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Rural Law Center of New York, Inc.

First Steps for a Non-Biological Parent Seeking Custody

If you are filing a new petition, you may get a blank form from your county's Family Court. As for the contents of your petition: In order to gain custody in New York State, if you are not a biological parent of a child, you must specify in your petition that "there are extraordinary circumstances in this case" that warrant you applying for custody. Then you must state what those extraordinary circumstances are. Then you may file the petition with the court (ask for a copy) and wait to be assigned a court date.

If you are amending (adding to or correcting) a previously-filed petition, you need to write an "amended petition" (put that on a new petition form that says: AMENDED PETITION) and then say:

"All of the previous allegations in paragraphs ___ through_____ in my original petition dated, _____ are true, but I would like to amend my petition to allege that there are extraordinary circumstances that warrant me filing for custody. Those are:

Extraordinary circumstances might be that you have been the primary caregiver for a significant period of time, or that the biological parent is no longer present (incarcerated, rehab, etc.) Be sure to describe this fully.

Then take that amended petition to court on your court date.....go a little bit early so it can be filed and you can get copies, that you can distribute (serve) to all of the parties when you are in court.

As to whether you will get custody or not, the judge will look at all the factors in this case. He or she will be looking to see what is in the child's best interest. That means you will need to prove that you can provide

a more stable, consistent, nurturing home, where the child's emotional, financial and educational needs are met best. If this matter goes to trial, you will need evidence (testimony) from others who can attest to what a good "parent" you would be.

Despite who has custody, it is very important that he or she is able to provide love and support.

All parties in the matter need to set aside any personal issues and rally behind this child as he or she grows up.