

INSTRUCTIONS FOR SUMMONS AND PETITION IN LEGAL CUSTODY AND PHYSICAL PLACEMENT ACTION

This form is to be used by a parent who wishes to start a court action concerning legal custody, physical placement or child support, when both parents have signed and filed a statement acknowledging paternity. **IT IS NOT USED to start an action to determine paternity in cases where there has not been a signed acknowledgment of paternity.** In addition to the Summons and Petition, you should also request a hearing by using the form labeled "Notice of Motion & Motion for Hearing."

Step 1: Fill out the forms

Carefully review all of the following instructions before you complete the forms. Type or print neatly using **black or blue ink**. The packet includes the following forms:

1. Summons—Action under § 767.805, Stats.
2. Petition for Custody, Placement and Child Support-Action under § 767.805, Stats.
3. Notice of Motion & Motion for Hearing-Action under § 767.805, Stats.
4. Affidavit in Support of Motion for Hearing-Action under § 767.805, Stats.
5. Confidential Petition Addendum

SUMMONS

1. In the caption at the top of page 1, print your name on the line labeled "Petitioner". Print the other parent's name on the line labeled "Respondent".
2. In the middle of the page, print your name on the first blank line. Print your address on the second and third lines.
3. Date and sign the document at the bottom of page 3. Print your address on the last line.

PETITION FOR CUSTODY, PLACEMENT AND CHILD SUPPORT

1. In the caption at the top of the page 1, print your name on the line labeled "Petitioner". Print the other parent's name on the line labeled "Respondent".
2. In the first paragraph fill in your name after "I". In the blank at the end of the sentence fill in the date on which the paternity acknowledgment form was filed with the State.
3. Print the child(ren)'s names on the line under the label "NAME" and the child(ren)'s dates of birth on the line under the label "DOB".
4. In the last paragraph which starts out "The Petitioner requests the following relief", cross off the items that you do not want the court to order.
5. Sign the form on the line labeled "Petitioner". Fill in the date below your signature.

NOTICE OF MOTION & MOTION FOR HEARING AND AFFIDAVIT IN SUPPORT OF MOTION FOR HEARING

This form is to be used by a party who wishes to have the Court hold a hearing and determine issues concerning legal custody, physical placement, child support, health insurance, and payment of uninsured health care expenses for the child. These documents will usually be filed at the same time as the summons and petition commencing the action. If the documents are filed together, the Respondent can be served with the summons, petition and documents concerning the hearing at the same time.

1. Fill in the names of the parties at the top of the form. Print your name on the line labeled "Petitioner". Print the other parent's name on the line labeled "Respondent".
2. Under the sentence which reads "PLEASE TAKE NOTICE THAT the Petitioner moves the court to order" are listed a number of issues which you may request the Court to decide; they are numbered 1-4. Cross off the issues that you do not want the Court to address (Please note that even if you do not want certain issues addressed, the other parent may request at the hearing that an order be entered concerning those issues).
3. Leave blank the lines which state the date, time and place of the hearing and the name of the commissioner who will hold the hearing. The Court Commissioner's Office will give you this information later.
4. Sign your name and fill in the date at the bottom of the page.

AFFIDAVIT IN SUPPORT OF MOTION FOR HEARING

1. Print your name on the line labeled "Petitioner". Print the other parent's name on the line labeled "Respondent".
2. Print your name in the first line after "I".
3. Sign your name and fill in the date **in front of a notary public** who will witness your signature.

MAKE THREE ADDITIONAL COPIES OF THE SUMMONS, PETITION, NOTICE OF MOTION & MOTION, AFFIDAVIT IN SUPPORT OF MOTION, AND UNIFORM CHILD CUSTODY JURISDICTION ACT AFFIDAVIT AFTER YOUR SIGNATURE ON THE UNIFORM CHILD CUSTODY AFFIDAVIT IS NOTARIZED. ONLY ONE (1) COPY OF THE CONFIDENTIAL PETITION ADDENDUM IS NEEDED AT THE TIME OF FILING

Step 2: Go to the Court Commissioner's Office and get a date for hearing

After making copies, go to the Court Commissioner's Office, to obtain a date for the hearing on your motion.

Step 3: File all of your forms and pay the filing fee

1. Take the original and three copies of the forms to the Clerk of Courts, Room 309, Douglas County Courthouse, 1313 Belknap Street, Superior, WI 54880 in order to file the case. You will have to pay a filing fee of \$184.50 if there is no request for child support or \$194.50 if there is a request for child support.

If you believe that you are entitled to a waiver of the fee because of poverty, fill out a Petition for Waiver of Filing and Service Fees available at the Clerk of Court's Office. The Court will determine if the fee can be waived. If you ask for a waiver, do so before paying any fees, not after.

2. Optional - If you would like to apply for services from the Douglas County Child Support Enforcement Unit, go to the Child Support Office and complete an "Application for Child Support Services". The application should be completed (including your newly assigned court case number) and dropped off or mailed to the Douglas County Child Support Enforcement Unit at the address listed on the form.

Step 4: Serve the summons and petition and notice of motion for hearing on the Respondent.

You must serve the other party within 90 days of the date the case is filed. Service may be accomplished in one of the following three ways:

1. Service by Sheriff. If the other party lives in Douglas County, you may have a copy of the paperwork served on the other party by the Douglas County Sheriff's Department. The Sheriff will need two copies for service. There is a charge for every service or attempted service, plus fees per mile that the deputy travels. There will be no fee if you qualify for a fee waiver. Once the Sheriff has served the forms, you will be sent a Proof of Service form. Make a copy for your records and return the original to the Clerk of Courts Office, Room 309 of the Douglas County Courthouse.

If the person to be served lives outside of Douglas County, call the Sheriff in the county where the person lives for instructions on serving the papers.

2. Service by Private Process Server. You may use a private process server to serve the other party. To locate a private process server, look in the phone book yellow pages under "Process Servers." Once the forms have been served, you will be sent a Proof of Service form. Make a copy for your records and return the original to the Clerk of Court's Office.
3. Admission of Service. If you believe the Respondent will be willing to admit that he or she received the Summons and Petition, you can have the Respondent sign an Admission of Service available online at wicourts.gov. If an Admission of Service form is signed by the Respondent, you do not need to have the Respondent served by the sheriff or a private process server. If the Respondent signs an Admission of Service form, make a copy for your records and return the original to the Clerk of Court's Office.

_____,
Petitioner,

**SUMMONS - LEGAL CUSTODY,
AND PHYSICAL PLACEMENT**

Petitioner's address

Date of birth

and

Case No. _____

_____,
Respondent.

Code No. 40803

Respondent's address

Date of birth

TO THE PERSON NAMED ABOVE AS RESPONDENT:

You are notified that the Petitioner named above has filed a legal action against you. The petition, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the petition. The court may reject or disregard any answer that does not follow the requirements of the statutes. The answer must be sent or delivered to:

Douglas County Clerk of Court
Douglas County Courthouse
1313 Belknap Street, Room 309
Superior, WI 54880

Douglas County Child Support Agency
Douglas County Courthouse
1313 Belknap Street, Room 202
Superior, WI 54880

and to the Petitioner at the address listed above.

You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the petition, and you may lose your right to object to anything that is or may be incorrect in the petition. A judgment may be enforced as provided by law.

As required by § 767.215(2m)(a)(2), Stats., accompanying this Summons will be a document setting forth the percentage standard for child support established by the Department of Workforce Development under § 49.22(9), Stats, and listing the factors that a court may consider for modification of that standard under § 767.511(1m), Stats.

You are hereby notified that violation of the following criminal statute is punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both (Class F felony); or by a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both (Class I felony):

948.31 Interference with custody by parent or others. (1)(a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.

2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22, or 46.23, or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person, or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (14).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in

violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4)(a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;

3. Is consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8).

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

767.105 Information from the office of family court commissioner. (1) Information on available services. Upon the filing of an action affecting the family, the office of family court commissioner shall inform the parties of any services, including referral services, offered by the office of family court commissioner and by the director of family court services under s. 767.405.

(2) Other information on request. Upon request of a party to an action affecting the family, including a revision of judgment or order under s. 767.451 or 767.59:

(a) The office of family court commissioner shall, with or without charge, provide the party with written information on the following, as appropriate to the action commenced:

1. The procedure for obtaining a judgment or order in the action.

2. The major issues usually addressed in such an action.

3. Community resources and family court services available to assist the parties.

4. The procedure for setting, modifying and enforcing child support awards or modifying and enforcing legal custody or physical placement judgments or orders.

(b) The office of family court commissioner shall provide a party, for inspection or purchase, with a copy of the statutory provisions in this chapter generally pertinent to the action.

767.511(1m) Deviation from standard; factors. Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

(a) The financial resources of the child.

(b) The financial resources of both parents.

(bj) Maintenance received by either party.

(bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

(bz) The needs of any person, other than the child, whom either party is legally obligated to support.

(c) If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of child care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(ej) The award of substantial periods of physical placement to both parents.

(em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.41.

(f) The physical, mental, and emotional health needs of the child, including any costs for health insurance as provided for under s. 767.513.

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

(hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

(i) Any other factors which the court in each case determines are relevant.

DCF 150.03 Support orders. (1) Determining income available for child support. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required.

(a) 17% for one child;

(b) 25% for 2 children;

(c) 29% for 3 children;

(d) 31% for 4 children; and

(e) 34% for 5 or more children.

(2) Determining income modified for business expenses. In determining a parent's monthly income available for child support under sub. (1), the court may adjust a parent's gross income as follows:

(a) Adding wages paid to dependent household members.

(b) Adding undistributed income that meets the criteria in s. DCF 150.02 (13) (a) 9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

(c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

(3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, and in the absence of credible evidence to the contrary, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to

ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the higher of the federal minimum hourly wage under 29 USC 206 (a) (1) or the state minimum wage in s. DWD 272.03. As an alternative to imputed income, the court may order the parent who is not a custodial parent to search for a job or participate in a work experience and job training program, including the Children First program under s. 49.36, Stats. If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

(4) Determining income imputed from assets. (a) The court may impute a reasonable earning potential to a parent's assets if the court finds both of the following:

1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DCF 150.02 (13).

2. The parent's assets are underproductive and at least one of the following applies:

a. The parent has diverted income into assets to avoid paying child support.

b. Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable and subtracting the actual income from the assets that was included as gross income under s. DCF 150.02 (13).

(5) Adjustment for child's social security. (a) The court may consider a child's benefit under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 and adjust a payer's child support obligation by subtracting the amount of the child's benefit received by the payee. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit. If the payer is receiving the child's benefit, the support amount is either the designated percentage applied to the payer's income or the amount of the child's benefit, whichever is greater.

(b) If the shared-placement guidelines under s. DCF 150.035 (1) apply, the child's benefit is split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the child's benefit that represents the proportion of time the child spends with the parent not receiving the benefit to the support obligation of the parent who is receiving the child's benefit. Support shall be determined as follows:

1. Determine each parent's monthly income available for child support under s. DCF 150.03 (1) (intro.). If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in s. DCF 150.04 (1). Include the parent's federal disability or old age insurance benefits under 42 USC 401 to 433 in that parent's income, but do not include the child's benefit under 42 USC 402 (d) in either parent's income.

2. Multiply each parent's monthly income available for child support by the designated percentage.

3. Multiply each amount determined under subd. 2. by 150%.

4. Multiply the amount determined for each parent in subd. 3. by the proportion of time that the child spends with the other parent.

5. Multiply the amount of the child's benefit by the proportion of the time the child spends with the parent who is not receiving the child's benefit.

6. Add the amount in subd. 5. to the child support obligation calculated in subd. 4. for the parent who is receiving the child's benefit.

7. Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared-placement payer. The shared-placement payer shall pay either the lesser of the amount determined in this subsection or the amount determined using the designated percentage.

(10) Dependency exemption. The court may order the payee to waive the federal dependency exemption provided that the payee's execution of the exemption waiver is made contingent on the receipt of child support payments.

(11) Deviation from the percentage standard. (a) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1) if, after considering the factors in s. 767.511 (1m), Stats., as applicable, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties.

(b) If the court under par. (a) modifies the amount of child support payment determined under sub. (1), the court shall state in writing or on the record the amount of support that would be required by using the percentage standard under sub. (1), the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification as provided under s. 767.511 (1n), Stats.

You are further notified of the availability, upon request of the Court Commissioner and with or without charge, of written information on the procedures in this action and any community resources and counseling services available to assist the parties.

Attached to this document is an affidavit concerning custody which is given in compliance with § 822.29, Stats.

If you require services because of a disability, please call 715-395-1203.

Dated this _____ day of _____, 20_____.

Petitioner

Full Name-Typed or Handwritten

Address

_____,
Petitioner,

**PETITION FOR LEGAL CUSTODY,
AND PHYSICAL PLACEMENT**

Petitioner's address

and

Case No. _____

_____,
Respondent.

Code No. 40803

Respondent's address

_____ is the father of the below-named child(ren) based upon signed acknowledgment(s) for said child(ren).

CHILD(REN)'S NAME(S)

DOB

1. Upon information and belief, no other action for custody, placement and support of the child(ren) has been commenced by either of the parents or is pending in any other court or before any judge in this state or elsewhere.

2. The Petitioner is a fit and proper person to have the care and custody of the minor child(ren).

3. The father acknowledged parentage of the minor child(ren) on _____

4. Upon information and belief, the parents have not entered into any written agreement as to custody, placement and support for the child(ren).

5. The Petitioner requests the following relief: (Check whichever provisions you think apply)

- An order determining legal custody and physical placement.
- An order for child support.
- An order for health care expenses and insurance.
- The costs of this action.
- Other: _____
- Any other relief that is appropriate.

Dated this _____ day of _____, 20_____.

Petitioner

_____,
Petitioner,

**NOTICE OF MOTION AND
MOTION FOR LEGAL CUSTODY
AND PHYSICAL PLACEMENT**

and

Case No. _____

_____,
Respondent.

Code No. 40803

PLEASE TAKE NOTICE THAT the Petitioner moves the Court to order: (Check all provisions that apply)

- Issues of legal custody and physical placement.
- Issues of child support.
- Issues of health insurance and payment of uninsured health care expenses.
- Issues of the costs of this action.
- Other: _____

And such other and further relief as may be just, equitable and necessary.

This motion will be heard:

DATE: _____
 TIME: _____
 BEFORE: REBECCA J. LOVEJOY, COURT COMMISSIONER
 ADDRESS: ROOM 301, DOUGLAS COUNTY COURTHOUSE
 1313 BELKNAP STREET
 SUPERIOR WI 54880

If you have a disability and need help in court, please call 715-395-1203.

If you fail to appear the court may proceed without you and an order may be entered.

Dated this _____ day of _____, 20_____.

Petitioner

Petitioner,

**AFFIDAVIT IN SUPPORT OF
MOTION UNDER § 767.805, STATS.**

and

Case No. _____

Respondent.

Code No. 40803

I, _____, being first duly sworn state the following:

1. I am a parent of the above-named child(ren) in the Summons and Petition in this case. A paternity acknowledgment has been signed and filed regarding the child(ren).

2. The issues of legal custody, physical placement, child support, health insurance and payment of birth expenses have not been resolved. I request that a hearing be held to address these issues.

3. I request the Court address the following other issues: _____

4. The minor child(ren)'s present address is: _____

5. The child(ren) resided at the following places during the last 5 years: _____

6. The name(s) and address(es) of the person(s) with whom the child(ren) lived during the last 5 years is: _____

7. I have have not participated as a party or witness, or in any other capacity, in any other proceeding concerning the custody or physical placement of the child(ren).

8. If applicable from #7., the court, case number, and date of the custody/placement determination, was: _____

9. I do do not know of any proceeding that could affect the current case (including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions).

10. If applicable from #9., the court, case number, and nature of the proceeding(s) is: _____

11. I do do not know of any person not a party to this case who has physical placement of the child(ren) or claims rights of legal custody or placement with the child(ren).

12. If applicable from #11., the names and addresses of those persons are: _____

Signature

State of Wisconsin)
) ss
Douglas County)

Subscribed and sworn to before me
this _____ day of _____ 20_____.

Notary Public
My commission is permanent/expires: _____

Petitioner/Joint Petitioner A: _____

Respondent/Joint Petitioner B: _____

Enter the name of the county in which this case is filed.

This form is used for family and paternity case types. Some information may not apply to your case.

Enter the case number and child support IV-D KIDS number, if known.

STATE OF WISCONSIN, CIRCUIT COURT,
_____ COUNTY

Petitioner/Joint Petitioner A:

Name (First, Middle and Last)

Respondent/Joint Petitioner B:

Name (First, Middle and Last)

Case No. _____

IV-D KIDS Case No. _____

Confidential Petition Addendum

Enter the name, date of birth [month, day, year], and social security number of each party.

1. Parties

- A. Petitioner/Joint Petitioner A/Alleged Parent: _____
Date of Birth: _____ SS#: _____ Phone No. _____
- B. Respondent/Joint Petitioner B/Alleged Parent: _____
Date of Birth: _____ SS#: _____ Phone No. _____
- C. Other party: (if any) _____
Date of Birth: _____ SS#: _____ Phone No. _____

See attached

2. Minor Child(ren) that we have together

- A. The minor child(ren) of the other party and me (born or adopted) before or during the marriage/relationship are:

None

Name of Minor Child	Date of Birth	SS#

See attached

B. Other Minor Child(ren)

If this is a divorce or legal separation, list **other** minor child(ren) born to either party during this marriage, but not fathered by the other party:

None

Name of Minor Child	Date of Birth	SS#	Parent

See attached

The party(s) filing this addendum must sign and print your name and date the document.

▶ _____
Signature

Name Printed or Typed

Address

Email Address Telephone Number

Date State Bar No. (if any)

▶ _____
Signature

Name Printed or Typed

Address

Email Address Telephone Number

Date State Bar No. (if any)