

PARENTING PLANS:

Advice for Non-Lawyers about How to Complete Them

Read this booklet before filling out any plan!

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INTRODUCTION

The Purpose of This Booklet

For the most part, this booklet is written to assist the persons who start lawsuits. They are called plaintiffs. It can be of benefit, though, to the parties on the other side of cases. They are called defendants.

Should You Hire a Lawyer?

You are not required to have a lawyer to handle your case. The decision to proceed with or without a lawyer is up to you. Many people find that the paperwork required is complex. If you decide not to use a lawyer, the other party may still use a lawyer and you may be at a disadvantage if you proceed without a lawyer. *If you do not have a lawyer you will be expected to know all the laws and court rules that apply to your case as if you were a lawyer.*

The court may make decisions that could have a significant impact on you, such as requiring you to pay money to the other party or garnishing your wages. Free legal advice may be available to you through volunteer programs organized by the bar association in your county. You may be able to hire a lawyer for a *portion* of a case – such as a hearing before a judge or a review of papers you propose to file – under rules of the Tennessee Supreme Court. See our separate booklet on limited legal representation.

To find out more about hiring a lawyer or obtaining free legal assistance, consult:

- your local bar association
- the Tennessee Bar Association at www.tba.org/LawBytes/findalawyer.html
- the Tennessee Alliance for Legal Services at www.tals.org

JUDGES AND CLERKS MAY NOT GIVE YOU LEGAL ADVICE OR ASSIST YOU WITH YOUR PAPERWORK.

TWO TYPES OF PARENTING PLAN

A **Temporary Parenting Plan** can be presented to the court for approval immediately if your case is contested and will take many weeks or months to resolve. If approved by the judge or chancellor, it will stay in effect until the case is completed.

A **Permanent Parenting Plan** is completed at the time that the Final Decree is entered in a divorce case, whether or not the case is contested. **It can also be used in a juvenile proceeding in those counties where parenting plans are adopted.**

Two separate forms are used for parenting plans – temporary and permanent. Most people find it necessary to fill out forms more than once. This is particularly true if you and your spouse are negotiating the terms of a Parenting Plan. So, be sure to make multiple copies of each of the forms for Temporary and Permanent Parenting Plans.

The Temporary Parenting Plan

Either parent or both of them may present a Temporary Parenting Plan on Form 140, but it is not effective until the judge orders it to be in effect or until both parents sign it. In order to complete the form, use the instructions below regarding the Permanent Parenting Plan. Only one parent need sign unless both parents have agreed to the plan. If there is agreement, both should sign. Notarization is required unless both parents sign.

Procedures for approval of a temporary plan may vary within counties. The process may also be affected by the use of mediation. A court may decide not to approve a Temporary Parenting Plan until mediation occurs. (With mediation, a third person advises you about ways to resolve your differences. You are free to follow or reject this advice. Courts encourage and frequently require mediation. Please see our separate booklet called *Mediation*.)

Generally, it will be necessary for you to file a **Motion for Temporary Relief** and for the judge to enter a **Temporary Order**, as explained in a two separate booklets entitled *Uncontested Divorce* and *Contested Divorce*. It will be effective when the order is signed by the judge or chancellor, rather than when you file the plan with the clerk of the court.

If both parents agree to the plan, it will be effective from the date both parents sign it, rather than the date of filing with the clerk of the court.

The Permanent Parenting Plan

Generally, the same plan should apply to all children. However, if there is more than one child and the residential schedule is different for each child, you should either fill out a separate plan for each child or explain the differences in the Permanent Parenting Plan. CAPITAL LETTERS indicate the content or titles of sections of the plan.

The Heading of the Form

THE BOXES. The boxes in the heading tell the clerk which file to place your plan in. You must first fill in the name of the court. The next box asks which county the court is located in. In the box called "File No.," you do not have to write this number. It is assigned to your file by the clerk. If you know the number from other court documents, and you are certain it is the proper number for your file, you can write it in this box. However, if you are not certain *do not* write the number. The box entitled "Plaintiff" is the name of the person who filed first. If you filed the case, this would be your name. If you were served with copies of court papers, you are the "Defendant." Put your name in

the box entitled "Defendant". Write both names as full legal names. This means first name, middle name and last name.

PROPOSED, AGREED, OR COURT-ORDERED PLAN. Either parent may submit a plan that he or she proposes. Parents may submit one they have agreed upon. The court may adopt a plan on its own. You should indicate which of these three possibilities is the case.

If you are submitting a proposed plan, you must furnish a copy to the other parent. If the other parent has an attorney, you are required to give a copy to the attorney. Write down the address you mailed it to, and at the date you mailed it. If the other parent does not file his or her own proposed plan, or will not come to an agreement with you, you will have to ask the judge to decide the terms of a court-ordered parenting plan. You should wait approximately 30 days after filing a proposed plan to see if the other parent will file a proposed plan. If you are not getting close to an agreement, you will need to set a hearing date with the court. Talk with the court clerk about selecting a hearing date. If the court clerk does not do so, you must send the other parent a written notice with the date, time and place of the hearing.

If you are submitting an agreed plan, some judges will nevertheless want to talk with you about it. Judges must be satisfied that a plan is in a child's best interest. Ask the clerk about whether your judge will want you to appear before him or her.

If you must go to a hearing because there is no agreement between the parents, and the judge decides in favor of your parenting plan, you must prepare a court-ordered parenting plan for the judge to sign. The only differences in the court-ordered plan and your proposed plan are the first and the last pages. Of course, you must make any changes which the judge has ordered in the plan.

Beginning of the Form

NEW OR REVISED PLAN. Indicate whether there is a prior plan or court order. This form may also be used by parties who are already divorced and are revising their plan. It sometimes is used in Juvenile Court as well as Circuit, Chancery, or another court.

CHILDREN TO WHOM THE PLAN APPLIES. List the name, birth date, and social security number of each dependent child of this marriage. This means a natural child born to the husband and wife, a child adopted by the husband and wife, or a natural child of one spouse adopted by the other spouse. You do not need to list a stepchild. A child is dependent if he or she is under 18. A child over 18 may be dependent if the child is physically or mentally disabled.

Residential Sharing Schedule

This section of the Permanent Parenting Plan describes the days and times the child will be with each parent, including holidays, birthdays and vacations. The residential schedule must be specific. The residential schedule may not simply state "reasonable visitation" or "as agreed by the parties."

When determining the time that each parent spends with the children, be sure to remember that it is not the quantity of time that counts, it is the quality. Many parents try to divide the time up in equal amounts, as if they are splitting possession of property. The better way to approach the subject is to look at the time you have available to focus on the children (time off from work, time you are not running errands, etc.) and time when the children are able to focus on you (not school time, not homework time). The decision should also take into consideration the age and needs of the child. If your family has more than one child, you may also want to consider time between a parent and just one of the children.

DAY-TO-DAY SCHEDULE. Check the box to show the parent with which the child will reside. Then fill in the specific times when the child will visit or live with the other parent.

If the children are in school, a proposal should be made taking their time in school into consideration. Generally, the school year should not be divided. Even splitting up the week can cause problems.

Pre-schoolers need contact with both parents, generally on a weekly basis. Their perception of time is different from an adult's perception. If more than one week passes without contact with a parent, the bond between the child and that parent can begin to erode. Most pre-school schedules revolve around the work schedules of the parents.

Teenagers have many activities. Try to schedule around their activities, but also try to create a time where you are able to do "family things" which will promote conversation.

Every other weekend is typical for visitation during a school year. You may want to expand this if you live within easy driving distance of each other, and you want to spend more time with the children.

HOLIDAYS. Fill in the space opposite each holiday to show which parent the child will spend the holiday with. Also specify whether the child will be with this parent in "Odd" or "Even" years or "Every" year. You should fill in the times for holiday visits to begin and end. Although the form does not require it, you may want to indicate whether you want Friday and Monday holidays to include the weekend. You may also modify the usual statement that a holiday or special occasion begins at 6:00 p.m. on the day before and ends at 6:00 p.m. on the day of the holiday.

VACATIONS. Sometimes, parents alternate fall, winter, and spring vacations, with one parent taking the vacations in odd-numbered years and the other taking the vacations in even-numbered years.

During the summer, parents can be more flexible. Usually the parent who is not spending the majority of the time with the children during the school year will want to have them for an extended period of time in the summer. Sometimes parents reverse the school-year schedule in the summer months. Whatever decision you make, be sure that the children are spending time with both parents. If your children are young, you may want to consider several visits, rather than long periods with only one parent. If one parent wants 30 days or more in the summer, the other parent probably should have some visits during that time. Typically, the children are returned to the parent who will have them during the school year one week before school begins.

TRANSPORTATION ARRANGEMENTS. You may specify places for delivery, responsibilities for payment of out-of-town travel, and other arrangements.

SUPERVISION OF VISITATION. While rare, supervised visitation is used when there is a likely harm to a child from unmonitored contact with a parent. It is usually applied for weeks or months – not permanently -- as a test of parenting skills and with the expectation that the experiment will be successful. Supervision can be provided by a relative, friend, or charitable organization.

OTHER. This is the place for making special arrangements and imposing restrictions. Suppose, for example, that a Tuesday holiday follows a weekend of visitation with the other parent. With whom should the child be on Monday? You may also state any restrictions that should be placed on a parent's contact with the child -- for examples, no overnight visitors of the opposite gender, no drugs or alcohol, or required counseling or therapy.

Decision-Making

DAY-TO-DAY DECISIONS and CHILD NURTURE. The information in these paragraphs bears careful reading, partly because of its importance and partly because the language about child nurturing is often ignored.

MAJOR DECISIONS. In this paragraph, say which parent will make major decisions about the child's education, health care, religious upbringing and other major issues. Such decisions may be made by one parent, both parents, or be divided between them.

Financial Support for Children

CHILD SUPPORT. If the plan is a proposed one and no agreement has been reached, fill in the amount, the person responsible for payment, and the other terms as you want them to be. You may obtain a copy of the Tennessee Child Support Guidelines

from the clerk of the court. They are revised annually. Some parents think that if they have the children 50% of the time, they will not have to pay child support. Under current Tennessee law, this is not the case. If the Child Support Office is involved in your case, it will be the one to indicate the amount of child support. Parents are not allowed to set child support lower than the guidelines, even if both of you agree on the amount. If child support has already been set in another legal proceeding, use the amount in the court order when filling out this section of the Parenting Plan. Finally, the judge or chancellor may permit a deviation from the state schedule on child support. He or she must state reasons for doing so.

TAX DEDUCTION. The federal tax deduction may be worth more to one spouse than the other and does not affect custody. Federal tax law provides that the parent who has had the child living with him or her for more than one half of the year is the parent who is entitled to take the child as a deduction. But he or she can transfer it to the other parent. In addition, the parent who has the child for more than six months in the year qualifies for the earned income credit even when the other parent takes the child as a deduction.

PROOF OF INCOME. The federal tax information and return furnished by the parent paying child support enables the other parent to verify income.

INSURANCE. One parent or TennCare must provide health insurance. Dental insurance is required only if available through employment. Uncovered medical and dental expenses are often divided by the parents. The parent paying child support must have life insurance to cover payment of this obligation.

OTHER MATTERS. This is the place for agreements about important matters not specified in the form.

Primary Residence for Other Legal Purposes

Other state and federal statutes sometimes require that one parent be designated as the custodian or that both be considered joint custodians. The way that you complete the rest of the Parenting Plan will determine whether sole or joint custody exists within the meaning of those other laws. This section of the Plan is for information only.

Dispute Resolution Process

The law requires that a Parenting Plan include ways for resolving disputes between the parents about the Parenting Plan, other than the amount of child support. This dispute resolution process must be used before filing a Petition **for Enforcement** or a **Petition for Visitation** for failing to follow the final Parenting Plan. (Neither of these forms is discussed in this booklet.)

Dispute resolution procedures include mediation, arbitration, settlement conference, and court process.

With *mediation*, a third person advises you about ways to resolve your differences. You are free to follow or reject the advice. For this reason, mediation is usually preferable to the other alternatives. With *arbitration*, a third person will make specific decisions for you that you must follow. Mediation and arbitration involve fees for the services of the third person, but approved mediators and arbitrators must take a number of cases each year without payment. (A separate booklet entitled *Mediation* explains this subject in greater detail. To obtain a reduced fee, you must file a motion on Form 220, and the judge must sign an order on Form 334.) Check with the court clerk about who is on the list of approved mediators and arbitrators.

With a *settlement conference*, you will have a meeting with a different judge or chancellor than the one handling your current case. No fees are imposed, but there are some court costs. This judge will talk with both parents and listen to each point of view, then tell you how he or she would decide the dispute based upon Tennessee law. The judge's opinion is not final, and neither parent must accept the judge's opinion. ***Court process*** is used for victims of domestic violence and when one spouse is under court-imposed restrictions. The judge or chancellor may be the same or a different one. This proceeding also entails payment of court costs. If you choose this method, you must file formal pleadings with the court and either hire an attorney or represent yourself.

You may choose more than one dispute resolution procedure, but this is generally not a good idea. You must follow the procedure you choose every time you and your spouse have a major difference about the Parenting Plan that you cannot resolve.

Unless otherwise agreed, parents usually share the cost of dispute resolution in proportion to their incomes. (For example, if the father earns 60% of the net total income of the mother and father combined, he pays 60% of the dispute resolution costs and the mother pays 40%.) You may write in your own statement about who is to pay what. If you cannot agree, the court will make that decision. If you schedule a meeting, and the other parent does not come to the meeting, the parent who did not come may be required to pay all of the costs of the missed meeting.

Be sure to also show how you will start the dispute resolution process. Certified mail is usually preferable.

Rights of Parents

Tennessee law gives both parents rights that are expressed in this section of the plan. All too often, it is forgotten or ignored, particularly with regard to unimpeded telephone calls, freedom from derogatory remarks, and out-of-town trips. Make yourself familiar with these rights, because if you interfere with the other parent's rights, you can find yourself facing contempt-of-court charges. Contempt charges can lead to fines and jail time, and denial of parental rights can be a basis to change the residential schedule.

Parenting Class

It is required of each parent in a divorce case but optional in other types of cases. A court may not refuse to grant a divorce because of failure to attend a parenting class. To obtain a reduced fee, you must file a motion on Form 220, and the judge must sign an order on Form 336.

Other Provisions

You may add a section or a page that sets forth any other provisions that you would like to have included in the Permanent Parenting Plan. For example, by law both parents have equal access to the child's medical or educational records after the divorce unless a court order states otherwise. Any limitations on the other parent's access to these records should be written in this section.

Signatures

When you have finished filling out your Parenting Plan, **READ THROUGH YOUR PARENTING PLAN SEVERAL TIMES TO MAKE SURE YOU UNDERSTAND IT AND HAVE COMPLETELY FILLED IT OUT.** Sign your name and write in the date. If you and your spouse are filing for divorce together, then both of you must sign and date the Parenting Plan.

Notarization is required if the proposed Permanent Parenting Plan is filed by one parent, rather than both.

The original should be filed with the clerk of the court with a copy being furnished to the other parent.

Sometimes judges or chancellors sign the Plan itself. Sometimes they sign an Order that incorporates the Plan. Once the Plan or Order is signed by the judge or chancellor, be sure to obtain a certified copy from the clerk's office.

Adapted from a booklet prepared by the Northwest Justice Project.