

Definitions for Common Terms in Family Court

Note: These definitions are for informational purposes only and are not legal advice.

- ★ **Adopt**-To legally take a child into one's family and raise as their own.
- ★ **Adoption(Private)**- An adoption that takes place without the involvement of a public agency. Examples include, but are not limited to, step-parent adoption and the adoption of a child from another country.
- ★ **Adoption(Agency)**- An adoption that takes place through a social services or foster care agency that has custody of the child. In order for an agency to proceed with an adoption, parental rights must be terminated.
- ★ **Affidavit of Service**-A sworn statement that certifies the delivery of a summons, notice, or order to a person, by stating the time and manner in which the paperwork was given to the party.
- ★ **Appeal**- A formal legal process requesting that a higher court review a lower court's decision.
- ★ **Arrear**- An unpaid or overdue debt.
- ★ **Bi-Weekly, Semi-Monthly, Bi-Monthly**- *Bi-weekly* occurs 26 times per year, such as every other Friday.
Semi-monthly occurs 24 times per year, such as on the 15th day and the last day of every month.
Bi-monthly occurs every other month.
- ★ **Change in Circumstance**- A change, usually substantial, in the emotional, financial, or physical condition of one or both parents, justifying a modification of a child custody or child support order.
- ★ **County**- A geographical designation that is not a city or village. For example, Monroe County includes the City of Rochester.
- ★ **Custody and Detention**- The Family Court Act refers to the procedure for detaining juveniles as "custody and detention" rather than "arrest." A juvenile may be taken into custody by a police officer without a warrant in circumstances in which there would have been probable cause to arrest an adult for the commission of a misdemeanor or felony. After the juvenile is taken into custody, he or she may be detained or held in an appropriate facility for a limited period of time, or may be brought into the Family Court if his or her parent cannot be contacted, or in other limited circumstances.

Note: These definitions are for informational purposes only and are not legal advice.

- ★ **Duration-** The length of time that something lasts.
- ★ **Emancipate-** The release of a child from the control, support, or responsibility of a parent or guardian. There is no provision in the Family Court Act to emancipate a child in regards to custody.
- ★ **Exclusive Jurisdiction-** The provision, made in the United States Constitution, in legislation, or in a contract, that a particular court is the only forum in which a certain type of case may be brought.
- ★ **Ex-parte Communication-**A motion, application, request, submission etc., made by one party without including notice to the other party.
- ★ **Guardian-** A person who is legally responsible for the care and management of the person or property of a minor or incompetent person.
- ★ **In Camera-** Also called a Lincoln Hearing, is held in the Judge's chambers, out of the presence of the public. The judge, child, attorney for the child and court reporter are present.
- ★ **Intimate relationship-** Is required when filing a Family Offense petition. The relationship cannot be a casual or business relationship, but does not have to be a sexual relationship. Judge will make the determination if the relationship is intimate.
- ★ **Judicial Recess -** Four days between Christmas and New Year's where there are no scheduled court proceedings.
- ★ **Mediation-** A method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.
- ★ **Motion-** A formal request made to a judge for an order or judgment. Motions are made in court all the time for many purposes: to continue (postpone) a trial to a later date, to get a modification of an order, for temporary child support, for a judgment, for dismissal of the opposing party's case, for a rehearing, for sanctions (payment of the moving party's costs or attorney's fees), or for dozens of other purposes. Most motions require a written petition, a written brief of legal reasons for granting the motion (often called "points and authorities"), written notice to the attorney for the opposing party and a hearing before a judge. However, during a trial or a hearing, an oral motion may be permitted.
- ★ **Native American-** Also called American Indian, Amerind, Amerindian. A member of the aboriginal people of the land that is now the United States of America or of any of the aboriginal North or South American stocks, usually excluding the Eskimos.
- ★ **Notarize-** To attest to or authenticate as a Notary Public, to verify the identity of the person signing the statement.
- ★ **Notary-** One legally empowered to witness and certify documents.

Note: These definitions are for informational purposes only and are not legal advice.

- ★ **Objection-** A written request that a Judge review a decision of a Support Magistrate.
- ★ **Order of Filiation-** An order establishing the paternity of a child or unborn child born out of wedlock issued by a court. This order establishes the child's legal right to support and inheritance from the biological father, as well as the father's right to seek custody and visitation.
- ★ **Paternity-** The state or condition of being a father.
- ★ **Payee-** Any person to whom a debt should be paid; creditor.
- ★ **Payor-**One who pays a debt or is obligated to pay a debt; debtor.
- ★ **Petitioner-** The person or agency that initiates a case by filing a petition. Known as the "plaintiff" in other courts.
- ★ **Physical Residence-** The place where a person lives.
- ★ **Relief requested-** What the petitioner wants the court to do.
- ★ **Residence-** A place in which a person lives with or without an intention to make it a permanent home.
- ★ **Respondent-** The person or agency against whom a petition is filed, and who responds to the petition. The respondent is known as the "defendant" in other types of courts.
- ★ **Testimony-** Evidence that a competent witness gives under oath at trial or in an affidavit or deposition.

- ★ **Acknowledgment of Paternity, Order of Filiation, Birth Certificate with person named as father, Putative Father**

Acknowledgment of Paternity: This is a written instrument authorized by the social services Law and Public Health Law whereby a person admits that he is the biological father of a particular child born out of wedlock. When properly executed and filed, the acknowledgment has the force and effect of an order of filiation.

Order of Filiation: An order of filiation is an official document by a court, declaring a man to be the father of a child born out of wedlock. Once the order is made, the father has an obligation to support the child and may have rights regarding custody or visitation.

Birth Certificate with person named as father: Having the father's name on the Birth Certificate does not constitute proof of paternity and it is not a legal indicator of paternity for a child born out of wedlock. It is a legal indicator of paternity for a child born during a marriage.

Putative father- Person assumed to be the father of a child born out of wedlock, by actions or deeds such as parenting, providing physical and or monetary support.

Note: These definitions are for informational purposes only and are not legal advice.

Additional Information: If the parties were not married at the time of birth of a child, legal paternity may only be established by signing an Acknowledgment of Paternity (either at the hospital or at the local Department of Social Services) or by the Family Court entering an Order of Filiation. Where the parties are married at the time of birth, then paternity is presumed to be that of the husband.

An Order of Filiation may only be issued by Family Court, although in rare circumstances the Supreme Court will enter such an order. Either party may petition the Family Court for paternity, from pregnancy up until the child reaches 21 years, except in certain circumstances.

Once an Acknowledgment of Paternity is signed it may not be vacated after six months of signing, unless it was signed by fraud, duress or material mistake of fact.

Having one's name on the birth certificate, providing emotional and/or financial support or holding oneself as the father makes one the "putative" father. That person may be named in the New York State Putative Father Registry and requires notice to such father in the event someone tries to adopt the child, the child is placed in foster care or if someone is seeking child custody or guardianship.

However, signing the Acknowledgment of Paternity, having an Order of Filiation, or having been married to the mother at the time of birth makes one the "legal" father. And although the rights and responsibilities are minimal, there is a legal difference between the two.

★ **Custody and Guardianship**

Custody: A court's determination of which parent (or other appropriate party) should have physical and/or legal control and responsibility for a minor child.

Guardianship: Being appointed by a court to manage the affairs of a person incapable of acting for himself, as a minor or person of unsound mind

★ **Modification, Violation, or Enforcement of an Order**

Modification: A change or alteration to an order introducing or canceling stipulations to that order.

Violation: Failure to comply with a Family Court order.

Enforcement: When a person fails to follow the terms of an order, the other party can petition the Family Court to enforce the order and secure the person's compliance.

Note: These definitions are for informational purposes only and are not legal advice.

★ **Sole Custody, Joint physical/legal Custody, Physical Residence**

Sole Custody– The person given sole custody has total responsibility for the child and the right to make important decisions for the child: including religious, educational and medical without the consent of the other parent.

Joint physical Custody: Joint physical custody (instead of one parent having custody with the other having visitation), does not mean exact division of time with each parent, but can be based on reasonable time with each parent either specifically spelled out (certain days, weeks, holidays, alternative periods) or based on stated guidelines and shared payment of costs of raising the child.

Joint legal Custody: Joint legal custody means that both parents can make decisions for the child, including religious, educational and medical, but where possible they should consult the other. Upon the death or disability of either parent, legal custody will go to the remaining parent and will give the active parent the sole ability to act as parent for the child without further order of the court..

Physical Residence: Where the child lives.

★ **Judgment, Order, Agreement**

Judgment: A determination of the rights of the parties in an action or special proceeding. A judgment shall refer to and state the result of a verdict or decision, or recite the circumstances on which it is based.

Order: A written direction or command delivered by the court or a judge.

Agreement: An arrangement between the parties.

★ **Jurisdictional differences between Family Court and Supreme Court**

Family Court: This court handles matters concerning custody, child support, paternity, spousal support, adoptions, family offense, juvenile delinquents, persons in need of supervision, neglect and abuse of minors.

Supreme Court: Of New York State handles separations, divorce, custody and support.

★ **Difference between Refrain from and Stay away on an Order of Protection**

Refrain from: Protects a party from certain dangerous and offending behavior that puts them at risk of physical and emotional violence.

Stay away: A court order which states that a particular person is prohibited from coming near and/or contacting another person.