather than ones which call for a yes or no answer.

4. Make sure you have your documents in court with you to support the points you want to make.

5. Refer to your outline so you don't forget anything. If you forget to present something at trial, the judge won't be able to consider that point.

6. At a minimum, you will have to show why your custody proposal is in the best interests of the children, what your proposed visitation schedule will be and why it is in the best interests of the children and why the proposed child support calculations are correct if disputed.

7. Don't assume that the court knows all about your case. You have to present facts to support all the points you want to make. The judge can not fill in the blanks for you.

C. After Trial

After all the testimony has been presented, the judge will make a decision. The judge may make the decision immediately or the judge may take some time to consider the evidence and make the decision later.

The judge may require you to prepare proposed findings of fact and conclusions of law and a proposed judgment. There are forms for this available at the clerk's office (form DR-460 and DR-465). Civil Rule 78(a).

You will get a copy of the written judgment when it is completed. Make sure the court has your current mailing address.

SECTION 8

AFTER THE COURT ENTERS A CUSTODY JUDGMENT

Appeal.

If you believe the court applied the law incorrectly or reached a decision which is not supported by the evidence presented, you may appeal the custody judgment or the child support order to the Alaska Supreme Court.

An appeal does not automatically give you a new trial. The supreme court will not accept any new evidence. The only information the supreme court will consider on appeal is (1) a transcript of the tape recording of the trial (or those parts of it designated by the parties), (2) any items presented as evidence at the trial, (3) the documents in the court file, and (4) legal briefs.

To appeal, you must file a *Notice of Appeal* with the Clerk of the Appellate Courts within 15 days after the date the judgment is distributed.[9] The *Notice of Appeal* must be accompanied by the items specified in Appellate Rule 204(b), including a filing fee in the amount specified in Administrative Rule 9(a) or motion to waive the fee. The court does not provide forms or instructions for appeals to the supreme court. See Appellate Rule 218 for more information about appeal procedure in custody cases. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.

Modification.

If circumstances change after the judgment is entered, you can ask the court to change the custody judgment and the support order. The court has jurisdiction to modify these orders while the children are under 18.

- Change In Custody or Visitation

  A change in custody will not be granted unless there has been a substantial change in circumstances since the last order was entered. Also, the requested change must be in the best interests of the children.

- Change In Child Support

  In order to obtain an increase or decrease in support payments because of a change in income of the person making the payments, the change in income must be both long term and significant. The court will not modify a support order because of a minor or temporary increase or decrease in income. The general guideline for determining whether a change in income is significant is if the change is enough to raise or lower the support payments by 15% or more.

The following packets of forms are available online and at the clerk's office:

(1) *Motion Packet: Requesting A Change In Child Custody, Support or Visitation* (DR-700)

(2) *Response Packet: For Responding To A Motion To Change Child Custody, Support or Visitation* (DR-720)

[9] Appellate Rule 218(d).

SECTION 9

ADDITIONAL INFORMATION

Laws. If you want to read about the laws that govern child custody and child support, the following are some Alaska Statutes and Alaska Rules of Court to look at. Also read the "Annotations" that follow these statutes and rules. (Annotations are brief paragraphs describing the Alaska Supreme Court decisions interpreting the rules and statutes.)

Child Support	Civil Rule 90.3 and the "Commentary" that explains this rule.
	Alaska Statutes 25.24.160(a)(1), 25.24.170, 25.24.240, 25.24.910, and 25.27.060 to .070
	How to Calculate Child Support Under Civil Rule 90.3 (DR-310) This free booklet is available at the court.
	Forms and instructions for requesting that child support continue while a child is 18 (DR-320 to DR-323), available at the court.
Child Custody and Visitation	Alaska Statutes 25.20.060 to 25.20.140, 25.24.150, 25.24.170, 25.24.240, and 25.30.300

Custody Decisions: "Best Interests of the Child"[10]

To decide who gets custody of a child, the court must determine what is in the best interests of the child. The court must consider the following:

(1) the physical, emotional, mental, religious, and social needs of the child;

(2) the capability and desire of each parent to meet these needs:

(3) the child's preference if the child is of sufficient age and capacity to form a preference;

(4) the love and affection existing between the child and each parent;

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;

(7) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;

(8) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;

(9) other factors that the court considers pertinent.

[10] Alaska Statute 25.24.150(c)

In awarding custody, the court must only consider facts that directly affect the child's wellbeing.

AS 25.24.150 limits the court's ability to award custody if either parent "has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner:"

(g) There is a rebuttable presumption that a parent who has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of a child.

(h) A parent has a history of perpetrating domestic violence under (g) of this section if the court finds that, during one incident of domestic violence, the parent caused serious physical injury or the court finds that the parent has engaged in more than one incident of domestic violence. The presumption may be overcome by a preponderance of the evidence that the perpetrating parent has successfully completed an intervention program for batterers, where reasonably available, that the parent does not engage in substance abuse, and that the best interests of the child require that parent's participation as a custodial parent because the other parent is absent, suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse that affects parenting abilities, or because of other circumstances that affect the best interests of the child.

(i) If the court finds that both parents have a history of perpetrating domestic violence under (g) of this section, the court shall either

(1) award sole legal and physical custody to the parent who is less likely to continue to perpetrate the violence and require that the custodial parent complete a treatment program; or

(2) if necessary to protect the welfare of the child, award sole legal or physical custody, or both, to a suitable third person if the person would not allow access to a violent parent except as ordered by the court.

(j) If the court finds that a parent has a history of perpetrating domestic violence under (g) of this section, the court shall allow only supervised visitation by that parent with the child, conditioned on that parent's participating in and successfully completing an intervention program for batterers, and a parenting education program, where reasonably available, except that the court may allow unsupervised visitation if it is shown by a preponderance of the evidence that the violent parent has completed a substance abuse treatment program if the court considers it appropriate, is not abusing alcohol or psychoactive drugs, does not pose a danger of mental or physical harm to the child, and unsupervised visitation is in the child's best interests.

(k) The fact that an abused parent suffers from the effects of the abuse does not constitute a basis for denying custody to the abused parent unless the court finds that the effects of the domestic violence are so severe that they render the parent unable to safely parent the child.

(l) Except as provided in AS 25.20.095 and 25.20.110, a court may not consider a parent's activation to military service and deployment in determining the best interest of the child under (c) of this section. In this subsection, "deployment" has the meaning given in AS 25.20.095.

Shared Custody: Factors The Court Must Consider.

AS 25.20.090 states:

> In determining whether to award shared custody of a child the court shall consider
>
> (1) the child's preference if the child is of sufficient age and capacity to form a preference;
>
> (2) the needs of the child;
>
> (3) the stability of the home environment likely to be offered by each parent;
>
> (4) the education of the child;
>
> (5) the advantages of keeping the child in the community where the child presently resides:
>
> (6) the optimal time for the child to spend with each parent considering
>
> (A) the actual time spent with each parent;
>
> (B) the proximity of each parent to the other and to the school in which the child is enrolled;
>
> (C) the feasibility of travel between the parents;
>
> (D) special needs unique to the child that may be better met by one parent than the other;
>
> (E) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;
>
> (7) any findings and recommendations of a neutral mediator;
>
> (8) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
>
> (9) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
>
> (10) other factors the court considers pertinent.

(§ 6 ch 88 SLA 1982, am § 1 ch 52 SLA 1989, am § 3 ch 111 SLA 2004)

Closure of Proceedings.

AS 25.20.120 states:

> Closure of custody proceedings and records. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time. (§ 6 ch 88 SLA 1982)

Access to Records.

AS 25.20.130 states:

> Access to records of the child. A parent who is not granted custody under AS 25.20.060 – 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent. (§ 6 ch 88 SLA 1982)

Federal Tax Benefits

In 2018, tax benefits for people with dependents changed. You will not receive an exemption for dependents anymore.[11] Instead, there is a larger child tax credit.[12] To get the child tax credit and other tax benefits, you must meet the requirements described in Internal Revenue Service (IRS) Publication 501. Check that you are viewing the publication for the current tax year because the IRS updates publications annually.

To get the child tax credit, your child must be a "qualifying child." A qualifying child must have lived with you for more than half the year. The "qualifying child" must not have provided over half of his or her own support during the calendar year and must also meet a few other age and relationship-to-filer requirements. Depending on your circumstances, your child may be a "qualifying child" for more than one person, such as the child's other parent or even the child's grandparent. If you think this might apply to you, review the "Qualifying Child of More Than One Person" section of IRS Publication 501.

Please contact the IRS or your tax advisor if you have questions about tax benefits.

[11] 26 U.S.C.A. § 151 (d)(5)(a) (2017); 26 U.S.C.A. § 152 (2018)
[12] 26 U.S.C.A. § 24 (2018).